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

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007–21]

Procedural Rules for Probable Cause Hearings

AGENCY: Federal Election Commission.

ACTION: Rule of Agency Procedure.

SUMMARY: The Federal Election Commission (''Commission'') is making permanent a program that allows respondents in enforcement proceedings under the Federal Election Campaign Act, as amended (''FECA''), to have a hearing before the Commission. Hearings will take place prior to the Commission's consideration of the General Counsel's recommendation on whether to find probable cause to believe that a violation has occurred. The Commission will grant a request for a probable cause hearing if any two commissioners agree to hold a hearing. The program will provide respondents with the opportunity to present arguments to the Commission directly and give the Commission an opportunity to ask relevant questions. Further information about the procedures for the program is provided in the supplementary information that follows.

DATES: Effective November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Mark D. Shonkwiler, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is making permanent a program to afford respondents in pending enforcement matters the opportunity to participate in hearings (generally through counsel) and present oral arguments directly to the Commissioners, prior to any Commission determination of whether to find probable cause to believe respondents violated FECA.[1]

I. Background

On June 11, 2003, the Commission held a hearing concerning its enforcement procedures. The Commission received comments from those in the regulated community, many of whom argued for increased transparency in Commission procedures and expanded opportunities to contest allegations.[2] In response to issues raised at the hearing, the Commission has made a number of changes and clarifications. These changes and clarifications include allowing respondents to have access to their deposition transcripts, *See Statement of Policy Regarding Deposition Transcripts in Nonpublic Investigations,* 68 FR 50688 (August 22, 2003), and clarifying questions concerning treasurer liability for violations of the FECA, *See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings,* 70 FR 3 (January 3, 2005).

On December 8, 2006, the Commission published a proposal for a pilot program for probable cause hearings, and sought comments from the regulated community. *See Proposed Policy Statement Establishing Pilot Program for Probable Cause Hearings,* 71 FR 71088 (Dec. 8, 2006). The comment period on the proposed policy statement closed on January 5, 2007. The Commission received four comments, all of which endorsed the proposed pilot program for probable cause hearings. These comments are available at *http://www.fec.gov/law/policy.shtml#proposed* under the heading ''Pilot Program for Probable Cause Hearings.''

On February 8, 2007, the Commission decided by a vote of 6–0 to institute the pilot program. The program went into effect on February 16, 2007. The pilot program was designed to remain in effect for at least eight months, after which time a vote would be scheduled on whether the program should continue. The Commission finds that the pilot program has been successful and hence, is issuing this notice to announce that the Commission has determined to make the program permanent.

II. Procedures for Probable Cause Hearings

A. Opportunity To Request a Hearing

A respondent may request a probable cause hearing when the enforcement process reaches the probable cause determination stage (see 11 CFR 111.16–111.17) and the respondent submits a probable cause response brief to the Office of General Counsel. The General Counsel will attach a cover letter to its probable cause brief to inform the respondent of the opportunity to request an oral hearing before the Commission. *See* 11 CFR 111.16(b). Hearings are voluntary and no adverse inference will be drawn by the Commission based on a respondent's request for, or waiver of, such a hearing. The respondent must include a written request for a hearing as a part of the respondent's filed reply brief under 11 CFR 111.16(c). Each request for a hearing must state with specificity why the hearing is being requested and what issues the respondent expects to address. Absent good cause, to be determined at the sole discretion of the Commission, late requests will not be accepted. Respondents are responsible for ensuring that their requests are timely received. All requests for hearings, scheduling and format inquiries, document submissions, and any other inquiries related to the probable cause hearings should be directed to the Office of General Counsel.

The Commission will grant a request for an oral hearing if any two Commissioners agree that a hearing would help resolve significant or novel legal issues, or significant questions about the application of the law to the facts. The Commission will inform the respondent whether the Commission is granting the respondent's request within 30 days of receiving the respondent's brief.

B. Hearing Procedures

The purpose of the oral hearing is to provide a respondent an opportunity to present the respondent's arguments in person to the Commissioners *before* the Commission makes a determination as to whether there is ''probable cause to believe'' that the respondent violated

[1] The Commission is appending to this statement a general description of its enforcement procedures (''Basic Commission Enforcement Procedure''). These procedures are prescribed by statute and regulation. See 2 U.S.C. 437g; 11 CFR part 111.

[2] The comments from these 2003 proceedings are available online at *http://www.fec.gov/agenda/agendas2003/notice2003-09/comments.shtml.*

the Act or Commission regulations. Consistent with current Commission regulations, a respondent may be represented by counsel, at the respondent's own expense, or may appear *pro se* at a probable cause hearing. *See* 11 CFR 111.23. Respondents (or their counsel) will have the opportunity to present their arguments, and Commissioners, the General Counsel, and the Staff Director will have the opportunity to pose questions to the respondent, or respondent's counsel, if represented.

At the hearing, respondents are expected to raise only issues that were identified in the respondent's hearing request. Such issues must have been previously presented during the enforcement process, either in the response, during the investigation or pre-probable cause conciliation, or in the reply brief. Respondents may discuss any issues presented in the enforcement matter, including potential liability and calculation of a civil penalty, and should be prepared to address questions related to the complaint, their initial response, and any other material they have submitted to the Commission. The reply brief should include specific citations to any authorities (including prior Commission actions) on which the respondent is replying or intends to cite at the hearing. If respondents discover new information after submission of the reply brief, or need to raise new arguments for similarly extenuating circumstances, they should notify the Commission as soon as possible prior to the hearing. Commissioners may ask questions on any matter related to the enforcement proceedings and respondents are free to raise new issues germane to any response.

Hearings are confidential and not open to the public; generally only respondents and their counsel may attend. Attendance by any other parties must be approved by the Commission in advance.

The Commission will determine the format and time allotted for each hearing at its discretion. Among the factors that the Commission may consider are agency time constraints, the complexity of the issues raised, the number of respondents involved, and the extent of Commission interest. The Commission will determine the amount of time allocated for each portion of the hearing, and each time limit may vary from hearing to hearing. The Commission anticipates that most hearings will begin with a brief opening statement by respondent or respondent's counsel, followed by questioning from the Commissioners, General Counsel, and Staff Director. Hearings will normally conclude with the respondent or respondent's counsel's closing remarks.

Third party witnesses or other co-respondents may not be called to testify at a respondent's oral hearing, nor may a respondent's counsel call the respondent to testify. However, the Commission may request that the respondent submit supplementary information or briefing after the probable cause hearing. The Commission discourages voluminous submissions. Supplementary information may be submitted only upon Commission request and no more than ten days after such a request from the Commission, unless the Commission's request for information imposes a different, Commission-approved deadline. Materials requested by the Commission, and materials considered by the Commission in making its ''probable cause to believe'' determination, may be made part of the public record pursuant to the Commission's *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files,* 68 FR 70426 (Dec. 18, 2003).

The Commission will have transcripts made of the hearings. The transcripts will become a part of the record of the enforcement matter and may be relied upon for determinations made by the Commission. Respondent may be bound by any representations made by respondent or respondent's counsel at a hearing. The Commission will make the transcripts available to the respondent as soon as practicable after the hearing, and the respondent may purchase copies of the transcript. Transcripts will be made public after the matter is closed in accordance with Commission policies on disclosure.[3]

C. Cases Involving Multiple Respondents

In cases involving multiple respondents, the Commission will decide on a case-by-case basis whether to structure any hearings separately or as joint hearings for all respondents. Respondents are encouraged to advise the Commission of their preferences. Co-respondents may request joint hearings if each participating co-respondent provides an unconditional waiver of confidentiality with respect to other participating co-respondents and their counsel and a nondisclosure agreement. If separate hearings are held, each respondent will have access to the transcripts from the hearing of that respondent, but transcripts of other co-respondents' hearings will not be made available unless co-respondents specifically provide written consent to the Commission granting access to such transcripts.

D. Scheduling of Hearings

The Commission will seek to hold the hearing in a timely manner after receiving respondents' request for a hearing. The Commission will attempt to schedule the hearings at a mutually acceptable date and time. However, if a respondent is unable to accommodate the Commission's schedule, the Commission may decline to hold a hearing. The Commission reserves the right to reschedule any hearing. Where necessary, the Commission reserves the right to request from a respondent an agreement tolling any upcoming deadline, including any statutory deadline or other deadline found in 11 CFR part 111.

E. Conclusion

Probable cause hearings are optional and no negative inference will be drawn if respondents do not request a hearing. Currently, the majority of the Commission's cases are settled through pre-probable cause conciliation. Proceeding to probable cause briefing requires a substantial investment of the Commission's limited resources. Consistent with the goal of expeditious resolution of enforcement matters, the Commission encourages pre-probable cause conciliation. The Commission has a practice in many cases of reducing the civil penalty it seeks through its opening settlement offer in pre-probable cause conciliation. However, once pre-probable cause conciliation has been terminated, this reduction (normally 25%) is no longer available and the civil penalty will generally increase.

This notice establishes rules of agency practice or procedure. This notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act (''APA''). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: November 5, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

Note: The following Appendix will not appear in the Code of Federal Regulations.

[3] The Commission's *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files,* 68 FR 70426 (Dec. 18, 2003) is hereby amended to include disclosure of transcripts from probable cause hearings.

Appendix: Basic Commission Enforcement Procedure

The Commission's enforcement procedures are set forth at 11 CFR part 111. An enforcement matter may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. 11 CFR 111.3. If a complaint substantially complies with certain requirements set forth in 11 CFR 111.4, within five days of receipt the Office of General Counsel notifies each party determined to be a respondent that a complaint has been filed, provides a copy of the complaint, and advises each respondent of Commission compliance procedures. 11 CFR 111.5. A respondent then has 15 days from receipt of the notification from the Office of General Counsel to submit a letter or memorandum to the Commission setting forth reasons why the Commission should take no action on the basis of the complaint. 11 CFR 111.6.

Following receipt of such letter or memorandum, or expiration of the 15-day period, the Office of General Counsel may recommend to the Commission whether or not it should find ''reason to believe'' that a respondent has committed or is about to commit a violation of the Act or Commission regulations. 11 CFR 111.7(a).[4] With respect to internally-generated matters (*e.g.*, referrals from the Commission's Audit or Reports Analysis Divisions), the Office of General Counsel may recommend that the Commission find ''reason to believe'' that a respondent has committed or is about to commit a violation of the Act or Commission regulations on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or any state. If the Commission determines by an affirmative vote of four members that it has ''reason to believe'' that a respondent violated the Act or Commission regulations, the respondent must be notified by letter of the Commission's finding(s). 11 CFR 111.9(a).[5] The Office of General Counsel will also provide the respondent with a Factual and Legal Analysis, which will set forth the bases for the Commission's finding of reason to believe.

After the Commission makes a ''reason to believe'' finding, an investigation is conducted by the Office of General Counsel, in which the Commission may undertake field investigations, audits, and other methods of information-gathering. 11 CFR 111.10. Additionally, the Commission may issue subpoenas to order any person to submit sworn written answers to written questions, to provide documents, or to appear for a deposition. 11 CFR 111.11–111.12. Any person who is subpoenaed may submit a motion to the Commission for it to be quashed or modified. 11 CFR 111.15.

Following a ''reason to believe'' finding, the Commission may attempt to reach a conciliation agreement with the respondent(s) prior to reaching the ''probable cause'' stage of enforcement (i.e., a pre-probable cause conciliation agreement). See 11 CFR 111.18(d). If the Commission is unable to reach a pre-probable cause conciliation agreement with the respondent, or determines that such a conciliation agreement would not be appropriate, upon completion of the investigation referenced in the preceding paragraph, the Office of General Counsel prepares a brief setting forth its position on the factual and legal issues of the matter and containing a recommendation on whether or not the Commission should find ''probable cause to believe'' that a violation has occurred or is about to occur. 11 CFR 111.16(a).

The Office of General Counsel notifies the respondent(s) of this recommendation and provides a copy of the probable cause brief. 11 CFR 111.16(b). The respondent(s) may file a written response to the probable cause brief within fifteen days of receiving said brief. 11 CFR 111.16(c). After reviewing this response, the Office of General Counsel shall advise the Commission in writing whether it intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration. 11 CFR 111.16(d).

If the Commission determines by an affirmative vote of four members that there is ''probable cause to believe'' that a respondent has violated the Act or Commission regulations, the Commission authorizes the Office of General Counsel to notify the respondent by letter of this determination. 11 CFR 111.17(a). Upon a Commission finding of ''probable cause to believe,'' the Commission must attempt to reach a conciliation agreement with the respondent. 11 CFR 111.18(a). If no conciliation agreement is finalized within the time period specified in 11 CFR 111.18(c), the Office of General Counsel may recommend to the Commission that it authorize a civil action for relief in the appropriate court. 11 CFR 111.19(a). Commencement of such civil action requires an affirmative vote of four members of the Commission. 11 CFR 111.19(b). The Commission may enter into a conciliation agreement with respondent after authorizing a civil action. 11 CFR 111.19(c).

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[4] The Office of General Counsel may also recommend that the Commission find no ''reason to believe'' that a violation has been committed to is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 CFR 111.6(a). 11 CFR 111.7(b).

[5] If the Commission finds no ''reason to believe,'' or otherwise terminates its proceedings, the Office of General Counsel shall advise the complainant and respondent(s) by letter. 11 CFR 111.9(b).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[Docket No. DEA–287F]

RIN 1117–AB01

Issuance of Multiple Prescriptions for Schedule II Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Department of Justice

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is finalizing a Notice of Proposed Rulemaking published on September 6, 2006 (71 FR 52724). In that document, DEA proposed to amend its regulations to allow practitioners to provide individual patients with multiple prescriptions, to be filled sequentially, for the same schedule II controlled substance, with such multiple prescriptions having the combined effect of allowing a patient to receive over time up to a 90-day supply of that controlled substance.

DATES: *Effective Date:* This rule is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 2006, the Drug Enforcement Administration (DEA) published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) (71 FR 52724) proposing to amend its regulations to allow practitioners to provide individual patients with multiple prescriptions, to be filled sequentially, for the same schedule II controlled substance, with such multiple prescriptions having the combined effect of allowing a patient to receive over time up to a 90-day supply of that controlled substance.

Comments Received

DEA received 264 comments regarding the NPRM. Two hundred thirty-one commenters supported the NPRM, 33 commenters opposed the rulemaking. Commenters supporting the NPRM included six physician associations, including those representing anesthesiologists, pediatricians, and psychiatrists, and three state level licensing organizations;

five nursing associations, including several nursing specialty associations; 3 pharmacy associations and 6 state boards of pharmacy; 17 organizations focusing on the treatment of pain and end of life issues; 8 other organizations; and individual commenters including 73 pain patients, 65 physicians or physicians' offices, 31 parents of children with attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), 30 individual citizens, 16 pharmacists, 5 nurses, and 2 physician's assistants. Commenters opposing the NPRM included 1 organization focusing on the treatment of pain; 17 individual citizens; 8 physicians; 3 pharmacists or pharmacy workers; 2 parents of pain patients; 1 nurse; and 1 physician's assistant.

The vast majority of commenters supported the rulemaking as proposed, although some commenters suggested various changes or requested clarification of certain issues. DEA has carefully considered all comments received. An in-depth discussion of the issues raised by commenters and DEA's responses to those comments follows.

Discussion of Comments

Of the 264 comments DEA received, 166 expressed approval of the proposed rule without change. The remainder of the comments either objected to the proposed rule or suggested modifications thereto. The major issues raised by the commenters are addressed below.

Comments expressing approval of the proposed rule without change: Commenters who expressed support for this rule represented a broad variety of interest groups, medical professionals, pharmacists, and patients. General comments regarding the support for this rule and the benefits commenters believed it will have appear below.

Patients being treated for pain: Commenters who described themselves as patients who receive controlled substances for the treatment of pain were very supportive of implementation of the rule as proposed. These commenters noted that the allowance for multiple prescriptions would reduce the number of visits they would need to make to practitioners, which would be beneficial financially. Many of these patients indicated they are unemployed or underemployed due to their medical conditions, and each additional visit to practitioners for the purpose of receiving another prescription takes a financial toll on them.

Among the patients who commented in support of the rule were those who indicated that they live in rural areas. These commenters explained that, currently, they must either drive to their practitioners, which is difficult for them, or must find someone to drive them because they cannot drive themselves due to their condition. They noted that arranging rides is often difficult and that the drive to a practitioner may be several hours each way. Some also stated that the trip is expensive and that the length of the trip exacerbates their conditions. According to these commenters, implementation of the proposed rule would enable them to visit their prescribing practitioners less frequently, thereby lessening the foregoing difficulties.

Parents of children receiving controlled substances: Commenters who described themselves as parents of children with ADD or ADHD welcomed the proposed rule. In their view, if the proposed rule is implemented, they no longer will have to take their children to their prescribing practitioners every month. As a result, they indicated they will be able to take less time off from work and their children will have fewer absences from school. Many of these commenters also noted that having to make monthly visits to practitioners is especially burdensome to single parents. These commenters also identified reduced costs as a reason for their support of the proposed rule.

Prescribing practitioners: Commenters who identified themselves as practitioners who prescribe controlled substances were, for the most part, strongly supportive of the proposed rule. Many of these commenters expressed the view that allowing the issuance of multiple sequential prescriptions for schedule II controlled substances will drastically reduce the work of the practitioners' offices and free up valuable practitioner-patient time. Many also expressed the view that for some of their patients whom they characterized as ''stable'' (including certain patients with chronic pain and ADD or ADHD), they believe there is no medical need to see such patients every month. In such cases, some of these commenters added they believe having to make monthly visits to the practitioner is a hardship to patients who are already suffering. It should be noted that some commenters who identified themselves as practitioners expressed a sharply contrasting view, asserting that patients who receive schedule II controlled substances should be seen in person at least once a month to ensure proper medical supervision and to lessen the likelihood of drug addiction and abuse. This latter perspective of some commenting practitioners is addressed further below.

Pharmacists: Commenters who identified themselves as pharmacists were, for the most part, supportive of the proposed rule. These commenters stated that issuing multiple prescriptions for sequential filling for schedule II controlled substances would reduce the quantity of those controlled substances dispensed to a patient at any one time. They argued that this reduced quantity could reduce the potential for abuse or diversion of these controlled substances. Some pharmacists indicated they would be more comfortable dispensing these prescriptions because of the more limited quantities dispensed.

90-day supply at one time: Sixteen commenters who supported the NPRM, and six commenters who disagreed with the NPRM, believed that the entire 90-day supply of controlled substances was available at one time instead of in sequential prescriptions. Commenters who supported the rule but believed that DEA is advocating the dispensing of a 90-day supply of controlled substances at one time cited the ease of filling prescriptions and obtaining reimbursement as reasons for their support. Those who objected to the rule on this ground believed it would be more difficult to monitor patients.

DEA response: In view of these comments, DEA wishes to make clear that the NPRM did *not* advocate that physicians prescribe a 90-day supply of controlled substances with a single prescription. Rather, the NPRM stated that if a physician determines it is medically appropriate to issue multiple schedule II prescriptions, the physician may provide for up to a 90-day supply through the use of multiple schedule II prescriptions under the conditions specified in the proposed rule.

As to the comment that DEA should allow multiple schedule II prescriptions for unlimited days' worth of schedule II controlled substances, as DEA explained in the NPRM, for the proposed rule to be legally permissible, it must be consistent with the text, structure, and purposes of the Controlled Substances Act (CSA). In this regard, 21 U.S.C. 829(a) states: ''No prescription for a controlled substance in schedule II may be refilled.'' By comparison, subsection 829(b) states that, for a schedule III or IV controlled substance, a prescription may be refilled up to five times within six months after the date the prescription was issued. Thus, Congress clearly mandated greater prescription controls for schedule II substances than for schedule III and IV substances. For example, a physician may—consistent with the statute—issue a prescription for a schedule III or IV controlled

substance and indicate on the prescription a certain number of refills. In this manner, a physician may provide a patient with up to a six-month supply of a schedule III or IV controlled substance with a single prescription indicating five refills. The same cannot be done with a schedule II controlled substance since section 829(a) prohibits refills. The statute requires a separate prescription if the physician wishes to authorize a continuation of the patient's use of a schedule II drug beyond the amount specified on the first prescription. Thus, if DEA were to allow multiple prescriptions for an unlimited days' worth of schedule II controlled substances, the controls for prescribing schedule II controlled substances would be less stringent than for schedule III and IV controlled substances—a result that would conflict with the purpose and structure of the CSA. DEA believes that the 90-day limit, under the terms specified in the proposed rule, strikes a fair balance that takes into account the limitation imposed by Congress under section 829 as well as the general structure of the statute, which imposes greater controls for schedule II substances than those in lower schedules.

Sequential filling of prescriptions, ''refills'': One commenter opposed the NPRM because the commenter believed that sequential prescriptions were ''refills'' which are not permitted by law. Two commenters suggested writing all sequential prescriptions, which the commenters referred to as ''refills,'' on one prescription. They believed this would prevent the patient from changing the dates or using multiple pharmacies to fill the prescriptions. Commenters also believed this would eliminate the possibility of the patient claiming that the original prescription had been lost and requesting replacement prescriptions. Two commenters recommended allowing 90-day sequential prescriptions on one prescription blank, but allowing the practitioner to prescribe the intervals at which it would be filled, rather than only permitting 30-day interval sequential fillings.

One commenter suggested writing a single prescription with two ''refills'' with the annotation ''Do not fill more frequently than once a month.'' One commenter suggested permitting not more than two ''refills'' of a schedule II prescription, but requiring the use of triplicate prescription blanks with one copy being sent to the state and the second copy being sent to DEA. The commenter then suggested that if a practitioner chose not to agree to this system, then the practitioner would not be permitted to sequentially prescribe any schedule II prescription. The commenter believed that this system would prevent theft and loss.

DEA response: As discussed above, DEA believes that the proposed rule takes into account the CSA prohibition on refilling prescriptions for schedule II controlled substances in a manner consistent with the overall framework of the Act. The use of multiple prescriptions for the dispensing of schedule II controlled substances, under the conditions set forth in this Final Rule, ensures that the prescriptions are treated as separate dispensing documents, not refills of an original prescription. As this Final Rule indicates, each separate prescription must be written for a legitimate medical purpose by a practitioner acting in the usual course of professional practice, and the practitioner must provide written instructions on each separate prescription regarding the filling of that prescription.

Regarding the comment that suggested allowing the writing of a single prescription with two ''refills'' with the annotation ''Do not fill more frequently than once a month,'' this would conflict with the CSA, which, as explained above, disallows the refilling of schedule II prescriptions. As indicated in this Final Rule, when issuing multiple prescriptions for a schedule II controlled substance, each of the prescriptions to be filled sequentially must be written on a separate prescription blank and must contain the information specified in this Final Rule.

As for the suggestion that DEA require the use of triplicate prescription blanks, DEA has never required triplicate prescription blanks for prescriptions and believes, at this time, that the requirements contained in this Final Rule provide adequate safeguards against diversion, which render unnecessary the use of triplicate prescription blanks. However, as with all newly promulgated regulations, DEA will continue to monitor the situation to determine whether additional modifications are needed to safeguard against diversion. DEA recognizes that some states require the use of triplicate prescriptions for some or all controlled substances. DEA supports the efforts of states to take the specific action they deem necessary to prevent the diversion of controlled substances within their jurisdictions. This Final Rule expressly requires practitioners to comply with all applicable provisions of state law when issuing multiple schedule II prescriptions.

Federal law and schedule II controlled substances: Five commenters requested written clarification that this rule is not intended to change existing Federal law which does not limit the length of time for which an individual prescription may be written or the total quantity, including the number of dosage units, that may be prescribed at one time. Further, two commenters suggested that DEA state, in the Final Rule, that federal law does not address how frequently a practitioner must see his patient, and that it remains within the practitioner's reasonable medical judgment as to how frequently the practitioner sees a patient.

Commenters requested that DEA clarify that the practitioner is not required to see the patient every 30 days or at the end of 90 days. One commenter requested that DEA clarify whether a practitioner is required to see a patient after 90 days. Alternatively, the commenter inquired as to whether the practitioner is permitted to write a new prescription with ''Do not fill until'' and mail it to the patient or have the patient pick it up if, in the prescribing practitioner's medical judgment, the patient does not need to see the practitioner. One commenter recommended DEA clarify whether it is DEA's intent to limit any schedule II controlled substance prescription to only a 90-day supply or, alternatively, to limit sequential schedule II prescriptions written on the same day to a 90-day supply. One commenter requested clarification as to whether the regulation limits the supply to 90 days when only a single schedule II controlled substance prescription is issued.

DEA response: As the NPRM made clear, the proposed rule in no way changes longstanding federal law governing the issuance of prescriptions for controlled substances. As stated in the NPRM: ''What is required, in each instance where a physician issues a prescription for any controlled substance, is that the physician properly determine there is a legitimate medical purpose for the patient to be prescribed that controlled substance and that the physician be acting in the usual course of professional practice.'' (71 FR 52725, September 6, 2006). Further, this Final Rule itself contains the following statement:

> Nothing in this subsection shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue

multiple prescriptions and how often to see their patients when doing so.

In addition, in the August 26, 2005, ''Clarification of Existing Requirements Under the Controlled Substances Act for Prescribing Controlled Substances'' (70 FR 50408), DEA stated the following:

> The CSA and DEA regulations contain no specific limit on the number of days worth of a schedule II controlled substance that a physician may authorize per prescription. Some states, however, do impose specific limits on the amount of a schedule II controlled substance that may be prescribed. Any limitations imposed by state law apply in addition to the corresponding requirements under Federal law, so long as the state requirements do not conflict with or contravene the Federal requirements. 21 U.S.C. 903. Again, the essential requirement under Federal law is that the prescription for a controlled substance be issued for a legitimate medical purpose in the usual course of professional practice. In addition, physicians and pharmacies have a duty as DEA registrants to ensure that their prescribing and dispensing of controlled substances occur in a manner consistent with effective controls against diversion and misuse, taking into account the nature of the drug being prescribed. 21 U.S.C. 823(f).

This Final Rule does not change any of the foregoing principles of the CSA and DEA regulations.

Effective date of prescription: Two commenters requested that DEA clarify the effective date of a sequential prescription for a schedule II controlled substance. Some commenters pointed out that some states stipulate ''effective dates'' for prescriptions, noting that these states have laws which require that, to be valid, prescriptions must be filled within a certain time after they are written, and that these time limits differ by state. Some commenters noted that if the time limit starts on the date all the sequential prescriptions are written, then it cannot be used in some states. If the effective date starts on the ''Do not fill until'' date on the second and third prescriptions, then it will be valid in many more states.

Three commenters requested clarification as to whether it is legally permissible for a practitioner to issue a *single* prescription with ''Do not fill before [date],'' in which the ''Do not fill'' date is, for example, 7–10 days in the future.

DEA response: Neither the CSA nor the DEA regulations use the term ''effective date'' for a prescription. The DEA regulations require that all prescriptions for controlled substances ''be dated as of, and signed on, the day when issued.'' 21 CFR 1306.05(a). This Final Rule does not amend the regulations regarding the date of issuance of a prescription.

Under longstanding federal law and DEA regulations, there is no express requirement that a prescription be filled within a certain time after it was issued. The proposed rule likewise contained no such express requirement, as DEA believes that the requirements contained in the proposed rule provided adequate safeguards against diversion. At the same time, the proposed rule made clear that the issuance of multiple prescriptions is permissible only if ''the individual practitioner complies fully with all other applicable requirements under the [CSA] and [DEA] regulations as well as any additional requirements under state law.'' (71 FR 52726). To make this point unambiguous, the NPRM also stated that ''nothing in this proposed rule changes the requirement that physicians must also abide by the laws of the states in which they practice and any additional requirements imposed by their state medical boards with respect to proper prescribing practices and what constitutes a bona fide physician-patient relationship.'' (71 FR 52725).

The proposed rule did not address whether a *single* prescription with ''Do not fill before [date]'' instructions is permissible. Nor does any existing provision of the CSA or DEA regulations address this type of prescribing. Accordingly, there is no prohibition on doing so under the CSA or DEA regulations, provided the practitioner otherwise complies fully with all applicable requirements of federal and state law.

Insurance reimbursement considerations: Four commenters requested further relaxation of the regulations to allow a 90-day supply of schedule II controlled substances to be dispensed *at one time* because, these commenters asserted, this would significantly decrease the cost of the medications to the patients through their health insurance. One commenter also recommended permitting the pharmacy to dispense a 90-day supply on one prescription, making it available in 30-day intervals, but allowing the patient to pay for the entire supply at one time to save on the cost of the medication.

DEA response: It is beyond the scope of DEA's authority under the CSA to take regulatory action for the specific purpose of affecting the manner in which patients pay for the medications or the manner in which insurance providers reimburse patients for such costs. As mentioned previously, the CSA and DEA regulations contain no specific limit on the number of days' worth of a schedule II controlled substance that a practitioner may authorize per prescription.

Limitations regarding certain medications: Three commenters supported the use of sequential prescriptions specifically for schedule II controlled substances used to treat ADD or ADHD, but disagreed with the use of sequential prescriptions for schedule II controlled substances used in the treatment of pain. Commenters believed pain patients should be seen and evaluated every 30 days and have medications prescribed at that time. One commenter requested that DEA include explicit language indicating that this regulation is applicable to all patients being treated for ADHD with stimulant medications.

Conversely, one commenter supported the use of sequential prescriptions only for narcotic schedule II controlled substances, or pain medications.

Another commenter suggested rescheduling methylphenidate and amphetamines, except methamphetamine, to separate them from pain medications because the two populations for ADHD medications and pain medications are different.

DEA response: This rule pertains to all schedule II controlled substances, not just those substances intended or approved to treat certain conditions. As DEA stated in the September 6, 2006, Policy Statement published in conjunction with the Notice of Proposed Rulemaking (71 FR 52716), it is certainly appropriate for prescribing practitioners and medical oversight boards to explore questions regarding appropriate treatment regimens for particular categories of controlled substances. Moreover, it might indeed be beneficial toward preventing diversion and abuse of controlled substances for prescribing practitioners to see patients at regular intervals when prescribing certain controlled substances for certain medical conditions. However, as the Policy Statement made clear, DEA does not regulate the general practice of medicine and the agency lacks the authority to issue guidelines that constitute advice on the general practice of medicine. DEA wishes to reiterate the general principle that the prescribing practitioner must properly determine there is a legitimate medical purpose for the patient to be prescribed the controlled substance and must be acting in the usual course of professional practice. Similarly, a pharmacy has a corresponding responsibility in this regard.

Regarding the comment suggesting the rescheduling of certain schedule II

controlled substances based on the conditions and populations which they are intended to treat, DEA notes that scheduling of controlled substances is based on scientific determinations regarding the substance's potential for abuse, its potential for psychological and physical dependence, and whether the substance has a currently accepted medical use in treatment in the United States (21 U.S.C. 812(b)). DEA may not reschedule a substance merely based on the population it is intended or approved to treat.

Language on sequential prescriptions: Two commenters suggested not limiting the language on the prescription to ''Do not fill before [date].'' These commenters suggested other alternatives including ''Do not fill until xx/xx/xxxx,'' and ''Fill on xx/xx/xxxx.'' Five commenters requested that DEA provide examples of acceptable language in the Final Rule. One commenter suggested requiring a standardized method for dating prescriptions, and considering prescriptions void if that standard is not adhered to. Another commenter recommended that specific indication should be provided regarding sequential prescriptions by including ''1 of 3,'' ''2 of 3,'' and ''3 of 3'' on the prescriptions.

DEA response: The Final Rule states that the individual practitioner must ''[provide] written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription.'' The commenters have correctly observed that this provision does not mandate that the practitioner use any particular language in the instructions on the sequential prescriptions, so long as such instructions make clear what is the earliest date on which the pharmacy may fill each prescription. DEA believes this is a sufficiently clear rule that practitioners will be able to understand and carry it out and, therefore, it is unnecessary to insist on a particular scripted approach. Likewise, under this Final Rule, a practitioner may—but is not required to—do as the commenter suggested and write on the sequential prescriptions, ''1 of 3,'' ''2 of 3,'' and ''3 of 3'', so long as each prescription complies fully with all the requirements of this Final Rule, including that it contains specific instructions regarding the earliest date on which the sequential prescription may be filled.

One commenter recommended that the practitioner write in his/her own handwriting in blue ink ''Do not fill until [date].''

DEA response: DEA appreciates that the underlying intent of this comment is to ensure that the ''Do not fill until [date]'' instructions were actually written by the practitioner, as opposed to being the result of forgery. While DEA supports all efforts of practitioners to take steps to prevent forgery in the context of prescriptions, the agency believes it is unnecessary to adopt the particular added requirement suggested by this commenter.

One commenter recommended that certain diagnostic codes, known as ICD–9 codes, should be written by the practitioner in their own handwriting on the face of the prescription.

DEA response: DEA has not previously required that prescriptions contain such diagnostic information, and the agency does not believe that such requirement is necessary to prevent diversion and abuse of controlled substances when issuing multiple prescriptions in accordance with the rule being issued today.

Post-dating of prescriptions: One commenter recommended allowing *post-dated* prescriptions so the practitioner does not have to use space on the prescription blank for the phrase ''Do not fill before [date].''

DEA response: The DEA regulations have always required that all prescriptions for controlled substances ''be dated as of, and signed on, the day when issued.'' 21 CFR 1306.05(a). This requirement is essential to monitor compliance with all provisions of the CSA and DEA regulations relating to the prescribing and dispensing of controlled substances, including (but not limited to) the requirement that a controlled substance be dispensed, including prescribed, only for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. Accordingly, it would be inappropriate to allow post-dating of prescriptions under any circumstance, including when issuing multiple prescriptions under the Final Rule being issued today.

Return of unfilled prescriptions: One commenter suggested that a patient return to the practitioner unfilled prescriptions (if issued for sequential dispensing) if the practitioner changes the medication and before the patient can receive a new prescription, as compared with simply destroying the previous prescriptions. The commenter asserted this would help to ensure that the previously-issued prescriptions will not be filled and diverted.

DEA response: Neither the CSA nor the DEA regulations address what a patient should do with an unfilled prescription for a controlled substance. Thus, regardless of whether the practitioner writes a single prescription or issues multiple prescriptions at the same time under the Final Rule being issued today, there is no mandatory procedure for handling unfilled prescriptions. In all situations, however, practitioners should use common sense in determining what steps are appropriate to prevent diversion in view of the particular patient's circumstances. While not required under the CSA or DEA regulations, it would be acceptable—and may even be the preferred practice—for a practitioner to ask the patient to return unfilled prescriptions for controlled substances, or for a patient to voluntarily do so.

Pharmacies and dispensing of sequential prescriptions: One commenter recommended that DEA clarify what a pharmacy is permitted to do if a prescription is written for 30 days and the month has 31 days (e.g., a prescription for 30 days with ''Do not fill'' before dates of 10/18/yy, 11/18/yy, 12/18/yy, but October has 31 days). The commenter also asked whether a pharmacist who fills a sequential prescription a day before the date stated because the pharmacy will be closed on the date the sequential prescription may be filled (e.g., Sunday) would be violating the regulation. Other commenters asked similar questions as to whether a pharmacist may fill sequential prescriptions earlier than the date specified by the prescribing practitioner. One commenter requested that DEA allow some language for a pharmacist's ''good judgment'' rather than having as an absolute that sequential prescriptions cannot be filled before the ''Do not fill'' date. At the very least, the commenter recommended that DEA include a statement of its intent to use enforcement discretion in these cases. Two commenters recommended that DEA clarify whether pharmacists can fill a sequential prescription before the ''Do not fill'' date (1) if the practitioner has not been contacted and (2) if the practitioner has been contacted. Three commenters requested that DEA clarify whether pharmacies are held accountable for filling the sequential prescriptions before the indicated date. Two commenters suggested that the Final Rule clarify any implications or responsibilities for the dispensing pharmacy.

DEA response: As explained in the NPRM, the requirements contained in the proposed rule were included to ensure that the rule can be reconciled with the text, purpose, and structure of the CSA. This includes, but is not limited to, adherence to the principles of requiring a written prescription for a schedule II controlled substance,

maintaining clear accountability by practitioners when prescribing controlled substances, and ensuring adequate safeguards to prevent diversion and abuse. The Final Rule being issued today states expressly that, where a practitioner has issued multiple prescriptions in accordance with the rule, no pharmacist may fill any prescription before the date specified by the practitioner. The rule contains no exceptions to this requirement. In addition, because the CSA states that prescriptions for schedule II controlled substances must be written (21 U.S.C. 829(a)), the essential elements of the prescription written by the practitioner (such as the name of the controlled substance, strength, dosage form, and quantity prescribed, and—in the case of multiple prescriptions under this Final Rule—the earliest date on which the prescription may be filled) may not be modified orally.

Changes to Regulatory Text

Section 1306.12: Some commenters suggested revising the proposed rule to state that multiple prescriptions do not constitute refills.

DEA response: DEA believes such a revision is unnecessary as it is clear from the text of the rule that it is permissible to issue multiple prescriptions in the manner specified in the rule.

Use of the term ''properly'': Section 1306.12(b)(1)(i) of the proposed rule read: ''The individual practitioner properly determines there is a legitimate medical purpose for the patient to be prescribed that controlled substance and the individual practitioner is acting in the usual course of professional practice.'' Several commenters suggested removing the word ''properly'' here, asserting that the use of the word ''properly'' in this context is unclear or modifies the meaning of the longstanding requirement that a controlled substance be dispensed for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

DEA response: Although the language of the proposed rule was meant simply to reiterate (and not modify) the meaning of the longstanding requirement that a controlled substance be dispensed for a legitimate medical purpose by a practitioner acting in the usual course of professional practice, DEA has decided to revise section 1306.12(b)(1)(i) in view of the comments. Specifically, DEA has revised this paragraph to more closely track the pertinent language contained in the longstanding regulation 21 CFR 1306.04(a). The paragraph being finalized today reads: ''Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice.''

Section 1306.12(b)(1)(iii): Section 1306.12(b)(1)(iii) of the proposed rule stated: ''The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.'' Several commenters objected to this provision, asserting that its meaning is unclear or that it imposes an undue burden on practitioners to prevent diversion and abuse. One commenter requested that DEA state whether this imposes a new standard on practitioners.

Eleven commenters recommended deleting the paragraph in its entirety. Commenters believed that the practitioner cannot account for all possible scenarios in making this conclusion. Commenters stated that the potential liability problem for practitioners is that their conclusions and prescribing actions could come into question any time a patient was implicated in abuse or diversion. Commenters believed that practitioners will waste valuable patient time documenting why issuing sequential prescriptions does not cause undue risk. Commenters believed it could also cause the unintended consequences of practitioners avoiding prescribing a medication the patient needs for fear of liability in court. Commenters argued that sequential prescriptions, in limiting the quantity of controlled substances prescribed at one time, supposedly decrease the potential for abuse/diversion.

DEA response: Since the inception of the CSA, it has always been a requirement that all DEA registrants (manufacturers, distributors, practitioners, pharmacies, researchers, importers and exporters) take reasonable steps to prevent their DEA registrations from being used in a manner that results in an undue risk of diversion. This requirement is inherent in the CSA registration provisions (21 U.S.C. 823) as well as the DEA regulations. For example, 21 CFR 1301.71 states: ''All * * * registrants shall provide effective controls to guard against theft and diversion of controlled substances.'' It bears emphasis that the Final Rule being issued today in no way changes this requirement. Under this Final Rule, practitioners who prescribe controlled substances are subject to the same standard in preventing diversion as they always have been under the CSA and DEA regulations. Section 1306.12(b)(1)(iii) of this Final Rule is intended to make clear that a practitioner may not simply comply with the other requirements of this Final Rule while turning a blind eye to circumstances that might be indicative of diversion. Thus, section 1306.12(b)(1)(iii) merely underscores that the longstanding requirement of providing effective controls against diversion remains in effect when issuing multiple schedule II prescriptions in accordance with this Final Rule.

Further, as DEA stated in the Policy Statement (71 FR 52716), published alongside the NPRM, ''one cannot provide an exhaustive and foolproof list of 'dos and don'ts' when it comes to prescribing controlled substances for pain or any other medical purpose.'' Just as DEA cannot provide an exhaustive list of ''dos and don'ts'' to elaborate on the phrase ''legitimate medical purpose in the usual course of professional practice,'' the agency cannot expand upon the general requirement that practitioners take reasonable steps to prevent diversion by setting forth a list of every hypothetical scenario a practitioner might encounter along with specific instructions on how the practitioner should handle the situation. DEA has an obligation to carry out all regulatory requirements in a reasonable manner, consistent with the governing statutes enacted by Congress, and to take into account all circumstances of the particular case at issue. The agency will do so with regard to all aspects of this Final Rule, including *section 1306.12(b)(1)(iii).*

Section 1306.12(b)(2): Section 1306.12(b)(2) of the proposed rule contained the statement:

> Nothing in this paragraph (b) shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.

In this context, two commenters suggested deleting the words ''in accordance with established medical standards.'' The commenters indicated they were not aware of any standards that a practitioner could use to determine whether it is appropriate to issue multiple prescriptions.

DEA response: The requirement that a prescription for a controlled substance be issued in accordance with established medical standards has been an integral part of federal law for decades and has been upheld by the

United States Supreme Court.[1] This requirement applies to all controlled substances and applies regardless of whether a practitioner issues a single prescription or multiple prescriptions in accordance with this Final Rule.

Pharmacies and dispensing of sequential prescriptions: In section 1306.14, Labeling of substances and filling of prescriptions, DEA proposed the following new paragraph (e): ''Where a prescription that has been prepared in accordance with section 1306.12(b) contains instructions from the prescribing practitioner indicating that the prescription shall not be filled until a certain date, no pharmacist may fill the prescription before that date.''

One commenter suggested the following additional language to section 1306.14(e): ''No pharmacist or pharmacy including mail order operations may auto-fill any additional prescriptions for schedule II drugs before verifying that the patient is still in need of each prescription refill.''

DEA response: It has always been the case under the CSA and DEA regulations that a pharmacist who fills a prescription for a controlled substance has a corresponding responsibility to ensure that the prescription was issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice. This requirement, which is set forth in 21 CFR 1306.04(a), is one of the primary legal bases upon which pharmacists are held accountable under the CSA. DEA believes it is not necessary to modify or expand upon this longstanding requirement in the context of multiple schedule II prescriptions, so long as the prescribing and filling of such prescriptions takes place in accordance with all the provisions of this Final Rule.

Other Issues

Electronically transmitted prescriptions: Four commenters recommended DEA allow electronically transmitted prescriptions for controlled substances.

DEA response: DEA notes that the electronic prescribing of controlled substances is outside the scope of this rulemaking. DEA intends to address electronic prescribing of controlled substances in a separate future rulemaking.

Authorization to use sequential prescriptions prior to publication of Final Rule: Two commenters requested that DEA allow practitioners to begin issuing multiple schedule II prescriptions based on the issuance of the NPRM (without waiting for a Final Rule to be published and to take effect).

DEA response: Under the Administrative Procedure Act (APA), when an agency seeks to impose a new substantive rule that modifies legal obligations of members of the public, the agency must first engage in notice-and-comment rulemaking (5 U.S.C. 553(b)). The APA further provides that substantive rules may not take effect until at least 30 days after publication of the final rule (5 U.S.C. 553(d)). Exceptions to these procedural requirements can be made only ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(B)). DEA has not found that there is such a legal justification to exempt this Final Rule from the basic procedural requirements of the APA. Accordingly, this Final Rule does not take effect until the effective date indicated herein (December 19, 2007).

Long Term Care Facilities: One commenter asked if this rule will apply to patients in long term care facilities.

DEA response: The DEA regulations contain a variety of provisions relating to the dispensing of controlled substances at long term care facilities. These provisions are unaltered by this Final Rule. This Final Rule may be utilized in the context of a long term care facility, provided such activity complies with any other applicable provisions of the DEA regulations.

Miscellaneous: One commenter recommended that DEA make one federal rule regarding prescriptions to supersede the many different state laws.

DEA response: Under the CSA, Congress envisioned that the Federal and State Governments would work in tandem to regulate activities relating to controlled substances. This is reflected in 21 U.S.C. 903, which indicates that Congress did not intend to preempt state controlled substance laws, so long as such state laws do not conflict with federal law. Thus, each state may enact controlled substance laws that go beyond the requirements of the CSA, provided such laws do not conflict with the CSA. Given this aspect of the CSA, it would not be appropriate for DEA to seek to preempt or supersede state laws relating to the prescribing of controlled substances, provided such laws do not conflict with the CSA or DEA regulations.

One commenter suggested DEA work with other federal agencies and national professional medical societies to be certain doctors are screening for alcoholism and drug addiction in their private medical practices as they are prescribing schedule II controlled substances in the treatment of legitimate medical illnesses.

DEA response: DEA firmly supports all efforts of practitioners to screen for factors that might be indicative of whether the patient may be likely to seek controlled substances for purposes of abuse or to satisfy an addiction. However, such a consideration is beyond the scope of this Final Rule. Persons interested in such considerations might wish to review the Policy Statement, which was published in the **Federal Register** alongside the NPRM (71 FR 52716).

Three commenters recommended that DEA explain existing law and the impact of the new rule to health care professionals, state attorneys general, drug control officials, and professional licensing and regulatory boards.

DEA response: DEA works cooperatively with a wide variety of organizations who have an interest in the CSA and DEA regulations and policies, including, but not limited to: State Boards of Medicine and Boards of Pharmacy; law enforcement; regulatory and professional licensing authorities and agencies; the pharmaceutical industry; and professional organizations representing prescribing and dispensing practitioners. DEA meets regularly with these organizations to discuss matters of mutual concern. Included in these meetings are discussions of DEA legal and regulatory activities.

One commenter suggested allowing partial filling of schedule II prescriptions so as not to constitute a refill.

DEA response: The DEA regulations delineate the circumstances under which the partial filling of a prescription for a controlled substance in schedule II is permissible (21 CFR 1306.13). Adherence to this aspect of the DEA regulations serves a critical function in preventing diversion of schedule II controlled substances. Accordingly, this Final Rule does not modify the requirements of the DEA regulations relating to the partial filling of prescriptions.

Objections to Notice of Proposed Rulemaking

Treatment of Pain Patients: Nineteen commenters opposed the NPRM because they believed that, for a patient who is receiving controlled substances for the treatment of pain, the practitioner should see the patient more than once every 90 days to properly monitor the

[1] *United States* v. *Moore*, 423 U.S. 122, 139–142 (1975).

patient's condition and whether that patient is responding well to the medication. These commenters asserted that such a patient should see the practitioner every 30 days because treatment for pain does not consist of medication alone.

One commenter stated that he had a family member who became addicted to schedule II controlled substances that were prescribed for pain and whose quality of life diminished significantly as a result. This commenter therefore objected to ''slackening the restrictions on these highly addictive and destructive drugs.''

DEA response: DEA recognizes, as these comments reflect, that some practitioners believe that seeing a patient who is receiving controlled substances only once every 90 days is inadequate. However, the CSA does not expressly address how frequently a practitioner must see a patient when prescribing controlled substances. At the same time, practitioners who prescribe controlled substances must see their patients in an appropriate time and manner so as to meet their obligation to prescribe only for a legitimate medical purpose in the usual course of professional practice and to thereby minimize the likelihood that patients will abuse, or become addicted to, the controlled substances. In this regard, section 1306.12(b)(2) of this Final Rule states:

> Nothing in this section shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.

Diversion: One commenter opposed the NPRM, asserting that a practitioner cannot always tell whether he or she is ''getting scammed'' by a patient seeking drugs for abuse. This commenter suggested that, if a practitioner is being deceived by such a patient, the harm will be less if the prescription is only for a 30-day supply of a controlled substance (rather than a 90-day supply). Another commenter opposed the NPRM because the commenter believed that drug abusers will change the dates on the multiple prescriptions and have all the multiple prescriptions filled at once by different pharmacies. Another commenter, who indicated she worked in a pharmacy, expressed the view that drug addicts will see multiple practitioners in a 90-day period to obtain overlapping 90-day supplies of schedule II controlled substances.

DEA response: It is true that, other factors being equal, the diversion of a 90-day supply of controlled substances causes greater harm than the diversion of a 30-day supply. Likewise, the adverse effects of any improper conduct on the part of a drug-seeking patient (such as ''doctor shopping'' or seeing multiple prescribing practitioners) will be magnified if the patient is receiving a 90-day supply of a schedule II controlled substance as opposed to a 30-day supply. However, for the reasons provided in responding to the preceding comments, DEA believes it is appropriate to allow for up to a 90-day supply of schedule II controlled substances under the conditions set forth in this Final Rule—with the understanding that 90 days is the upper limit and by no means mandatory. To the contrary, as this Final Rule indicates, the practitioner must determine on his/her own, on a case-by-case basis, based on sound medical judgment, and in accordance with established medical standards, the appropriate amounts of schedule II controlled substances to prescribe.

Possibility of increased pressure on prescribing practitioners: Some commenters expressed the view that implementation of the proposed rule will result in practitioners receiving an increased number of ''demands'' by patients to receive a 90-day supply of controlled substances. As a result, these commenters asserted practitioners might feel undue pressure to prescribe a 90-day supply of controlled substances at each office visit.

DEA response: Given this important concern, DEA repeats for emphasis the following statement in this Final Rule:

> Nothing in this [Final Rule] shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.

It is indeed essential that practitioners adhere to the above-quoted provision and not simply—based on pressure from patients or any other improper reason—feel obligated to provide multiple prescriptions totaling a 90-day supply of schedule II controlled substances. Toward this end, practitioners may wish to refer their patients to the above-quoted provision if they believe doing so will be beneficial.

Appropriateness of this rule in view of the extent of prescription controlled substance abuse in the United States: Among those commenters who objected to the proposed rule, many pointed to the alarming increase in prescription controlled substance abuse in the United States and resulting deaths and harm to the public welfare. Such commenters expressed the view that the proposed rule—or any other lessening of drug controls—will exacerbate the problem.

DEA response: DEA shares the concerns of those who are deeply troubled by the increasing levels of prescription controlled substance abuse in the United States and the resulting detriment to the public health and welfare of the American people. DEA addressed these concerns in depth in the September 6, 2006, Policy Statement that was published in conjunction with the proposed rule, and the agency encourages those interested in this topic to review that document. To minimize the likelihood that this Final Rule will exacerbate the extensive problem of prescription controlled substance abuse in the United States, DEA has reiterated in the text of the regulation several important and longstanding legal principles. Among these are the requirements that ''Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice'' and that ''The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.'' In addition, as stated repeatedly above, nothing in this Final Rule shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing schedule II controlled substances; rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so. It is with the understanding that adherence to all of these principles is essential that DEA has concluded that implementation of this Final Rule is consistent with the overall structure of the CSA and DEA's mission.

Methadone: Among the commenters who objected to the proposed rule, several mentioned the prescribing of methadone in particular and the significant number of deaths that have resulted from methadone abuse. These

commenters expressed concern that the proposed rule would lead to even more deaths from methadone abuse.

DEA response: DEA shares the concerns of those commenters who pointed to the unique and significant problems associated with methadone abuse. In view of these concerns, DEA repeats the following statement from the September 6, 2006, Policy Statement that was published in conjunction with the proposed rule:

> Methadone, a schedule II controlled substance, has been approved by the [Food and Drug Administration (FDA)] as an analgesic. While a physician must have a separate DEA registration to dispense methadone for maintenance or detoxification, no separate registration is required to prescribe methadone for pain. However, in a document entitled ''Methadone-Associated Mortality: Report of a National Assessment,'' [The Department of Health and Human Services, Substance Abuse and Mental Health Services Administration] recently recommended that ''physicians need to understand methadone's pharmacology and appropriate use, as well as specific indications and cautions to consider when deciding whether to use this medication in the treatment of pain.'' [2] This recommendation was made in light of mortality rates associated with methadone.

Since 2003, the FDA has issued revised labeling for methadone analgesic products, and physician education and training curricula have been developed for methadone treatment.[3] In 2007, SAMHSA convened an expert panel to consider the implications of methadone mortality.

Conclusion

As DEA discussed at the beginning of this document, the vast majority of comments received regarding this rulemaking were supportive of its adoption. Two hundred thirty-one of the 264 comments received supported this action. As DEA noted previously, this rulemaking was supported by a wide variety of individuals and organizations—medical professionals, patient advocacy organizations, and patients themselves. To reiterate, the majority of commenters believed this Final Rule would be beneficial from both physical and financial perspectives, citing the time and money saved due to less frequent visits to prescribing practitioners, and the reduced physical toll resulting from the reduced visits. While many commenters sought clarification regarding various aspects of this rulemaking, it is important to reiterate the overwhelmingly positive reaction this rule generated.

DEA, state authorities, practitioners, and pharmacists all share a common interest in ensuring that controlled substances are prescribed for legitimate medical purposes by prescribing practitioners acting in the usual course of professional practice. As discussed throughout this document, DEA, through its enforcement of the CSA and its implementing regulations, must prevent the diversion and abuse of controlled substances while ensuring that there is an adequate supply for legitimate medical purposes. DEA supports the intent of this Final Rule to address patients' needs for schedule II controlled substances while preventing the diversion of those substances. DEA believes that this Final Rule provides an option for practitioners to treat their patients, which is legally permissible and consistent with the text, structure, and purposes of the CSA.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule provides an additional option that practitioners may utilize when prescribing schedule II controlled substances under certain circumstances. The rule will not mandate any new procedures. Therefore, a regulatory flexibility analysis is not required for this rule.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, Regulatory Planning and Review, Section 1(b). This rule has been deemed a ''significant regulatory action.'' Accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1306

Drug traffic control, Prescription drugs.

■ Pursuant to the authority vested in the Attorney General under sections 201, 202, and 501(b) of the CSA (21 U.S.C. 811, 812, and 871(b)), delegated to the Deputy Administrator pursuant to section 501(a) (21 U.S.C. 871(a)) and as specified in 28 CFR 0.100 and 0.104, Appendix to Subpart R, the Deputy Administrator hereby orders that Title 21 of the Code of Federal Regulations, Part 1306, be amended as follows:

PART 1306—PRESCRIPTIONS

■ 1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

■ 2. Section 1306.12 is revised to read as follows:

§ 1306.12 Refilling prescriptions; issuance of multiple prescriptions.

(a) The refilling of a prescription for a controlled substance listed in Schedule II is prohibited.

[2] CSAT Publication No. 28–03. Available at *http://dpt.samhsa.gov/medications/methreports.aspx*.

[3] The FDA health advisory can be found at *http://www.fda.gov/cder/drug/advisory/methadone.htm* and the package insert can be found at *http://www.fda.gov/cder/foi/label/2006/006134s028lbl.pdf*.

(b)(1) An individual practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance provided the following conditions are met:

(i) Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice;

(ii) The individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription;

(iii) The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

(iv) The issuance of multiple prescriptions as described in this section is permissible under the applicable state laws; and

(v) The individual practitioner complies fully with all other applicable requirements under the Act and these regulations as well as any additional requirements under state law.

(2) Nothing in this paragraph (b) shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.

■ 3. Section 1306.14 is amended by adding a new paragraph (e) to read as follows:

§ 1306.14 Labeling of substances and filling of prescriptions.

* * * * *

(e) Where a prescription that has been prepared in accordance with section 1306.12(b) contains instructions from the prescribing practitioner indicating that the prescription shall not be filled until a certain date, no pharmacist may fill the prescription before that date.

Dated: November 7, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–22558 Filed 11–16–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 5991]

RIN 1400–AC28

Passports

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule reorganizes, restructures, and updates passport regulations in order to make them easier for users to access information, to better reflect current practice and changes in statutory authority, and to remove outdated provisions. In general, the revisions do not mark a departure from current policy. Rather, the Department's intent is to bring greater clarity to current passport policy and practice and to present it in a less cumbersome way.

DATES: This rule becomes effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Consuelo Pachon, Office of Passport Policy, (202) 663–2662. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, with a request for comments, amending and updating numerous sections of Part 51 of Title 22 of the Code of Federal Regulations. The rule was discussed in detail in Public Notice 5712, as were the Department's reasons for changes in the regulation (**Federal Register**, March 7, 2007, 72 FR 10095). The comment period closed on May 7, 2007. The Department of State is now promulgating its final rule. Some of the more notable changes in the regulations include: Changes regarding minors, extending the two-parent consent and personal appearance requirements to minors under the age of 16; changes regarding Passport Agents and Passport Acceptance Agents, codifying the definitions and clarifying their qualifications and responsibilities, including the requirement that they be U.S. citizens or U.S. nationals respectively; changes on denial, revocation and restriction of passports to permit the Department to deny a passport, for example, to applicants who are the subject of an outstanding State, local, or foreign warrant of arrest for a felony, intended to enhance U.S. law enforcement and cooperation; and changes regarding change of names on passports, intended to clarify what is required of an applicant whose name has changed and to reflect more accurately Department practice in this regard.

Subpart F remains under review and may be addressed in a future rulemaking. Public Notice 5712 further advised that a separate rulemaking was underway to amend Part 51 to introduce the passport card and that comments regarding the passport card would be considered in that separate rulemaking, which is ongoing. The final rule for the passport card will include any necessary renumbering of its sections for compatibility with the numbering of this overall revision, as well as language modifications to take into account the changes made in this Final Rule.

Analysis of Comments: The Department received four (4) comments. One comment expressed support of the change to increase the maximum age requiring two-parent consent for minors from under 14 to under 16. A second comment, addressed in detail below, underscored the importance of competent adjudicators, recommended the Department always require applicants to appear in person (rather than permit mail-in procedures), and suggested passport fees should be considerably increased. The two remaining comments concerned passport fees and the proposed passport card. Because issues regarding passport fees and the passport card are addressed in a separate rulemaking, the Department will respond to these comments at a later time.

One comment suggested that the Department should always require that a passport application be executed personally rather than allowing renewals by mail. The comment also seemed to misunderstand the role of the U.S. Postal Service and clerks of court, who act as passport acceptance agents but do not have the ability to adjudicate and issue passports. The commenter also opined that the passport application process should be made more difficult because passports are ''as easy to get as turning on a water faucet.''

The passport application process for first time passport applicants is designed to verify the citizenship and identity of the applicant. A U.S. passport is, by definition, a citizenship and identity document. U.S. citizens may apply for subsequent passports by mail within certain parameters described in the regulations. This is an acceptable practice because the Department has previously thoroughly reviewed and verified the applicant's citizenship and ensured that the applicant's identity is genuine. Furthermore, fraud prevention measures allow the Department to instantly

retrieve the previous version of the applicant's passport record, and quickly compare the submitted passport information and photograph with the previously issued, imaged passport record. Further, the lack of personal appearance by the applicant has no negative effect on the automated checks, which are performed on all passport applications before approval. In addition, necessary criminal and other checks performed during the passport review process do not require the applicant to appear in person. Finally, imposing such a requirement would place an unacceptable burden on applicants, passport acceptance facilities, and passport agencies.

Passport acceptance agents throughout the country provide an invaluable customer service on behalf of the State Department by enabling citizens to apply for passports anywhere in the country rather than exclusively at passport agencies. Acceptance agents are responsible for accepting the applications and administering the oath contained in the application. They also ensure that the required evidence of citizenship and identity accompany the application. Acceptance agents do not adjudicate applications or issue passports. Those functions are performed exclusively by the State Department.

Regulatory Findings

Administrative Procedure Act

The Department published this rule as a proposed rule, with 60 days for public comments and review.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 301–612, and Executive Order 13272, section 3(b) as the rule governs only individuals.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532 generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $120 million or more by State, local, or tribal governments, or by the private sector. This final rule does not result in any such expenditure nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

This regulation does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department of State reviewed this final rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and determined that the benefits of the final rule justify its costs. The Department does not consider the final rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulation. The Department of State has determined that this proposal does not contain new collection of information requirements for the purposes of the PRA.

List of Subjects in 22 CFR Part 51

Passports.

■ Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is revised to read as follows:

PART 51—PASSPORTS

Sec.
51.1 Definitions.

Subpart A—General

51.2 Passport issued to nationals only.
51.3 Types of passports.
51.4 Validity of passports.
51.5 Adjudication and issuance of passports.
51.6 Verification of passports and release of information from passport records.
51.7 Passport property of the U.S. Government.
51.8 Submission of currently valid passport.
51.9 Amendment of passports.
51.10 Replacement passports.

Subpart B—Application

51.20 General.
51.21 Execution of passport application.
51.22 Passport agents and passport acceptance agents.
51.23 Identity of applicant.
51.24 Affidavit of identifying witness.
51.25 Name of applicant to be used in passport.
51.26 Photographs.
51.27 Incompetents.
51.28 Minors.

Subpart C—Evidence of U.S. Citizenship or Nationality

51.40 Burden of proof.
51.41 Documentary evidence.
51.42 Persons born in the United States applying for a passport for the first time.
51.43 Persons born outside the United States applying for a passport for the first time.
51.44 Proof of resumption or retention of U.S. citizenship.
51.45 Department discretion to require evidence of U.S. citizenship or non-citizen nationality.
51.46 Return or retention of evidence of U.S. citizenship or non-citizen nationality.

Subpart D—Fees

51.50 Form of payment.
51.51 Passport fees.
51.52 Exemption from payment of passport fees.
51.53 Refunds.
51.54 Replacement passports without payment of applicable fees.
51.55 Execution fee not refundable.
51.56 Expedited passport processing.

Subpart E—Denial, Revocation, and Restriction of Passports

51.60 Denial and restriction of passports.

51.61 Denial of passports to certain convicted drug traffickers.
51.62 Revocation or limitation of passports.
51.63 Passports invalid for travel into or through restricted areas; prohibition on passports valid only for travel to Israel.
51.64 Special validation of passports for travel to restricted areas.
51.65 Notification of denial or revocation of passport.
51.66 Surrender of passport.

Subpart F—Procedures for Review of Certain Denials and Revocations

51.70 Request for hearing to review certain denials and revocations.
51.71 The hearing.
51.72 Transcript and record of the hearing.
51.73 Privacy of hearing.
51.74 Final decision.

Authority: 8 U.S.C. 1504; 22 U.S.C. 211a, 212, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2721; 26 U.S.C. 6039E; 31 U.S.C. 7701, 7901; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103–317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603; Sec. 1 of Pub. L. 109–210, 120 Stat. 319; Sec. 2 of Pub. L. 109–167, 119 Stat. 3578; Sec. 5 of Pub. L. 109–472, 120 Stat. 3554; Pub. L. 108–447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2896.

§ 51.1 Definitions.

The following definitions are applicable to this part:

(a) *Department* means the United States Department of State.

(b) *Electronic passport* means a passport containing an electronically readable device, an electronic chip encoded with the bearer's personal information printed on the data page, a digitized version of the bearer's photograph, a unique chip number, and a digital signature to protect the integrity of the stored information.

(c) *Minor* means an unmarried, unemancipated person under 18 years of age.

(d) *Passport* means a travel document regardless of format issued under the authority of the Secretary of State attesting to the identity and nationality of the bearer.

(e) *Passport acceptance agent* means a U.S. national designated by the Department to accept passport applications and to administer oaths and affirmations in connection with such applications.

(f) *Passport agent* means a U.S. citizen employee of the Department of State, including consular officers, diplomatic officers and consular agents abroad, and such U.S. citizen Department of State employees or contractors as the Assistant Secretary for Consular Affairs may designate for the purpose of administering oaths and affirmations for passport applications.

(g) *Passport application* means the application form for a United States passport, as prescribed by the Department pursuant to 22 U.S.C. 213 and all documents, photographs, and statements submitted with the form or thereafter in support of the application.

(h) *Passport authorizing officer* means a U.S. citizen employee who is authorized by the Department to approve the issuance of passports.

(i) *Secretary* means the Secretary of State.

(j) *United States* when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(k) *U.S. citizen* means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship.

(l) *U.S. national* means a U.S. citizen or a U.S. non-citizen national.

(m) *U.S. non-citizen national* means a person on whom U.S. nationality, but not U.S. citizenship, has been conferred at birth under 8 U.S.C. 1408, or under other law or treaty, and who has not subsequently lost such non-citizen nationality.

Subpart A—General

§ 51.2 Passport issued to nationals only.

(a) A passport may be issued only to a U.S. national.

(b) Unless authorized by the Department, no person may bear more than one valid passport of the same type.

§ 51.3 Types of passports.

(a) *Regular passport.* A regular passport is issued to a national of the United States.

(b) *Official passport.* An official passport is issued to an official or employee of the U.S. Government traveling abroad to carry out official duties. When authorized by the Department, spouses and family members of such persons may be issued official passports. When authorized by the Department, an official passport may be issued to a U.S. government contractor traveling abroad to carry out official duties on behalf of the U.S. government.

(c) *Diplomatic passport.* A diplomatic passport is issued to a Foreign Service officer or to a person having diplomatic status or comparable status because he or she is traveling abroad to carry out diplomatic duties on behalf of the U.S. Government. When authorized by the Department, spouses and family members of such persons may be issued diplomatic passports. When authorized by the Department, a diplomatic passport may be issued to a U.S. Government contractor if the contractor meets the eligibility requirements for a diplomatic passport and the diplomatic passport is necessary to complete his or her mission.

§ 51.4 Validity of passports.

(a) *Signature of bearer.* A passport is valid only when signed by the bearer in the space designated for signature, or, if the bearer is unable to sign, signed by a person with legal authority to sign on his or her behalf.

(b) *Period of validity of a regular passport.* (1) A regular passport issued to an applicant 16 years of age or older is valid for 10 years from date of issue unless the Department limits the validity period to a shorter period.

(2) A regular passport issued to an applicant under 16 years of age is valid for five years from date of issue unless the Department limits the validity period to a shorter period.

(3) A regular passport for which payment of the fee has been excused is valid for a period of 5 years from the date issued unless limited by the Department to a shorter period.

(c) *Period of validity of an official passport.* The period of validity of an official passport, unless limited by the Department to a shorter period, is five years from the date of issue, or so long as the bearer maintains his or her official status, whichever is shorter. An official passport which has not expired must be returned to the Department upon the termination of the bearer's official status or at such other time as the Department may determine.

(d) *Period of validity of a diplomatic passport.* The period of validity of a diplomatic passport, unless limited by the Department to a shorter period, is five years from the date of issue, or so long as the bearer maintains his or her diplomatic status, whichever is shorter. A diplomatic passport which has not expired must be returned to the Department upon the termination of the bearer's diplomatic status or at such other time as the Department may determine.

(e) *Limitation of validity.* The validity period of any passport may be limited by the Department to less than the normal validity period. The bearer of a limited passport may apply for a new passport, using the proper application and submitting the limited passport, applicable fees, photographs, and additional documentation, if required, to support the issuance of a new passport.

(f) *Invalidity*. A United States passport is invalid as soon as:

(1) The Department has sent or personally delivered a written notice to the bearer stating that the passport has been revoked; or

(2) The passport has been reported as lost or stolen to the Department, a U.S. passport agency or a diplomatic or consular post abroad and the Department has recorded the reported loss or theft; or

(3) The passport is cancelled by the Department (physically, electronically, or otherwise) upon issuance of a new passport of the same type to the bearer; or

(4) The Department has sent a written notice to the bearer that the passport has been invalidated because the Department has not received the applicable fees; or

(5) The passport has been materially changed in physical appearance or composition, or contains a damaged, defective or otherwise nonfunctioning chip, or includes unauthorized changes, obliterations, entries or photographs, or has observable wear or tear that renders it unfit for use as a travel document, and the Department either takes possession of the passport or sends a written notice to the bearer.

§ 51.5 Adjudication and issuance of passports.

(a) A passport authorizing officer may adjudicate applications and authorize the issuance of passports.

(b) A passport authorizing officer will examine the passport application and all documents, photographs and statements submitted in support of the application in accordance with guidance issued by the Department.

§ 51.6 Verification of passports and release of information from passport records.

(a) *Verification.* When required by a foreign government, a consular officer abroad may verify a U.S. passport.

(b) *Release of information.* Information in passport records is subject to the provisions of the Freedom of Information Act (FOIA) and the Privacy Act. Release of this information may be requested in accordance with Part 171 or Part 172 of this title.

§ 51.7 Passport property of the U.S. Government.

(a) A passport at all times remains the property of the United States and must be returned to the U.S. Government upon demand.

(b) Law enforcement authorities who take possession of a passport for use in an investigation or prosecution must return the passport to the Department on completion of the investigation and/or prosecution.

§ 51.8 Submission of currently valid passport.

(a) When applying for a new passport, an applicant must submit for cancellation any currently valid passport of the same type.

(b) If an applicant is unable to produce a passport under paragraph (a) of this section, he or she must submit a signed statement in the form prescribed by the Department setting forth the circumstances regarding the disposition of the passport.

(c) The Department may deny or limit a passport if the applicant has failed to provide a sufficient and credible explanation for lost, stolen, altered or mutilated passport(s) previously issued to the applicant, after being given a reasonable opportunity to do so.

§ 51.9 Amendment of passports.

Except for the convenience of the U.S. Government, no passport may be amended.

§ 51.10 Replacement passports.

A passport issuing office may issue a replacement passport without payment of applicable fees for the reasons specified in § 51.54.

Subpart B—Application

§ 51.20 General.

(a) An application for a passport, a replacement passport, extra visa pages, or other passport related service must be completed using the forms the Department prescribes.

(b) The passport applicant must truthfully answer all questions and must state every material matter of fact pertaining to his or her eligibility for a passport. All information and evidence submitted in connection with an application is considered part of the application. A person providing false information as part of a passport application, whether contemporaneously with the form or at any other time, is subject to prosecution under applicable Federal criminal statutes.

§ 51.21 Execution of passport application.

(a) *Application by personal appearance.* Except as provided in § 51.28, to assist in establishing identity, a minor, a person who has never been issued a passport in his or her own name, a person who has not been issued a passport for the full validity period of 10 years in his or her own name within 15 years of the date of a new application, or a person who is otherwise not eligible to apply for a passport by mail under paragraphs (b) and (c) of this section, must apply for a passport by appearing in person before a passport agent or passport acceptance agent (see § 51.22). The applicant must verify the application by oath or affirmation before the passport agent or passport acceptance agent, sign the completed application, provide photographs as prescribed by the Department, provide any other information or documents requested and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (see 22 CFR 22.1).

(b) *Application by mail—persons in the United States.* A person in the United States who previously has been issued a passport valid for 10 years in his or her own name may apply for a new passport by filling out, signing and mailing an application on the form prescribed by the Department if:

(1) The most recently issued previous passport was issued when the applicant was 16 years of age or older;

(2) The application is made not more than 15 years following the issue date of the previous passport, except as provided in paragraph (e) of this section; and

(3) The most recently issued previous passport of the same type is submitted with the new application.

Note to paragraph (b): The applicant must also provide photographs as prescribed by the Department and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1).

(c) *Application by mail—persons abroad.* A person in a foreign country where the Department has authorized a post to receive passport applications by mail who previously has been issued a passport valid for 10 years in his or her own name may apply for a new passport in that country by filling out, signing and mailing an application on the form prescribed by the Department if:

(1) The most recently issued previous passport was issued when the applicant was 16 years of age or older;

(2) The application is made not more than 15 years following the issue date of the previous passport, except as provided in paragraph (e) of this section; and

(3) The most recently issued previous passport of the same type is submitted with the new application.

Note to paragraph (c): The applicant must also provide photographs as prescribed by the Department and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1).

(d) Nothing in this Part shall prohibit or limit the Department from authorizing an overseas post to accept a

passport application or applications from persons outside the country or outside the person's country of residence in circumstances which prevent provision of these services to the person where they are located or in other unusual circumstances as determined by the Department.

(e) A senior passport authorizing officer may authorize acceptance of an application by mail where the application is made more than 15 years following the issue date of the previous passport as appropriate and in accordance with guidance issued by the Department.

§ 51.22 Passport agents and passport acceptance agents.

(a) *U.S. citizen employees of the Department authorized to serve as passport agents.* The following employees of the Department are authorized by virtue of their positions to serve as passport agents unless the Department in an individual case withdraws authorization:

(1) A passport authorizing officer;

(2) A consular officer, or a U.S. citizen consular agent abroad;

(3) A diplomatic officer specifically authorized by the Department to accept passport applications; and

(4) Such U.S. citizen Department of State employees and contractors as the Assistant Secretary for Consular Affairs may designate for the purpose of administering oaths and affirmations for passport applications.

(b) *Persons designated by the Department to serve as passport acceptance agents.* When designated by the Department, the following persons are authorized to serve as passport acceptance agents unless the Department in an individual case withdraws authorization.

(1) An employee of the clerk of any Federal court;

(2) An employee of the clerk of any state court of record;

(3) A postal employee at a United States post office that has been selected to accept passport applications;

(4) An employee of the Department of Defense at a military installation that has been authorized to accept passport applications;

(5) An employee of a federal agency that has been selected to accept passport applications; and

(6) Any other person specifically designated by the Department.

(c) *Qualifications of persons designated by the Department to serve as passport acceptance agents.* Before the Department will designate a person described in § 51.22(b) as a passport acceptance agent, his or her employer must certify that the person:

(1) Is a U.S. citizen or a U.S. non-citizen national;

(2) Is 18 years of age or older;

(3) Is a permanent employee, excluding ad hoc, contractual, and volunteer employees; and

(4) Does not have a record of either:

(i) A Federal or State felony conviction; or

(ii) A misdemeanor conviction for crimes involving moral turpitude or breach of trust, including but not limited to embezzlement, identity theft, misappropriation, document fraud, drug offenses, or dishonesty in carrying out a responsibility involving public trust.

(d) *Training.* A passport acceptance agent described in § 51.22(b) must be trained to apply procedures and practices as detailed in guidance provided by the Department. Training must be successfully completed before accepting passport applications.

(e) *Responsibilities.* The responsibilities of a passport acceptance agent described in § 51.22(b) include but are not limited to the following:

(1) Certifying the identity of each applicant. Passport acceptance agents must certify that they have personally witnessed the applicant signing his or her application, and that the applicant has:

(i) Personally appeared;

(ii) Presented proper identification, as documented on the application;

(iii) Submitted photographs that are a true likeness; and

(iv) Taken the oath administered by the acceptance agent.

(2) Safeguarding passport application information under the Privacy

Act of 1974. Passport acceptance agents described in § 51.22(b) must not retain copies of executed applications, nor release passport application information to anyone other than the applicant and the Department.

(3) Avoiding conflict of interest. Passport acceptance agents described in § 51.22(b) must not participate in any relationship that could be perceived as a conflict of interest, including but not limited to providing commercial services related to the passport process.

(f) *Documentation.* Passport acceptance facilities within the United

States must maintain a current listing of all passport acceptance agents designated under § 51.22(b) working at its facility. This list must be updated at least annually and a copy provided to the officer specified by the Department at the appropriate passport issuing office.

(1) The current listing of all designated passport acceptance agents must include the passport acceptance agents':

(i) Names; and

(ii) Signatures.

(2) Any addition to or deletion from the current listing of designated passport acceptance agents is subject to prior approval by the Department.

§ 51.23 Identity of applicant.

(a) The applicant has the burden of establishing his or her identity.

(b) The applicant must establish his or her identity by the submission of a previous passport, other state, local, or federal government officially issued identification with photograph, or other identifying evidence which may include an affidavit of an identifying witness.

(c) The Department may require such additional evidence of identity as it deems necessary.

§ 51.24 Affidavit of identifying witness.

(a) An identifying witness must execute an affidavit in the form prescribed by the Department before the person who accepts the passport application.

(b) A person who has received or expects to receive a fee for his or her services in connection with executing the application or obtaining the passport may not serve as an identifying witness.

§ 51.25 Name of applicant to be used in passport.

(a) The passport shall be issued in the full name of the applicant, generally the name recorded in the evidence of nationality and identity.

(b) The applicant must explain any material discrepancies between the name on the application and the name recorded in the evidence of nationality and identity. The name provided by the applicant on the application may be used if the applicant submits the documentary evidence prescribed by the Department.

(c) A name change will be recognized for purposes of issuing a passport if the name change occurs in one of the following ways.

(1) Court order or decree. An applicant whose name has been changed by court order or decree must submit with his or her application a copy of the order or decree.

Acceptable types of court orders and decrees include but are not limited to:

(i) A name change order;

(ii) A divorce decree specifically declaring the return to a former name;

(2) Certificate of naturalization issued in a new name.

(3) Marriage. An applicant who has adopted a new name following marriage must present a copy of the marriage certificate.

(4) Operation of state law. An applicant must present operative

government-issued legal documentation declaring the name change or issued in the new name.

(5) Customary usage. An applicant who has adopted a new name other than as prescribed in paragraphs (c)(1) through (4) of this section must submit evidence of public and exclusive use of the adopted name for a long period of time, in general five years, as prescribed in guidance issued by the Department. The evidence must include three or more public documents, including one government-issued identification with photograph and other acceptable public documents prescribed by the Department.

§ 51.26 Photographs.

The applicant must submit with his or her application photographs as prescribed by the Department that are a good likeness of and satisfactorily identify the applicant.

§ 51.27 Incompetents.

A legal guardian or other person with the legal capacity to act on behalf of a person declared incompetent may execute a passport application on the incompetent person's behalf.

§ 51.28 Minors.

(a) *Minors under age 16.* (1) Personal appearance. Minors under 16 years of age applying for a passport must appear in person, unless the personal appearance of the minor is specifically excused by a senior passport authorizing officer, pursuant to guidance issued by the Department. In cases where personal appearance is excused, the person(s) executing the passport application on behalf of the minor shall appear in person and verify the application by oath or affirmation before a person authorized by the Secretary to administer oaths or affirmations, unless these requirements are also excused by a senior passport authorizing officer pursuant to guidance issued by the Department.

(2) Execution of passport application by both parents or by each legal guardian. Except as specifically provided in this section, both parents or each of the minor's legal guardians, if any, whether applying for a passport for the first time or for a renewal, must execute the application on behalf of a minor under age 16 and provide documentary evidence of parentage or legal guardianship showing the minor's name, date and place of birth, and the names of the parent or parents or legal guardian.

(3) Execution of passport application by one parent or legal guardian. A passport application may be executed on behalf of a minor under age 16 by only one parent or legal guardian if such person provides:

(i) A notarized written statement or affidavit from the non-applying parent or legal guardian, if applicable, consenting to the issuance of the passport, or

(ii) Documentary evidence that such person is the sole parent or has sole custody of the minor. Such evidence includes, but is not limited to, the following:

(A) A birth certificate providing the minor's name, date and place of birth and the name of only the applying parent;

(B) A Consular Report of Birth Abroad of a Citizen of the United States of America or a Certification of Report of Birth of a United States Citizen providing the minor's name, date and place of birth and the name of only the applying parent;

(C) A copy of the death certificate for the non-applying parent or legal guardian;

(D) An adoption decree showing the name of only the applying parent;

(E) An order of a court of competent jurisdiction granting sole legal custody to the applying parent or legal guardian containing no travel restrictions inconsistent with issuance of the passport; or, specifically authorizing the applying parent or legal guardian to obtain a passport for the minor, regardless of custodial arrangements; or specifically authorizing the travel of the minor with the applying parent or legal guardian;

(F) An order of a court of competent jurisdiction terminating the parental rights of the non-applying parent or declaring the non-applying parent or legal guardian to be incompetent.

(G) An order of a court of competent jurisdiction providing for joint legal custody or requiring the permission of both parents or the court for important decisions will be interpreted as requiring the permission of both parents or the court, as appropriate. Notwithstanding the existence of any such court order, a passport may be issued when compelling humanitarian or emergency reasons relating to the welfare of the minor exist.

(4) Execution of passport application by a person acting in loco parentis.

(i) A person may apply in loco parentis on behalf of a minor under age 16 by submitting a notarized written statement or a notarized affidavit from both parents or each legal guardian, if any, specifically authorizing the application.

(ii) If only one parent or legal guardian provides the notarized written statement or notarized affidavit, the applicant must provide documentary evidence that an application may be made by one parent or legal guardian, consistent with § 51.28(a)(3).

(5) Exigent or special family circumstances. A passport may be issued when only one parent, legal guardian or person acting in loco parentis executes the application, in cases of exigent or special family circumstances.

(i) ''Exigent circumstances'' are defined as time-sensitive circumstances in which the inability of the minor to obtain a passport would jeopardize the health and safety or welfare of the minor or would result in the minor being separated from the rest of his or her traveling party. ''Time sensitive'' generally means that there is not enough time before the minor's emergency travel to obtain either the required consent of both parents/legal guardians or documentation reflecting a sole parent's/legal guardian's custody rights.

(ii) ''Special family circumstances'' are defined as circumstances in which the minor's family situation makes it exceptionally difficult for one or both of the parents to execute the passport application; and/or compelling humanitarian circumstances where the minor's lack of a passport would jeopardize the health, safety, or welfare of the minor; or, pursuant to guidance issued by the Department, circumstances in which return of a minor to the jurisdiction of his or her home state or habitual residence is necessary to permit a court of competent jurisdiction to adjudicate or enforce a custody determination. A passport issued due to such special family circumstances may be limited for direct return to the United States in accordance with § 51.60(e).

(iii) A parent, legal guardian, or person acting in loco parentis who is applying for a passport for a minor under age 16 under this paragraph must submit a written statement with the application describing the exigent or special family circumstances he or she believes should be taken into consideration in applying an exception.

(iv) Determinations under § 51.28(a)(5) must be made by a senior passport authorizing officer pursuant to guidance issued by the Department.

(6) Nothing contained in this section shall prohibit any Department official adjudicating a passport application filed on behalf of a minor from requiring an applicant to submit other documentary evidence deemed necessary to establish the applying adult's entitlement to obtain a passport on behalf of a minor under the age of 16 in accordance with the provisions of this regulation.

(b) *Minors 16 years of age and above.* (1) A minor 16 years of age and above applying for a passport must appear in person and may execute the application for a passport on his or her own behalf unless the personal appearance of the minor is specifically excused by a senior passport authorizing officer pursuant to guidance issued by the Department, or unless, in the judgment of the person before whom the application is executed, it is not advisable for the minor to execute his or her own application. In such case, it must be executed by a parent or legal guardian of the minor, or by a person in loco parentis, unless the personal appearance of the parent, legal guardian or person in loco parentis is excused by the senior

passport authorizing officer pursuant to guidance issued by the Department.

(2) The passport authorizing officer may at any time require a minor 16 years of age and above to submit the notarized consent of a parent, a legal guardian, or a person in loco parentis to the issuance of the passport.

(c) *Rules applicable to all minors*—(1) Objections. At any time prior to the issuance of a passport to a minor, the application may be disapproved and a passport may be denied upon receipt of a written objection from a parent or legal guardian of the minor, or from another party claiming authority to object, so long as the objecting party provides sufficient documentation of his or her custodial rights or other authority to object.

(2) An order from a court of competent jurisdiction providing for joint legal custody or requiring the permission of both parents or the court for important decisions will be interpreted as requiring the permission of both parents or the court as appropriate.

(3) The Department will consider a court of competent jurisdiction to be a U.S. state or federal court or a foreign court located in the minor's home state or place of habitual residence.

(4) The Department may require that conflicts regarding custody orders, whether domestic or foreign, be settled by the appropriate court before a passport may be issued.

(5) Access by parents and legal guardians to passport records for minors. Either parent or any legal guardian of a minor may upon written request obtain information regarding the application for and issuance of a passport to a minor, unless the requesting parent's parental rights have been terminated by an order of a court of competent jurisdiction, a copy of which has been provided to the Department. The Department may deny such information to a parent or legal guardian if it determines that the minor objects to disclosure and the minor is 16 years of age or older or if the Department determines that the minor is of sufficient age and maturity to invoke his or her own privacy rights.

Subpart C—Evidence of U.S. Citizenship or Nationality

§ 51.40 Burden of proof.

The applicant has the burden of proving that he or she is a U.S. citizen or non-citizen national.

§ 51.41 Documentary evidence.

The applicant must provide documentary evidence that he or she is a U.S. citizen or non-citizen national.

§ 51.42 Persons born in the United States applying for a passport for the first time.

(a) *Primary evidence of birth in the United States.* A person born in the United States generally must submit a birth certificate. The birth certificate must show the full name of the applicant, the applicant's place and date of birth, the full name of the parent(s), and must be signed by the official custodian of birth records, bear the seal of the issuing office, and show a filing date within one year of the date of birth.

(b) *Secondary evidence of birth in the United States.* If the applicant cannot submit a birth certificate that meets the requirement of paragraph (a) of this section, he or she must submit secondary evidence sufficient to establish to the satisfaction of the Department that he or she was born in the United States. Secondary evidence includes but is not limited to hospital birth certificates, baptismal certificates, medical and school records, certificates of circumcision, other documentary evidence created shortly after birth but generally not more than 5 years after birth, and/or affidavits of persons having personal knowledge of the facts of the birth.

§ 51.43 Persons born outside the United States applying for a passport for the first time.

(a) *General.* A person born outside the United States must submit documentary evidence that he or she meets all the statutory requirements for acquisition of U.S. citizenship or non-citizen nationality under the provision of law or treaty under which the person is claiming U.S. citizenship or non-citizen nationality.

(b) *Documentary Evidence.* (1) Types of documentary evidence of citizenship for a person born outside the United States include:

(i) A certificate of naturalization.

(ii) A certificate of citizenship.

(iii) A Consular Report of Birth Abroad.

(2) An applicant without one of these documents must produce supporting documents as required by the Department, showing acquisition of U.S. citizenship under the relevant provisions of law.

§ 51.44 Proof of resumption or retention of U.S. citizenship.

An applicant who claims to have resumed or retained U.S. citizenship must submit with the application a certificate of naturalization or evidence that he or she took the steps necessary to resume or retain U.S. citizenship in accordance with the applicable provision of law.

§ 51.45 Department discretion to require evidence of U.S. citizenship or non-citizen nationality.

The Department may require an applicant to provide any evidence that it deems necessary to establish that he or she is a U.S. citizen or non-citizen national, including evidence in addition to the evidence specified in 22 CFR 51.42 through 51.44.

§ 51.46 Return or retention of evidence of U.S. citizenship or non-citizen nationality.

The Department will generally return to the applicant evidence submitted in connection with an application for a passport. The Department may, however, retain evidence when it deems it necessary for anti-fraud or law enforcement or other similar purposes.

Subpart D—Fees

§ 51.50 Form of payment.

Passport fees must be paid in U.S. currency or in other forms of payments permitted by the Department.

§ 51.51 Passport fees.

The Department collects the following passport fees in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1):

(a) An application fee, which must be paid at the time of application, except as provided in § 51.52, and is not refundable, except as provided in § 51.53.

(b) An execution fee, except as provided in § 51.52, when the applicant is required to execute the application in person before a person authorized to administer oaths for passport purposes. The execution fee is collected at the time of application and is not refundable (see § 51.55). When execution services are provided by an official of a State or local government or of the United States Postal Service (USPS), the State or local government or USPS may retain the fee if authorized to do so by the Department.

(c) A fee for expedited passport processing, if applicable (see § 51.56).

(d) A surcharge in the amount of twenty dollars ($20) on the filing of each application for a passport in order to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1165 note). The surcharge will be recovered by the Department of State from within the passport fee reflected in the Schedule of Fees for Consular Services.

(e) An enhanced border security surcharge on the filing of each application for a regular passport in an

amount set administratively by the Department and published in the Schedule of Fees for Consular Services.

(f) Any other fee that the Department is authorized or required by law to charge for passport services.

(g) The foregoing fees are applicable regardless of the validity period of the passport.

§ 51.52 Exemption from payment of passport fees.

The following persons are exempt from payment of passport fees except for the passport execution fee, unless their applications are executed before a federal official, in which case they are also exempt from payment of the passport execution fee:

(a) An officer or employee of the United States traveling on official business and the members of his or her immediate family. The applicant must submit evidence of the official purpose of the travel and, if applicable, authorization for the members of his or her immediate family to accompany or reside with him or her abroad.

(b) An American seaman who requires a passport in connection with his or her duties aboard a United States flag vessel.

(c) A widow, widower, child, parent, brother or sister of a deceased member of the U.S. Armed Forces proceeding abroad to visit the grave of such service member or to attend a funeral or memorial service for such member.

(d) Other persons whom the Department determines should be exempt from payment of passport fees for compelling circumstances, pursuant to guidance issued by the Department; or

(e) Other categories of persons exempted by law.

§ 51.53 Refunds.

(a) The Department will refund the passport application fee and the security surcharge to any person exempt from payment of passport fees under 22 CFR 51.52 from whom the fee was erroneously collected.

(b) The Department will refund an expedited passport processing fee if the Department fails to provide expedited passport processing as provided in 22 CFR 51.56.

(c) For procedures on refunds of $5.00 or less, see 22 CFR 22.6(b).

§ 51.54 Replacement passports without payment of applicable fees.

A passport issuing office may issue a replacement passport for the following reasons without payment of applicable fees:

(a) To correct an error or rectify a mistake of the Department;

(b) When the bearer has changed his or her name or other personal identifier listed on the data page of the passport, and applies for a replacement passport within one year of the date of the passport's original issuance.

(c) When the bearer of an emergency full fee passport issued for a limited validity period applies for a full validity passport within one year of the date of the passport's original issuance.

(d) When a passport is retained by U.S. law enforcement or judiciary for evidentiary purposes and the bearer is still eligible to have a passport.

(e) When a passport is issued to replace a passport with a failed electronic chip for the balance of the original validity period.

§ 51.55 Execution fee not refundable.

The fee for the execution of a passport application is not refundable.

§ 51.56 Expedited passport processing.

(a) Within the United States, an applicant for passport service (including issuance, replacement or the addition of visa pages) may request expedited processing. The Department may decline to accept the request.

(b) Expedited passport processing shall mean completing processing within the number of business days published on the Department's website, consistent with the purposes of expedited processing, commencing when the application reaches a Passport Agency or, if the application is already with a Passport Agency commencing when the request for expedited processing is approved. The processing will be considered completed when the passport is ready to be picked up by the applicant or is mailed to the applicant, or a letter of passport denial is transmitted to the applicant.

(c) A fee is charged for expedited passport processing (see 22 CFR 51.51(c)). The fee does not cover any costs of mailing above the normal level of service regularly provided by the Department. The cost of expedited mailing must be paid by the applicant.

(d) The Department will not charge the fee for expedited passport processing if the Department's error, mistake or delay caused the need for expedited processing.

Subpart E—Denial, Revocation, and Restriction of Passports

§ 51.60 Denial and restriction of passports.

(a) The Department may not issue a passport, except a passport for direct return to the United States, in any case in which the Department determines or is informed by competent authority that:

(1) The applicant is in default on a loan received from the United States under 22 U.S.C. 2671(b)(2)(B) for the repatriation of the applicant and, where applicable, the applicant's spouse, minor child(ren), and/or other immediate family members, from a foreign country (see 22 U.S.C. 2671(d)); or

(2) The applicant has been certified by the Secretary of Health and Human Services as notified by a state agency under 42 U.S.C. 652(k) to be in arrears of child support in an amount determined by statute.

(b) The Department may refuse to issue a passport in any case in which the Department determines or is informed by competent authority that:

(1) The applicant is the subject of an outstanding Federal warrant of arrest for a felony, including a warrant issued under the Federal Fugitive Felon Act (18 U.S.C. 1073); or

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(3) The applicant is subject to a U.S. court order committing him or her to a mental institution; or

(4) The applicant has been legally declared incompetent by a court of competent jurisdiction in the United States; or

(5) The applicant is the subject of a request for extradition or provisional request for extradition which has been presented to the government of a foreign country; or

(6) The applicant is the subject of a subpoena received from the United States pursuant to 28 U.S.C. 1783, in a matter involving Federal prosecution for, or grand jury investigation of, a felony; or

(7) The applicant is a minor and the passport may be denied under 22 CFR 51.28; or

(8) The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces pursuant to chapter 47 of title 10 of the United States Code; or

(9) The applicant is the subject of an outstanding state or local warrant of arrest for a felony; or

(10) The applicant is the subject of a request for extradition or provisional arrest submitted to the United States by a foreign country.

(c) The Department may refuse to issue a passport in any case in which:

(1) The applicant has not repaid a loan received from the United States under 22 U.S.C. 2670(j) for emergency medical attention, dietary supplements, and other emergency assistance, including, if applicable, assistance provided to his or her child(ren), spouse, and/or other immediate family members in a foreign country; or

(2) The applicant has not repaid a loan received from the United States under 22 U.S.C. 2671(b)(2)(B) or 22 U.S.C. 2671(b)(2)(A) for the repatriation or evacuation of the applicant and, if applicable, the applicant's child(ren), spouse, and/or other immediate family members from a foreign country to the United States; or

(3) The applicant has previously been denied a passport under this section or 22 CFR 51.61, or the Department has revoked the applicant's passport or issued a limited passport for direct return to the United States under 22 CFR 51.62, and the applicant has not shown that there has been a change in circumstances since the denial, revocation or issuance of a limited passport that warrants issuance of a passport; or

(4) The Secretary determines that the applicant's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States.

(d) The Department may refuse to issue a passport in a case in which the Department is informed by an appropriate foreign government authority or international organization that the applicant is the subject of a warrant of arrest for a felony.

(e) The Department may refuse to issue a passport, except a passport for direct return to the United States, in any case in which the Department determines or is informed by a competent authority that the applicant is a minor who has been abducted, wrongfully removed or retained in violation of a court order or decree and return to his or her home state or habitual residence is necessary to permit a court of competent jurisdiction to determine custody matters.

§ 51.61 Denial of passports to certain convicted drug traffickers.

(a) A passport may not be issued in any case in which the Department determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a felony conviction for a Federal or state drug offense, if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, including a felony conviction arising under:

(1) The Controlled Substances Act (21 U.S.C. 801 *et seq.*) or the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*); or

(2) Any Federal law involving controlled substances as defined in section 802 of the Controlled Substances Act (21 U.S.C. 801 *et seq.*); or

(3) The Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) or the Money Laundering Act (18 U.S.C. 1956 *et seq.*) if the Department is in receipt of information that supports the determination that the violation involved is related to illicit production of or trafficking in a controlled substance; or

(4) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(b) A passport may be refused in any case in which the Department determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a misdemeanor conviction of a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, other than a first conviction for possession of a controlled substance, including a misdemeanor conviction arising under:

(1) The Federal statutes described in § 51.61(a); or

(2) Any State law involving the manufacture, distribution, or possession of a controlled substance.

(c) Notwithstanding paragraph (a) of this section, the Department may issue a passport when the competent authority confirms, or the Department otherwise finds, that emergency circumstances or humanitarian reasons exist.

§ 51.62 Revocation or limitation of passports.

(a) The Department may revoke or limit a passport when

(1) The bearer of the passport may be denied a passport under 22 CFR 51.60 or 51.61; or 51.28; or any other provision contained in this part; or,

(2) The passport has been obtained illegally, fraudulently or erroneously; was created through illegality or fraud practiced upon the Department; or has been fraudulently altered or misused;

(b) The Department may revoke a passport when the Department has determined that the bearer of the passport is not a U.S. national, or the Department is on notice that the bearer's certificate of citizenship or certificate of naturalization has been canceled.

§ 51.63 Passports invalid for travel into or through restricted areas; prohibition on passports valid only for travel to Israel.

(a) The Secretary may restrict the use of a passport for travel to or use in a country or area which the Secretary has determined is:

(1) A country with which the United States is at war; or

(2) A country or area where armed hostilities are in progress; or

(3) A country or area in which there is imminent danger to the public health or physical safety of United States travelers.

(b) Any determination made and restriction imposed under paragraph (a) of this section, or any extension or revocation of the restriction, shall be published in the **Federal Register**.

(c) A passport may not be designated as valid only for travel to Israel.

§ 51.64 Special validation of passports for travel to restricted areas.

(a) A U.S. national may apply to the Department for a special validation of his or passport to permit its use for travel to, or use in, a restricted country or area. The application must be accompanied by evidence that the applicant falls within one of the categories in paragraph (c) of this section.

(b) The Department may grant a special validation if it determines that the validation is in the national interest of the United States.

(c) A special validation may be determined to be in the national interest if:

(1) The applicant is a professional reporter or journalist, the purpose of whose trip is to obtain, and make available to the public, information about the restricted area; or

(2) The applicant is a representative of the International Committee of the Red Cross or the American Red Cross traveling pursuant to an officially-sponsored Red Cross mission; or

(3) The applicant's trip is justified by compelling humanitarian considerations; or

(4) The applicant's request is otherwise in the national interest.

§ 51.65 Notification of denial or revocation of passport.

(a) The Department will notify in writing any person whose application for issuance of a passport has been denied, or whose passport has been revoked. The notification will set forth the specific reasons for the denial or revocation, and, if applicable, the procedures for review available under 22 CFR 51.70 through 51.74.

(b) An application for a passport will be denied or treated as abandoned if an

applicant fails to meet his or her burden of proof under 22 CFR 51.23(a) and 51.40 or otherwise does not provide documentation sufficient to establish entitlement to passport issuance within ninety days of notification by the Department that additional information from the applicant is required. Thereafter, if an applicant wishes to pursue a claim of entitlement to passport issuance, he or she must submit a new application and supporting documents, photographs, and statements in support of the application, along with applicable application and execution fees.

§ 51.66 Surrender of passport.

The bearer of a passport that is revoked must surrender it to the Department or its authorized representative upon demand.

Subpart F—Procedures for Review of Certain Denials and Revocations

§ 51.70 Request for hearing to review certain denials and revocations.

(a) A person whose passport has been denied or revoked under 22 CFR 51.60(b)(1) through (10), 51.60(c), 51.60(d), 51.61(b), 51.62(a)(1) where the basis for the adverse action would entitle the applicant to a hearing under this section, or § 51.62(a)(2) may request a hearing to the Department to review the basis for the denial or revocation within 60 days of receipt of the notice of the denial or revocation.

(b) The provisions of §§ 51.70 through 51.74 do not apply to any action of the Department taken on an individual basis in denying, restricting, revoking, or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport for reasons excluded from § 51.70(a) including:

(1) Non-nationality;

(2) Refusal under the provisions of 51.60(a);

(3) Refusal to grant a discretionary exception under emergency or humanitarian relief provisions of § 51.61(c);

(4) Refusal to grant a discretionary exception from geographical limitations of general applicability.

(c) If a timely request for a hearing is made, the Department will hold it within 60 days of the date the Department receives the request, unless the person requesting the hearing asks for a later date and the Department and the hearing officer agree.

(d) The Department will give the person requesting the hearing not less than 10 business days' written notice of the date and place of the hearing.

§ 51.71 The hearing.

(a) The Department will name a hearing officer, who will make findings of fact and submit recommendations based on the record of the hearing as defined in § 51.72 to the Deputy Assistant Secretary for Passport Services in the Bureau of Consular Affairs.

(b) The person requesting the hearing may appear in person, or with or by his designated attorney. The attorney must be admitted to practice in any state of the United States, the District of Columbia, any territory or possession of the United States, or be admitted to practice before the courts of the country in which the hearing is to be held.

(c) The person requesting the hearing may testify, offer evidence in his or her own behalf, present witnesses, and make arguments at the hearing. The person requesting the hearing is responsible for all costs associated with the presentation of his or her case. The Department may present witnesses, offer evidence, and make arguments in its behalf. The Department is responsible for all costs associated with the presentation of its case.

(d) Formal rules of evidence will not apply, but the hearing officer may impose reasonable restrictions on relevancy, materiality, and competency of evidence presented. Testimony will be under oath or by affirmation under penalty of perjury. The hearing officer may not consider any information that is not also made available to the person requesting the hearing and made a part of the record of the proceeding.

(e) If any witness is unable to appear in person, the hearing officer may, in his or her discretion, accept an affidavit from or order a deposition of the witness, the cost for which will be the responsibility of the requesting party.

§ 51.72 Transcript and record of the hearing.

A qualified reporter will make a complete verbatim transcript of the hearing. The person requesting the hearing and/or his or her attorney may review and purchase a copy of the transcript. The hearing transcript and the documents received by the hearing officer will constitute the record of the hearing.

§ 51.73 Privacy of hearing.

Only the person requesting the hearing, his or her attorney, the hearing officer, official reporters, and employees of the Department directly concerned with the presentation of the case for the Department may be present at the hearing. Witnesses may be present only while actually giving testimony or as otherwise directed by the hearing officer.

§ 51.74 Final decision.

After reviewing the record of the hearing and the findings of fact and recommendations of the hearing officer, the Deputy Assistant Secretary for Passport Services will decide whether to uphold the denial or revocation of the passport. The Department will promptly notify the person requesting the hearing in writing of the decision. If the decision is to uphold the denial or revocation, the notice will contain the reason(s) for the decision. The decision is final and is not subject to further administrative review.

Dated: November 8, 2007.

Janice L. Jacobs,

Principal Deputy Assistant Secretary, Consular Affairs, Department of State.

[FR Doc. E7–22461 Filed 11–16–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9367]

RIN 1545—BH00

Payments Made by Reason of a Salary Reduction Agreement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document promulgates a final regulation that defines the term *salary reduction agreement* for purposes of section 3121(a)(5)(D) of the Internal Revenue Code (Code). The final regulation provides guidance to employers (public educational institutions and section 501(c)(3) organizations) purchasing annuity contracts described in section 403(b) on behalf of their employees.

DATES: *Effective Date:* This regulation is effective November 15, 2007.

Applicability Date: This regulation applies to contributions to section 403(b) plans made on or after November 15, 2007.

FOR FURTHER INFORMATION CONTACT: Neil D. Shepherd, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This final regulation amends the Employment Tax Regulations (26 CFR part 31) by providing guidance relating

to section 3121(a)(5)(D). The Federal Insurance Contributions Act (FICA) imposes taxes on employees and employers equal to a percentage of the wages received with respect to employment. Section 3121(a) defines wages for FICA tax purposes as all remuneration for employment unless otherwise excepted. Section 3121(a)(5)(D), added by the Social Security Amendments of 1983 (Public Law 98–21 (97 Stat. 65)), generally excepts from wages payments made by an employer for the purchase of an annuity contract described in section 403(b). However section 3121(a)(5)(D) expressly excludes from the exception payments made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise). Thus, payments made under a salary reduction agreement to purchase a section 403(b) annuity contract are included in wages for FICA purposes. A temporary and proposed regulation defining the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D) was published in the **Federal Register** (69 FR 67054) on November 16, 2004.

For income tax purposes, contributions made by an employer to a section 403(b) contract, including contributions made pursuant to a cash or deferred election or other salary reduction agreement, are generally excluded from income. § 403(b); see also section 1450(a) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188 (110 Stat. 1755)). Conversely, for FICA tax purposes, contributions made by an employer to a section 403(b) contract pursuant to a cash or deferred election or other salary reduction agreement are included in wages. § 3121(a)(5)(D); see also S. Rep. No. 98–23, at 40–41, 98th Cong., 1st Sess. (1983).

Summary of Comments and Explanation of Provisions

This regulation finalizes the temporary and proposed regulation without change. The final regulation provides that the term ''salary reduction agreement'' includes (1) a plan or arrangement whereby a payment will be made if the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)–1(a)(3) of the Income Tax Regulations, (2) a plan or arrangement whereby a payment will be made if the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of initial eligibility to participate in such plan or arrangement (or pursuant to a similar arrangement involving a one-time irrevocable election), and (3) a plan or arrangement whereby a payment will be made if the employee agrees as a condition of employment (whether such condition is set by statute, contract, or otherwise) to make a contribution that reduces the employee's compensation.

Comments were submitted with respect to the definition of the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D) and with respect to the applicability date of the temporary and proposed regulation.

Salary Reduction Agreement

Commentators asserted that Congress intended the term ''salary reduction agreement'' in section 3121(a)(5)(D) to apply only to voluntary reductions in salary and not to salary reductions required as a condition of employment. In support of this view, commentators cited the legislative history underlying section 3121(a)(5)(D), particularly the following language from the Senate Report:

> The bill also provides that any amounts paid by an employer to a tax-sheltered annuity by reason of a salary reduction agreement between the employer and the employee would be includible in the employee's social security wage base. The committee intended that the provision would merely codify the holding of Revenue Ruling 65–208, 1965–2 Cum. Bull. 383, without any implication with respect to the issue of whether a particular amount paid by an employer to a tax-sheltered annuity is, in fact, made by reason of a ''salary reduction agreement.''

S. Rep. No. 98–23, at 40–41, 98th Cong., 1st Sess. (1983).

Commentators maintained that Revenue Ruling 65–208 distinguishes between voluntary and mandatory salary reduction contributions and that the legislative history reflects Congress' intent to treat only voluntary salary reduction contributions as having been made by reason of a salary reduction agreement. While the Senate Report indicates a Congressional intent to ''codify the holding of Revenue Ruling 65–208,'' the revenue ruling does not address any distinction between voluntary and mandatory reductions in salary. The critical distinction drawn in Revenue Ruling 65–208 is between situations ''where an organization uses its own funds for the purchase of an annuity contract'' (a supplemental contribution) and situations ''where the employee takes a voluntary reduction in salary to provide the necessary funds'' (a salary reduction contribution). At the time Revenue Ruling 65–208 was issued the statutory standard under section 3121(a)(2) for determining whether to include contributions to section 403(b) annuity contracts in wages for FICA purposes was whether the contributions had been paid by the employer or by the employee. Thus, in determining whether the employer or the employee has paid the contribution, the revenue ruling distinguishes between supplemental contributions funded by the employer and salary reduction contributions funded by the employee. Whether a salary reduction contribution was voluntary or mandatory is irrelevant in establishing that the employee funded the contribution through a reduction in salary.

Several courts have discussed Revenue Ruling 65–208 and confirmed that it addresses the distinction between salary supplements and salary reductions. See *Temple University* v. *United States*, 769 F.2d 126, 130 (3d Cir. 1985), discussing the distinction drawn by Revenue Ruling 65–208 between supplemental contributions and salary reduction contributions, and *Canisius College* v. *United States*, 799 F.2d 18, 20–21 (2d Cir. 1986), distinguishing between ''salary supplement plans'' and ''salary reduction plans.'' See also *University of Chicago* v. *United States*, No. 06 C 3452, 2007 U.S. Dist. LEXIS 61632, at *8 (N.D. Ill. Aug. 21, 2007) concluding that ''the distinction that was being drawn in [Revenue Ruling 65–208] was between annuity purchase funds that come from employee contributions and those that come from employer contributions.'' The Treasury Department and the Internal Revenue Service (IRS) continue to believe that it is consistent with the legislative history of section 3121(a)(5)(D) and with the codification of Revenue Ruling 65–208 to treat both voluntary salary reductions and salary reductions to which the employee agrees as a condition of employment as payments made pursuant to a salary reduction agreement.

Commentators suggested that the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D) should mean an elective deferral within the meaning of section 402(g)(3)(C), which defines the term *elective deferral* for purposes of the section 402(g)(3) limit on the exclusion of elective deferrals from gross income. In their view, because salary reduction contributions made pursuant to a one–time irrevocable election or as a condition of employment are not elective deferrals under section 402(g)(3)(C) and its accompanying regulations, such contributions are not made pursuant to a salary reduction agreement and, consequently, are excluded from wages under section 3121(a)(5)(D).

Section 402(g)(3)(C) provides that the term ''elective deferral'' includes ''any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).'' However, when enacting section 402(g)(3), Congress made the following statement about the relationship among mandatory salary reduction contributions, elective deferrals, and salary reduction agreements: ''if an employee is required to contribute a fixed percentage of compensation to a tax–sheltered annuity as a condition of employment, the contributions are not treated as elective deferrals.'' H.R. Rep. No. 99–841 at II–405 (1986). Similarly, in 1988 Congress added the flush language of 402(g)(3) providing that a one-time irrevocable election will not be treated as an elective deferral. Congress added the flush language to clarify that the term ''elective deferral'' excludes contributions ''made pursuant to a one-time election to participate in the tax-sheltered annuity even though such contribution would be considered made under a salary reduction agreement under section 3121(a)(5)(D).''

S. Rep. No. 100–445, at 151, 100th Cong., 2d Sess. (1988). Congress explained the clarification to section 402(g)(3) as follows:

> The bill conforms the statutory language to the legislative history by providing that contributions to a tax-sheltered annuity are not considered elective deferrals if the contributions are made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the annuity or are made pursuant to a similar arrangement specified in regulations. The bill does not change the definition of salary reduction agreement for purpose of section 3121(a)(5)(D).

Sen. Rep. 100–445, 100th Cong., 2d Sess. (1988) 151.

Thus, as reflected in both the statutory language of section 402(g) and in its legislative history, Congress intended the definition of salary reduction agreement for purposes of section 3121(a)(5)(D) to be distinct from the definition of elective deferral for purposes of section 402(g)(3)(C).

Furthermore, Congress intended that the term *wages* would have different meanings for income tax withholding and FICA tax purposes. The broader scope of the term for FICA tax purposes is consistent with the general policy underlying the FICA. See S. Rep. No. 98–23, at 39, 98th Cong., 1st Sess. (1983) relating to the Social Security Amendments of 1983 (Pub. L. 98–21 (97 Stat. 65)). Moreover, the legislative history to section 3121(a)(5)(D) cited in this preamble describes Congress's intent to codify the holding in Revenue Ruling 65–208 (see § 601.601(d)(2)(ii)(*b*)), which provides that certain amounts included in income and amounts included in wages with respect to contributions used to purchase a 403(b) annuity contract are not the same. Based on the statutory language and the legislative history of section 3121(a)(5)(D) and related provisions, including section 3121(v)(1)(B) as discussed in this preamble, the Treasury Department and the IRS continue to believe that the term ''salary reduction agreement'' in section 3121(a)(5)(D) includes salary reduction contributions made pursuant to a one-time irrevocable election or as a condition of employment.

The term ''salary reduction agreement'' is used not only in section 3121(a)(5)(D) but also in another subsection of section 3121, specifically section 3121(v)(1)(B), which provides that wages include ''any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).'' Commentators contended that the term ''salary reduction agreement'' should be interpreted differently for purposes of sections 3121(a)(5)(D) and 3121(v)(1)(B) because section 3121(v)(1)(B) applies only to salary reduction contributions made under a section 414(h) pick-up plan established by a State or local government employer. By definition, the salary reductions that fund these employer contributions are mandatory whereas contributions to section 403(b) annuity plans may be mandatory or voluntary. While it is correct that salary reductions in connection with section 414(h) pick-up plans are mandatory, we see no evidence in the statute or legislative history that Congress intended to interpret the same language differently or to treat similarly situated employees differently for FICA purposes. Both section 3121(a)(5)(D) and section 3121(v)(1)(B) include salary reduction contributions in wages for FICA tax purposes. Neither the statute nor the legislative history gives a basis for concluding that mandatory salary reductions made in connection with a section 414(h) pick-up plan should be included in wages for FICA purposes while mandatory salary reductions made in connection with a section 403(b) annuity plan should be excluded from wages. Thus, the Treasury Department and the IRS continue to believe that it is appropriate to give a consistent interpretation to identical language in two subsections of the same statutory section enacted only one year apart.

Similarly, as discussed in the preamble to the temporary and proposed regulation, the Tenth Circuit's decision in *Public Employees' Retirement Board* v. *Shalala,* 153 F.3d 1160 (10th Cir. 1998) supports the view that a mandatory salary reduction contribution nonetheless requires the employee's agreement. In Public Employees' Retirement Board the Court of Appeals held that the term ''salary reduction agreement'' includes mandatory salary reduction contributions made as a condition of employment. As the Court said, ''[A]n employee's decision to go to work or continue to work * * * constitutes conduct manifesting assent to a salary reduction.'' 153 F.3d at 1166. The employment relationship itself is a voluntary relationship, and the employee manifests his or her agreement with the terms and conditions of the employment relationship by accepting employment. See *University of Chicago* v. *United States,* No. 06 C 3452, 2007 U.S. Dist. LEXIS 61632, at *7 (N.D. Ill. Aug. 21, 2007) citing *Public Employees' Retirement Board* for the proposition that ''a salary reduction agreed to as a condition of employment constitutes a salary reduction agreement because 'the employee has ''agreed'' to the salary reduction by continuing employment.' '' The temporary and proposed regulations, and now the final regulations, read the term ''agreement'' for purposes of section 3121(a)(5)(D) as the Tenth Circuit read it for purposes of section 3121(v)(1)(B), as both an agreement to accept employment subject to a mandatory salary reduction and an agreement to a specified salary reduction.

Accordingly, the final regulation adopts the definition of salary reduction agreement as proposed.

Applicability Date

Commentators asked the IRS to confirm that the definition of salary reduction agreement provided in the temporary and proposed regulation would apply prospectively only and, therefore, would not affect contributions to a section 403(b) plan made prior to November 16, 2004, the date the temporary and proposed regulation went into effect. As explicitly set forth in § 31.3121(a)(5)–2T the temporary and proposed regulation was applicable to contributions to section 403(b) annuity plans made on or after November 16, 2004. Therefore, the Internal Revenue

Service will not apply the temporary and proposed regulation to contributions made to any section 403(b) plan prior to November 16, 2004, for purposes of determining whether such contributions were subject to FICA tax. The final regulation will apply only to contributions made to any section 403(b) plan on or after November 15, 2007.

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) do not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of this regulation is Neil D. Shepherd, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 2.** Section 31.3121(a)(5)–2 is added to read as follows:

§ 31.3121(a)(5)–2 Payments under or to an annuity contract described in section 403(b).

(a) *Salary reduction agreement defined.* For purposes of section 3121(a)(5)(D), the term *salary reduction agreement* means a plan or arrangement (whether evidenced by a written instrument or otherwise) whereby payment will be made by an employer, on behalf of an employee or his or her beneficiary, under or to an annuity contract described in section 403(b)—

(1) If the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)–1(a)(3) of this chapter;

(2) If the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of initial eligibility to participate in such plan or arrangement (or pursuant to a similar arrangement involving a one-time irrevocable election); or

(3) If the employee agrees as a condition of employment (whether such condition is set by statute, contract, or otherwise) to make a contribution that reduces his or her compensation.

(b) *Effective/applicability date.* This section is applicable on November 15, 2007.

§ 31.3121(a)(5)–2T [Removed]

■ **Par. 3.** Section 31.3121(a)(5)–2T is removed.

Approved: November 13, 2007.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 07–5730 Filed 11–14–07; 1:17 pm]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX–057–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving amendments to the Texas regulatory program (Texas program) and the Texas abandoned mine land reclamation plan (Texas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to and additions to regulations concerning post mining land uses; terms and conditions of the bond; topsoil redistribution; standards for revegetation success; public hearing; review of notice of violation or cessation order; determination of amount of penalty; assessment of separate violation for each day; request for hearing; and liens. Also, Texas proposed revisions to its statute concerning liens and administrative penalty for violation of permit conditions. Texas intends to revise its program and plan to be consistent with the corresponding Federal regulations and/or SMCRA, to clarify ambiguities, and to improve operational efficiency.

DATES: *Effective Date:* November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *aclayborne@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program and Texas Plan
II. Submission of the Amendments
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Texas Program and Texas Plan

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. A reclamation fee on each ton of coal supports the abandoned mine land reclamation program. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive

responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Texas plan on June 23, 1980. You can find background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 23, 1980, **Federal Register** (45 FR 41937). You can find later actions concerning the Texas plan and amendments to the plan at 30 CFR 943.25.

II. Submission of the Amendments

By letter dated February 14, 2007 (Administrative Record No. TX–662), Texas sent us amendments to the Texas program and the Texas plan, at its own initiative, under SMCRA (30 U.S.C. 1201 *et seq.*). We announced receipt of the proposed amendments in the April 30, 2007, **Federal Register** (72 FR 21185). We did not receive any public comments. We did receive comments from two Federal agencies.

During our review of the amendment to the Texas program, the Railroad Commission of Texas notified us that the Texas legislators capped the State's administrative penalty at $10,000 instead of the $13,000 as proposed in the amendment to the Texas program submitted to us on February 14, 2007 (Administrative Record No. TX–662). On May 7, 2007, Texas sent us this revision to its regulatory program statutes regarding administrative penalty for violations of permit conditions along with corresponding revisions to its regulations regarding determination of amount of penalty (Administrative Record No. TX–662.03).

Also, during our review of the Texas program amendment, we identified concerns about informal public hearings and assessment of separate violations for each day. By email dated June 5, 2007 (Administrative Record No. TX–662.07) we notified Texas of these concerns. Texas sent us revisions to this amendment by e-mail dated June 7, 2007 (Administrative Record No. TX–662.08).

Based on Texas' revisions to its amendment, we reopened the public comment period in the June 11, 2007, **Federal Register** at 72 FR 32049. The public comment period ended on June 26, 2007. We did not receive any public comments.

III. OSM's Findings

Following are the findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14, and 884.15. We are approving the amendments as described below.

A. Revisions to Texas' Statutes, Chapter 134 of the Texas Surface Coal Mining and Reclamation Act (TSCMRA)

1. Section 134.150 Lien

Texas revised its requirements at section 134.150(c) pertaining to who may not be subject to liens as a result of the reclamation of abandoned mine lands. Currently, persons who owned property before May 2, 1977, and who did not consent to, or participate in, or exercise control over the mining operation that necessitated the reclamation are exempt from liens. Texas removed the date requirement at section 134.150(c)(1) so that persons who did not consent to, or participate in, or exercise control over the mining operation (that necessitated the reclamation) are exempt from liens regardless of when they acquired the property.

We are approving the change because this date requirement of May 2, 1977, was also removed from section 408(a) of SMCRA effective December 20, 2006, and because the change will not make Texas' plan less stringent than SMCRA.

2. Section 134.174 Administrative Penalty for Violation of Permit Condition of this Chapter

Texas proposed to revise subsection (b) by increasing its penalty cap from $5,000 to $10,000 for each violation at surface coal mining operations.

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain, at a minimum, penalties which are ''no less stringent than'' those set forth in SMCRA. Section 518(a) of SMCRA assesses a maximum penalty of $5,000 for each violation. Texas proposed a maximum penalty of $10,000 for each violation. We are approving Texas' change at section 134.174(b) because it is no less stringent than SMCRA.

B. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Texas' regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations or statute.

Topic	State regulation Texas Administrative Code (TAC)	Federal counterpart regulation or statute
Reclamation Plan: Postmining Land Uses	12.147(a) through (a)(3)	30 CFR 780.23(b) through (b)(3).
Letters of Credit	12.309(g)(2)	30 CFR 800.21(b)(2).
Topsoil: Redistribution	12.337(b) through (b)(3)	30 CFR 816.22(d)(1) through (d)(1)(iii).
Revegetation: Standards for Success	12.395(a)(1), (b)(1), (b)(3), (b)(3)(A) and (B), and (c)(3) and (4).	30 CFR 816.116(a)(1), (b)(1), (b)(3), (b)(3)(i) and (ii), and (c)(3)(i) and (c)(4).
Informal Public Hearing	12.681(a), (b) through (b)(3), (c), (e), (f), and (h).	30 CFR 843.15(a), (b) through (b)(3), (c), (e), and (h).
Formal Review of Notice of Violation or Cessation Order.	12.682(a) and (b)	30 CFR 843.16(a) and (b).
Assessment of Separate Violations for Each Day.	12.689(b) through (b)(3)	30 CFR 845.15(b) through (b)(2).
Request for Hearing	12.693	30 CFR 845.19(a).
Liens	12.816(c)	Section 408(a) of SMCRA, as amended in December 2006.

Because the above State regulations contain language that is the same as or similar to or have the same meaning as the corresponding Federal regulations or statute, we find that they are no less stringent than SMCRA and/or no less effective than the Federal regulations.

B. TAC 12.337 Topsoil: Redistribution

In section 12.337(a), Texas added topsoil substitutes to the list of materials to be redistributed after final grading during surface mining reclamation. The

counterpart Federal regulation at 30 CFR 816.22(d)(2) includes topsoil substitutes as one of the materials being redistributed after the land is regraded during surface mining reclamation. We are approving this addition because it is no less affective than the above Federal regulation.

C. TAC 12.681 Informal Public Hearing

Texas added the word, informal, to the section heading. Texas also revised paragraph (g) by changing ''public hearing'' to ''informal public hearing'' and by changing ''review'' to ''formal review.'' The revised paragraph (g) reads as follows:

(g) The granting or wavier of the above informal public hearing shall not affect the right of any person to formal review under §§ 134.175 and 134.176 of the Act and §§ 2001.141–2001.147 of the APA (relating to Contested Cases: Final Decisions and Orders; Motions for Rehearing). At such review proceedings, no evidence as to statements made or evidence produced at the informal public hearing pursuant to this section shall be introduced as evidence to impeach a witness.

The counterpart Federal regulation at 30 CFR 843.15(g) refers to ''hearings'' and ''reviews'' under enforcement procedures as ''informal hearings'' and ''formal reviews.'' We are approving the above revisions because they simply clarify that under Texas' enforcement procedures, public hearings are ''informal public hearings'' and reviews are ''formal reviews'' and because the revisions are no less effective than the Federal regulations at 30 CFR 843.15(g).

D. TAC 12.688 Determination of Amount of Penalty

Texas' current regulation regarding administrative penalties was promulgated in 1979. Texas proposed to increase these penalties to reflect the decreased value in the dollar since 1979. The current penalties begin with $20 increments for each penalty assessment point and increase to a maximum penalty of $5,000. The revised penalties begin with $550 and increase to $10,000.

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are ''no less stringent than'' those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM's regulations governing civil monetary penalties (CMPs), the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Instead, section 518(i) of the Act requires only the incorporation of penalties and procedures explained in section 518. The system proposed by the State must incorporate the four criteria of section 518(a) of SMCRA: (1) History of previous violations, (2) seriousness of the violation, (3) negligence of the permittee, and (4) good faith of the permittee in attempting to achieve compliance. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4, 1980 (45 FR 51548) by suspending the requirement that penalties shall be consistent with 30 CFR part 845. Consequently, we cannot require that the CMP provisions contained in a State's regulatory program mirror the point system and resulting dollar amounts specified in our regulations.

We are approving Texas' revised penalties because the penalties are no less stringent than those specified in SMCRA and the procedural requirements are the same or similar to the procedures specified in SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the Texas program and Texas plan amendments, but did not receive any.

Federal Agency Comments

On March 16, 2007 (Administrative Record No. TX–662.01) and May 31, 2007 (Administrative Record No. TX–662.06), under 30 CFR 732.17(h)(11)(i), 884.14(a)(2), and 884.15(a), and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Texas program and Texas plan. On March 22, 2007, the Natural Resources Conservation Service stated that it had no comments pertaining to the proposed changes (Administrative Record No. TX–662.02). The U.S. Army Corps of Engineers responded on April 20, 2007 (Administrative Record No. TX–662.04), that both its Southwestern Division representatives and its Regulatory Branch in its Headquarters office had no additional comments at this time to the proposed changes to the Texas abandoned mine land reclamation plan.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the Texas program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On March 16, 2007 (Administrative Record No. TX–662.01) and July 10, 2007 (Administrative Record No. TX–662.06), under 30 CFR 732.17(h)(11)(i), 884.14(a)(2), and 884.15(a), we requested comments on the Texas program and Texas plan amendments from the EPA. The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on State regulatory program amendments that may have an effect on historic properties. On March 16, 2007 (Administrative Record No. TX–662.01) and May 31, 2007 (Administrative Record No. TX–662.06), we requested comments on the Texas program amendment, but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendments to the Texas program and the Texas plan that Texas sent us on February 14, 2007, and as revised on May 7, 2007, and June 7, 2007.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program and Texas plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 2007.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
February 14, 2007	November 19, 2007	TSCMRA 134.174(b); TAC 12.147(a) through (a)(3); 12.309(g)(2); 12.337(a) and (b) through (b)(3); 12.395(a)(1), (b)(1), (b)(3), (b)(3)(A) and (B), and (c)(3) and (4); 12.681(a), (b) through (b)(3), (c), (e), (f), (g), and (h); 12.682(a) and (b); 12.688; 12.689(b) through (b)(3); and 12.693.

■ 3. Section 943.25 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
February 14, 2007	November 19, 2007	TSCMRA 134.150(c) and TAC 12.816(c),

[FR Doc. E7–22555 Filed 11–16–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1013; FRL–8496–7]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving the rescission from the California SIP of local rules that address Storage, Handling and Transport of Petroleum Coke and PM–10 Emissions from Paved and Unpaved Roads, and Livestock Operations, and the accompanying negative declaration.

DATES: This rule is effective on January 18, 2008 without further notice, unless EPA receives adverse comments by December 19, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–1013, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov*.
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

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

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I. The State's Submittal

A. What rule rescissions did the State submit?

Table 1 lists the rule rescissions we are approving with the dates that they were adopted by the Antelope Valley Air Quality Management District (AVAQMD) and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
AVAQMD	1158	Storage, Handling, and Transport of Petroleum Coke	02/20/07	08/24/07
AVAQMD	1186	PM–10 Emissions From Paved and Unpaved Roads, and Livestock Operations.	05/16/06	10/05/06

These rule submittals were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review on September 17, 2007 and October 24, 2006, respectively.

B. Are there other versions of these rules?

A version of Rule 1158 adopted December 2, 1983 was approved into the SIP on January 15, 1987. A version of Rule 1186 adopted September 10, 1999 was approved into the SIP on June 10, 2000.

C. What is the purpose of the submitted rule rescissions?

Section 110(a) of the CAA requires states to submit regulations that control VOC emissions, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were originally developed as part of the South Coast Air Quality Management District's (SCAQMD) program to control particulate matter (PM). At the time, SCAQMD's jurisdiction included the portion of Los Angeles County located in the Mojave Desert Air Basin, known as the Antelope Valley. On July 1, 1997 the AVAQMD was formed, pursuant to statute and assumed the duties and powers of the SCAQMD in the Antelope Valley. The AVAQMD subsequently rescinded Rules 1158 and 1186 after determining that there are no sources regulated by these rules within the jurisdiction of the AVAQMD. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule rescissions?

EPA has evaluated all the appropriate background and submittal documentation and has determined that the rescission of Rules 1158 and 1186 are approvable. The AVAQMD has identified that the sources regulated by these rules are not present in the AVAQMD. Further, the AVAQMD also stated that they do not anticipate these types of sources in the future.

The rule rescissions are consistent with the CAA, EPA regulations and EPA policy.

B. Do the rule rescissions meet the evaluation criteria?

We believe these rule rescissions are consistent with the relevant policy and guidance. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule rescissions because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule rescissions. If we receive adverse comments by December 19, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 18, 2008. This will incorporate these rule rescissions into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 2, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(153)(vii)(C) and (278)(i)(A)(3) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(153) * * *

(vii) * * *

(C) Previously approved on March 14, 1984 in paragraph (c)(153)(vii)(B) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District Rule 1158.

* * * * *

(278) * * *

(i) * * *

(A) * * *

(3) Previously approved on January 21, 2000 in paragraph (c)(278)(i)(A)(2) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District Rule 1186.

* * * * *

[FR Doc. E7–22447 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R03–OAR–2007–0605; FRL–8497–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Scranton/Wilkes-Barre 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Scranton/Wilkes-Barre ozone nonattainment Area (or ''Area'') be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). The Scranton/Wilkes-Barre Area is composed of Lackawanna, Luzerne, Monroe, and Wyoming Counties. EPA is approving the ozone redesignation request for Scranton/Wilkes-Barre Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Scranton/Wilkes-Barre Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for the Scranton/Wilkes-Barre Area, which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Scranton/Wilkes-Barre Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, and the maintenance plan and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on December 19, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0605. All documents in the docket are listed in the *www.regulations.gov* website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 25, 2007 (72 FR 54390), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request and maintenance plan SIP revisions for the Scranton/Wilkes-Barre Area that provide for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. The NPR also proposed approval of a 2002 base year emissions inventory for the Area. The formal SIP revisions were submitted by PADEP on June 12, 2007. Other specific requirements of Pennsylvania's redesignation request and maintenance plan SIP revisions, and the rationales for EPA's proposed actions, are explained in the NPR and will not be restated here. No public comments were received on the NPR.

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23591, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for the 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain NAAQS. In addition, the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of the 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified the 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in the light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, and 2002 base year emissions inventory SIP revisions because they satisfy the requirements for approval. EPA has evaluated Pennsylvania's redesignation request that was submitted on June 12, 2007 and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Scranton/Wilkes-Barre Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Scranton/Wilkes-Barre Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the Scranton/Wilkes-Barre Area submitted on June 12, 2007 as a revision to the Pennsylvania SIP. EPA is also approving the MVEBs submitted by PADEP in conjunction with its redesignation request. In addition, EPA is approving the 2002 base year emissions inventory submitted by PADEP on June 12, 2007 as a revision to the Pennsylvania SIP. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_X and VOCs in the Scranton/Wilkes-Barre Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Scranton/Wilkes-Barre Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

SCRANTON/WILKES-BARRE AREA ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Budget year	VOC	NO_X
2009	25.2	48.3
2018	16.9	23.7

The Scranton/Wilkes-Barre Area is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, this action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject

to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the redesignation of the Scranton/Wilkes-Barre Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year emission inventory, and the MVEBs identified in the maintenance plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 8, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Scranton-Wilkes-Barre Area: Lackawanna, Luzerne, Monroe and Wyoming Counties.	06/12/07	11/19/07 [Insert page number where the document begins].	

* * * * *

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.339, the table entitled ''Pennsylvania-Ozone (8-Hour Standard)'' is amended by revising the entry for the Scranton-Wilkes-Barre, PA, Lackawanna County, Luzerne County, Monroe County, Wyoming County to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Scranton-Wilkes-Barre, PA: Lackawanna County, Luzerne County, Monroe County, Wyoming County.	12/19/07	Attainment.		
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except otherwise noted.

[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–22446 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2006–0898; FRL–8340–8]

RIN 2070–AB27

Certain Chemical Substances; Withdrawal of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rules.

SUMMARY: EPA is withdrawing two significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substances which were the subject of premanufacture notices (PMNs), i.e., dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2,5–dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283). EPA published the SNURs using direct final rulemaking procedures. EPA received notices of intent to submit adverse comments on these rules. Therefore, the Agency is withdrawing these SNURs, as required under the expedited SNUR rulemaking process. EPA also intends to publish in the **Federal Register**, under separate notice and comment rulemaking procedures, proposed SNURs for these two substances.

DATES: This final rule is effective November 19, 2007.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8773; e-mail address:*chu.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

A list of potentially affected entities is provided in the **Federal Register** of September 19, 2007 (72 FR 53470) (FRL–8135–8). If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Rule is being Withdrawn?

In the **Federal Register** of September 19, 2007 (72 FR 53470), EPA issued several direct final Significant New Use Rules (SNURs), including SNURs for the two chemical substances that are the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with 40 CFR 721.170(d)(4)(i)(B), EPA is withdrawing the rules issued for dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2, 5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283) (see § 721.10057 and § 721.10088, respectively) because the Agency received a notice to submit adverse comments. EPA intends to propose SNURs for these two substances via notice and comment rulemaking in a future **Federal Register** document.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D and the**Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNUR for these substances which is being withdrawn was established at EPA–HQ–OPPT–2006–0898. That record includes information considered by the Agency in developing this rule and one of the notices of intent to submit adverse comments. The other notice of intent to submit adverse comments was claimed as Confidential Business Information by the commenter and therefore is not in the public docket.

III. How Do I Access the Docket?

To access the electronic docket, please go to*http://www.regulations.gov* and follow the online instructions to access Docket ID No. EPA–HQ–OPPT–2006–0898. Additional information about the docket facility is provided under**ADDRESSES** in the **Federal Register** document of September 19, 2007 (72 FR 53470). If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. What Statutory and Executive Order Reviews Apply to this Action?

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** document of September 19, 2007 (72 FR 53470). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 14, 2007.

Oscar Hernandez,

Acting Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.10057 [Removed]

■ 2. By removing § 721.10057.

§ 721.10088 [Removed]

■ 3. By removing § 721.10088.

[FR Doc. E7–22614 Filed 11–16–07 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060418103–6181–02]

RIN 0648–XD92

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 2 Quota Harvested

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

ACTION: Closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the semi-annual quota period, November 1, 2007 - April 30, 2008, has been harvested. Therefore, effective 0001 hours, November 16, 2007, federally permitted commercial vessels may not fish for, possess, transfer, or land spiny dogfish until May 1, 2008, when the 2008 Period 1 quota becomes available. Federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels through April 30, 2007. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 2 quota and to allow for effective management of this stock.

DATES: Effective at 0001 hr local time, November 16, 2007, through 2400 hr local time April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221, or *Don.Frei@Noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2007 fishing year is 4 million lb (1.81 million kg) (71 FR 40436, July 17, 2006). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 600 lb (272 kg) for both quota Periods 1 and 2. Quota Period 1 is allocated 2.3 million lb (1.05 million kg), and quota Period 2 is allocated 1.7 million lb (763,849 kg) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to quota Period 1 have the effect of reducing the quota available to the fishery during quota Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, November 16, 2007, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through April 30, 2008, 2400 hr local time. The 2008 Period 1 quota will be available for commercial spiny dogfish harvest on May 1, 2008. Effective November 16, 2007, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 13, 2007.

Emily H. Menashes,

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

[FR Doc. 07–5731 Filed 11–14–07; 1:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–AV57

[Docket No. 070510101–7101–01]

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Emergency Rule Extension

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS is extending the temporary rule to prohibit vessels without sector-specific participation history in the directed Pacific whiting (whiting) fishery off the West Coast from participating in the whiting fishery. This emergency rule extension is necessary to prevent serious conservation and management problems that could be caused by new entrants and to maintain status quo participation while the Pacific Fishery Management Council (Council) completes its efforts to develop a vessel license limitation program through an amendment to the Pacific Coast Groundfish Fishery Management Plan (FMP.)

DATES: Effective from November 14, 2007, through May 13, 2008.

ADDRESSES: Copies of the Finding of No Significant Impact (FONSI) and its supporting Environmental Assessment (EA) for the emergency rule are available from Frank D. Lockhart, Assistant Regional Administrator for Sustainable Fisheries, Northwest Region, NMFS 7600 Sand Point Way, NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart (Northwest Region, NMFS,) phone: 206–526–6142; fax: 206–526–6736; and email: *frank.lockhart@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The temporary rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://*

www.gpoaccess.gov/fr/index.html. Background information and documents, including the EA, are available at the Council's website at *http://www.pcouncil.org*.

On May 17, 2007, NMFS published a temporary rule (72 FR 27759) to prohibit any vessel from participating in either the mothership, catcher-processor, or shoreside delivery sector of the directed whiting fishery off the West Coast in 2007 if it did not have a history of sector-specific participation in the whiting fishery between January 1, 1997 and January 1, 2007 (72 FR 27759.) The Council had requested that NMFS implement this rule in order to prevent new entrants from accelerating the pace of the fishery and potentially increasing the rate at which bycatch species are taken in the fishery. The Council had requested this emergency rule in order to prevent conservation and management problems in the 2007 fishery while it worked to develop a vessel license limitation program for the whiting fishery in 2008 and beyond. The emergency rule published on May 17, 2007, went into effect on May 14, 2007, and was made effective for 180 days, or until November 13, 2007. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at section 305(c), an emergency rule may be made effective for up to 180 days and may be extended for up to 186 additional days. In most fishing years, the whiting fishery has taken its full allocation and the whiting fishery is closed by mid-November. As of publication of this document, however, 2007 whiting quota remains available and the fishery remains open. In order to prevent the ''race for fish'' that the Council had feared for the 2007 whiting fishery, and to ensure that the accelerated race for fish does not occur in the early 2008 whiting season, the emergency rule must be extended through the additional allowable 186 days to May 13, 2008. NMFS anticipates that Amendment 15, if approved, will be implemented by that time.

NMFS notes that the May 17, 2007 temporary rule included a provision (amendment to § 660.333) allowing disaggregation of permits that had been aggregated in early 2007, and did not specify the end of the effective date for this disaggregation provision. NMFS has determined that it was an oversight to leave the provision effective indefinitely. NMFS is leaving the disaggregation in place and effective through the effective date of the extension of the emergency rule as originally planned to provide parties time to complete any desired disaggregation. If Amendment 15 to the Groundfish FMP is approved and implemented, NMFS intends to consider, through notice and comment rulemaking, termination of the option to disaggregate.

Further background information for this action is provided in the preamble text of the May 17, 2007 emergency rule and in the supporting documents for this action, and is not repeated here.

Comments and Responses

During the comment period on the initial emergency action, which ended on June 18, 2007, NMFS received one letter and eight emails of comment. All of the comments addressed the same subject and are summarized and addressed here:

Comments: When the Council requested that NMFS take emergency action to prohibit participation in the 2007 whiting fishery by vessels without sector-specific participation prior to January 1, 2007, it had not requested that NMFS set a beginning date for the vessel qualification period. NMFS first implemented sector-specific allocations to the non-tribal whiting sectors that operate today in 1997 (62 FR 27519, May 20, 1997). Therefore, in the emergency rule, NMFS implemented the Council's request for sector-specific participation history as a history of whiting catch between December 31, 1996 and January 1, 2007. Eight of the commenters wrote to state that they did not believe the Council had intended to exclude from the 2007 fisheries those vessels with fishery participation history prior to December 31, 1996. These commenters identified two vessels that would be excluded from participating in the shorebased whiting sector and which had already made financial arrangements to participate in the 2007 fishery based on their interpretation that the Council's request had been intended to include any vessels with whiting harvest prior to January 1, 2007, regardless of how far into the past that history had occurred. A dissenting commenter wrote to oppose revising the emergency rule to allow 2007 participation for vessels only with participation history prior to 1997 when the emergency rule was continuing to prohibit 2007 participation by vessels with limited entry permits but without a history of participation in the whiting fishery.

Response: NMFS reviewed the comments received and agreed that, although the Council's request did speak to sector-specific history, it did not set a start date for the qualification period for participation in 2007. Because NMFS did not have time to revise the emergency rule prior to the June 15, 2007 start date of the shorebased whiting fishery, NMFS instead revised the exempted fishing permits (EFPs) issued to the two affected vessels so that they were permitted to participate in the 2007 shorebased whiting sector. Both of the affected vessels had long and consistent history participating as catcher vessels in the mothership whiting fishery; therefore, NMFS believed that the vessels could be expected to participate in the shorebased sector without causing conservation concerns. In contrast to these two vessels, there were other vessels that were also excluded by the emergency rule to which NMFS did not issue revised EFPs. They did not receive EFPs because they did not have any history in the whiting fishery between 1997 and 2007, and thus NMFS was concerned about their ability to participate in the fishery without causing conservation concerns.

Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Act.

This action has been determined to be not significant for the purposes of Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The Assistant Administrator finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment on this emergency rule extension. In the initial emergency rule published on May 17, 2007 (72 FR 27759), NMFS requested, and subsequently received, comments on the rulemaking. Therefore, the agency has the authority to extend the emergency action for up to 186 days beyond the November 13, 2007, expiration of the initial emergency action, which is May 13, 2008.

The measures of this emergency rule extension remain unchanged from the measures contained in the initial emergency rule that prohibited participation in the 2007 whiting fishery by vessels without sector-specific participation history prior to January 1, 2007. This extension must be in place by November 14, 2007 because the 2007 whiting fishery is still underway and failing to extend the emergency rule would be counter to the Council's efforts to constrain whiting fishery

participation in 2007 in order to constrain bycatch of co-occurring species within the whiting fishery. Extending the provisions of the emergency rule without notice and comment rule will ensure that the 2007 whiting fishery continues to operate with the same pool of participants that have been permitted to operate throughout the season, thereby preventing disruption of the fishery and unnecessary adverse economic impacts to fishery participants.

NMFS solicited public comment during the 30-day post-promulgation comment period on the measures contained in the initial emergency action and extended by this action. The comments received were considered and are addressed in the preamble to this rule; however, no change to the emergency action measures were enacted as a result of the comments received. The Council developed a vessel license limitation program for 2008 and beyond under Amendment 15 to the FMP, which would be considered and implemented through notice and comment rulemaking. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: November 13, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.306, paragraph (f)(7) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(f)* * *

(7) Fish for or land whiting, or process whiting at sea, while participating in a specific sector (as defined at § 660.373(a)), from May 14, 2007 through May 13, 2008 with a vessel that has no history of participation within that specific sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007, as specified in § 660.373(j).

* * * * *

■ 3. In § 660.373, paragraph (k) is added to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(k) *2007 Pacific Whiting Fishery*. (1) In general, a person may fish for or land whiting or process whiting at sea in a sector of the whiting fishery (as defined at § 660.373(a)) between May 14, 2007, and May 13, 2008, only with a vessel that has history of participation in that sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007. Specifically:

(i) To harvest whiting in the shore-based sector between May 14, 2007 and May 13, 2008, a vessel must have harvested for delivery to a shore-based processor at least 4,000 lb (1.81 mt) of whiting in a single trip during the primary season (as defined at § 660.373(b))in the period after December 31, 1996, and prior to January 1, 2007. State fish ticket data collected by the states and maintained by Pacific States Marine Fisheries Commission's Pacific Fishery Information System is the sole evidence to demonstrate participation in this sector.

(ii) To harvest whiting in the mothership sector between May 14, 2007 and May 13, 2008, a vessel must have harvested whiting for delivery to motherships in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iii) To process whiting in the mothership sector between May 14, 2007 and May 13, 2008, a vessel must have processed at sea, but not harvested, whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iv) To harvest and process whiting in the catcher-processor sector between May 14, 2007 and May 13, 2008, a vessel must have harvested and processed whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(2) [Reserved]

* * * * *

[FR Doc. 07–5732 Filed 11–14–07; 1:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 222
Monday, November 19, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0202; Directorate Identifier 2007–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes. This proposed AD would require an inspection of the vertical fin lugs, skin, and skin edges for discrepancies, an inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion, an inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion, and corrective actions if necessary. This proposed AD results from reports indicating that moisture was found within the section 48 cavity. We are proposing this AD to ensure that the correct amount of sealant was applied around the vertical fin lugs, skin and the skin edges. Missing sealant could result in icing of the elevator cables, which could cause a system jam and corrosion of structural and flight control parts, resulting in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 3, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0202; Directorate Identifier 2007–NM–185–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports indicating that moisture was found within the section 48 cavity on Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes. A root-cause investigation determined that, due to a manufacturing process error, airplanes were delivered with an incorrect amount of sealant around the station (STA) 1088 vertical fin lugs common to the section 48 skin. This condition, if not corrected, could result in icing of the elevator cables, which could cause a system jam and corrosion of structural and flight control parts, resulting in reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007. The service bulletin describes the following procedures:

- Inspecting the vertical fin lugs, skin, and skin edges for discrepancies (i.e. water ingress, corrosion damage, and missing, insufficient, or cracked sealant).
- Performing a detailed inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion.
- Performing a detailed inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion.
- Performing applicable corrective actions. The corrective actions include repairing cracks, filling the space between the vertical fin lugs and skin, lubricating the horizontal stabilizer trim actuator and actuator gimbal pins, replacing any cracked sealant with a new sealant, and contacting Boeing for corrosion repair conditions, as applicable.

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

FAA's Determination and Requirements of the Proposed AD

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

previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

Difference Between the Proposed AD and Service Bulletin

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

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

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

Costs of Compliance

There are about 829 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 372 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $29,760, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–0202; Directorate Identifier 2007–NM–185–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007.

Unsafe Condition

(d) This AD results from reports indicating that moisture was found within the section 48 cavity. We are issuing this AD to ensure that the correct amount of sealant was applied around the vertical fin lugs, skin and the skin edges. Missing sealant could result in icing of the elevator cables, which could cause a system jam and corrosion of structural and flight control parts, resulting in reduced controllability of the airplane.

Compliance

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

Inspections

(f) Within 2,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first, do the detailed inspections specified in paragraphs (f)(1), (f)(2) and (f)(3) of this AD in accordance with the Accomplishment Instructions of the Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007.

(1) Do a detailed inspection of the vertical fin lugs, skin, and skin edges for discrepancies (i.e. water ingress, corrosion damage, and missing, insufficient, or cracked sealant).

(2) Do a detailed inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion.

(3) Do a detailed inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector (i.e., the person performing the inspection). Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(g) If any discrepancy or corrosion is found during any inspection required by paragraph (f) of this AD, before further flight, do the applicable corrective actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007; except where the service bulletin specifies to contact Boeing, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Credit for Actions Done Using the Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 737–53A1242, dated October 17, 2002; and Revision 1, dated April 28, 2005; are considered acceptable for compliance with the corresponding actions specified in paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Issued in Renton, Washington, on November 7, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–22548 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0201; Directorate Identifier 2007–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–10F Airplanes, Model DC–10–15 Airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes, Model DC–10–40 and DC–10–40F Airplanes, Model MD–10–10F and MD–10–30F Airplanes, and Model MD–11 and MD–11F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas airplane models identified above. This proposed AD would require revising the FAA-approved maintenance program, or the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness, as applicable, to incorporate new AWLs for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. For certain airplanes, this proposed AD would also require the initial accomplishment of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by January 3, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0201; Directorate Identifier 2007–NM–163–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to

flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following appendixes of the Boeing Trijet Special Compliance Item Report, MDC–02K1003, Revision C, dated July 24, 2007 (hereafter referred to as ''Report MDC–02K1003''):

- Appendix B, Critical Design Configuration Control Limitations (CDCCLs)
- Appendix C, Airworthiness Limitation Instructions (ALIs)
- Appendix D, Short-Term Extensions

Appendixes B and C of Report MDC–02K1003 describe new airworthiness limitations (AWLs) for fuel tank systems. The new AWLs include:

- CDCCLs, which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection, and
- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the FAA-approved maintenance program, or the AWLs section of the Instructions for Continued Airworthiness, as applicable, by incorporating the information in Appendixes B, C, and D of Report MDC–02K1003. For certain airplanes, this proposed AD would also require the initial accomplishment of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision specified in paragraph (g) of this proposed AD, and the AWLs revision specified in paragraph (h) of this proposed AD, for the fuel tank systems, which involve incorporating the information specified in Report MDC–02K1003, would affect how operators maintain their airplanes. After doing the maintenance program revision or AWLs revision, as applicable, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the maintenance program revision specified in paragraph (g), or the AWLs revision specified in paragraph (h), as applicable, would not need to be redone in order to comply with paragraph (g) or (h). For example, the AWL that requires fuel pumps to be repaired and overhauled per the FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the maintenance programs are revised; spare or on-wing fuel pumps do not need to be reworked. For AWLs that require repetitive inspections, the initial inspection interval (threshold) starts from the date that the maintenance program revision specified in paragraph (g), or the AWLs revision specified in paragraph (h), as applicable, is done, except as provided by paragraph (i) of this proposed AD. This proposed AD would require only the applicable maintenance program revision or AWL revision specified in this proposed AD and the initial inspection specified in paragraph (i). No other fleet-wide inspections need to be done.

Changes to Fuel Tank System AWLs

For certain airplanes, paragraph (g) of this proposed AD would require revising the FAA-approved maintenance program by incorporating certain information specified in Report MDC–02K1003. For certain other airplanes, paragraph (h) of this proposed AD would require revising the AWLs section of the Instructions for Continued Airworthiness by incorporating certain information specified in Report MDC–02K1003. Paragraphs (g) and (h) allow accomplishing the revision in accordance with later revisions of Report MDC–02K1003 as an acceptable method of compliance if they are approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For certain airplanes, paragraph (i) of this AD allows accomplishing the initial inspection and repair in accordance with later revisions of Report MDC–02K1003 as an acceptable method of compliance if they are approved by the Manager, Los Angeles ACO. In addition, Appendixes B and C of Report MDC–02K1003 specify that any deviations from the published AWL instructions, including AWL intervals, must be approved by the Manager, Los Angeles ACO. Therefore, after the maintenance program or AWLs revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Los Angeles ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Appendix D of Report MDC–02K1003 has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Appendix D without consultation with the Manager, Los Angeles ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Appendix D, exceptional short-term extensions must not be used

for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised the applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. The AWLs contained in Appendix C of Report MDC–02K1003 are inspections for which the applicable sections of the operating rules apply. The AWLs contained in Appendix B of Report MDC–02K1003 are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs

Some of the AWLs in Appendix B of Report MDC–02K1003 refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in the AWL because of the volume of that information. As a result, the Manager, Los Angeles ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Los Angeles ACO, or governing regulatory authority. For example, certain pump repair/overhaul manuals must be approved by the Manager, Los Angeles ACO.

Changes to Airplane Maintenance Manual Referenced in Fuel Tank System AWLs

In other AWLs in Report MDC–02K1003, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Los Angeles ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Difference Between the Proposed AD and Service Information

Although Report MDC–02K1003 specifies to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Costs of Compliance

There are about 300 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 180 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $14,400, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2007–0201; Directorate Identifier 2007–NM–163–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes, Model DC–10–15 airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, Model DC–10–40 and DC–10–40F airplanes, Model MD–10–10F and MD–10–30F airplanes, and Model MD–

11 and MD–11F airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing Trijet Special Compliance Item Report, MDC–02K1003, according to paragraph (g), (h), or (k) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Information Reference

(f) The term ''Report MDC–02K1003'' as used in this AD, means the Boeing Trijet Special Compliance Item Report, MDC–02K1003, Revision C, dated July 24, 2007.

Revise the FAA-Approved Maintenance Program

(g) For Model DC–10–10 and DC–10–10F airplanes, Model DC–10–15 airplanes, Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes, and Model DC–10–40 and DC–10–40F airplanes: Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information specified in Appendixes B, C, and D of Report MDC–02K1003. Accomplishing the revision in accordance with a later revision of Report MDC–02K1003 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Revise the AWLs Section

(h) For Model MD–10–10F and MD–10–30F airplanes, and Model MD–11 and MD–11F airplanes: Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness to incorporate the information specified in Appendixes B, C, and D of Report MDC–02K1003, except that the initial inspection required by paragraph (i) of this AD must be done at the applicable compliance time specified in that paragraph. Accomplishing the revision in accordance with a later revision of Report MDC–02K1003 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles ACO.

Initial Inspection and Repair If Necessary

(i) For Model MD–11 and MD–11F airplanes: Within 60 months after the effective date of this AD, do a detailed inspection of the metallic overbraiding and red-wrap tape installed on the tail tank fuel quantity indication system (FQIS) wiring to verify if the metallic overbraiding or red-wrap tape is damaged or shows signs of deterioration, in accordance with ALI 20–2 of Appendix C of Report MDC–02K1003. If any discrepancy is found during the inspection, repair the discrepancy before further flight in accordance with ALI 20–2 of Appendix C of Report MDC–02K1003. Accomplishing the actions required by this paragraph in accordance with a later revision of Report MDC–02K1003 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles ACO.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

No Reporting Requirement

(j) Although Report MDC–02K1003 specifies to submit certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on November 7, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–22547 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29332; Directorate Identifier 2007–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42 and ATR72 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document announces a reopening of the comment period for the above-referenced NPRM. The NPRM proposed the adoption of a new airworthiness directive for all ATR Model ATR42 and ATR72 airplanes. That NPRM invites comments concerning the proposed requirements for revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This reopening of the comment period is necessary to provide additional opportunity for public comment on the proposed requirements of that NPRM.

DATES: We must receive comments on this proposed AD by December 19, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact ATR, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD

docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION: We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD for all ATR Model ATR42 and ATR72 airplanes. The NPRM was published in the **Federal Register** on September 28, 2007 (72 FR 55113). The NPRM proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. The NPRM action invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD.

Actions Since NPRM Was Issued

Since we issued the NPRM, the DOT's Docket Management System (DMS) was replaced by the Federal Docket Management System (FDMS). FDMS is a government-wide, electronic docket management system, which contains the public dockets and is the method used for submitting comments on the overall regulatory, economic, environmental, and energy aspects of proposed rulemaking actions. However, due to the service disruption caused by the transition from DOT's DMS to the FDMS, the docket material was not posted on the FDMS until November 1, 2007. Therefore, we have determined that the public was not provided adequate opportunity to submit comments on the NPRM. As a result, we have decided to reopen the comment period for 30 days to receive additional comments.

No part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

Comments Due Date

We must receive comments on this AD action by December 19, 2007.

Issued in Renton, Washington, on November 8, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–22546 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0204; Directorate Identifier 2007–NM–083–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, and 747SR Series Airplanes Powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3 or JT9D–7 Series Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, and 747SR series airplanes powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3 or JT9D–7 series engines. This proposed AD would require repetitive inspections to find cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and repair if necessary. For certain airplanes, this proposed AD mandates a terminating modification for certain inspections of the inboard and outboard nacelle struts. This proposed AD results from reports of web and frame cracks and sheared attachment fasteners on the inboard and outboard nacelle struts. We are proposing this AD to detect and correct cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the rear engine mount bulkhead load path and consequent separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by January 3, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–0204; Directorate Identifier 2007–NM–083–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*; including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://www.regulations.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On January 2, 2002, the FAA issued a notice of proposed rulemaking (NPRM), Docket No. 2001–NM–40–AD, to address the identified unsafe condition; that action was published in the **Federal Register** on January 9, 2002 (67 FR 1167). That NPRM proposed to require repetitive inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair if necessary. For certain airplanes, that NPRM provided for an optional terminating modification for the inspections of the outboard nacelle struts. That NPRM was prompted by reports indicating that fatigue cracking of the inboard and outboard nacelle struts of the rear engine mount bulkhead was found. The unsafe condition is cracks and broken fasteners of the inboard and outboard nacelle struts. Subsequently, we worked with the manufacturer to ensure that the unsafe condition is adequately addressed and appropriate service instructions are available. We have also received many new reports of additional web and frame cracks and sheared attachment fasteners, and reports of cracks on the outboard struts of airplanes not identified in the applicability of that NPRM. In addition, we have considered comments submitted in response to that NPRM.

In light of all this information, we have determined that the corrective actions required by that NPRM are inadequate for addressing the identified unsafe condition; therefore, we have withdrawn that NPRM and are issuing this new proposed AD to address the unsafe condition.

Relevant Service Information

In light of those new reports, Boeing has issued Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. The original issue, dated December 21, 2000, was referred to in the NPRM, Docket No. 2001–NM–40–AD, as the appropriate source of service information for accomplishing certain actions. Revision 1 includes the following changes to the original issue:

- Adds additional airplanes powered by General Electric (GE) CF6–45/50 series engines to the effectivity (identified as Group 6 airplanes).
- Adds modifications, inspections, and post-modification inspections for airplanes in Groups 1 through 5 (those included in the effectivity of the original issue of the service bulletin).
- Adds outboard strut inspections for Groups 3, 4, and 5 airplanes included in the effectivity of the original issue of the service bulletin.

The compliance times listed in the Part A Inspections, as specified in the service bulletin, are as follows: The compliance time for airplanes on which the detailed visual and high frequency eddy current (HFEC) inspections of the inboard and outboard strut rear engine mount bulkheads in the original issue of the service bulletin have been done ranges from 180 days to 18 months from the release date of Revision 1 of the service bulletin or 350 flight cycles to 1,200 flight cycles, whichever occurs earlier; the repetitive interval ranges from 350 flight cycles to 1,200 flight cycles or 18 months, whichever occurs earlier.

The compliance time for airplanes on which the inspections in the original issue of the service bulletin have not been done is within 90 days from the release date of Revision 1 of the service bulletin to within 18 months or 1,200 flight cycles, whichever occurs earlier; the repetitive interval ranges from 350 flight cycles to 1,200 flight cycles or 18 months, whichever occurs earlier. The compliance times depend on airplane configuration and nacelle strut position.

The compliance times listed in the Part B Inspections—Post Modification, as specified in the service bulletin, are as follows: The compliance time for airplanes on which the repairs have been done ranges from 600 flight cycles to 7,200 flight cycles or 18 months after repair; the repetitive interval ranges from 600 flight cycles to 1,200 flight cycles or 18 months, whichever occurs earlier. At 7,200 flight cycles after repair the repetitive interval changes from doing a detailed visual inspection every 1,200 flight cycles or 18 months, to doing detailed visual and HFEC inspections every 1,200 flight cycles or 18 months.

Depending on the group, the service bulletin specifies doing the following repairs, related investigative actions, and corrective actions:

- For Groups 1, 2, and 5 airplanes (on inboard struts only for Group 5): If any crack is found, do Repair 1 of the service bulletin. Replace cracked frames with new frames, and install repair doublers, chords, and corrosion resistant steel (CRES) repair angles before further flight. Repair 1 includes the following related investigative and corrective actions: Detailed visual and HFEC inspections for cracks of the bulkhead frame, replacement of cracked frames, inspection of holes in frames for cracks, inspection of holes in chords for cracks, replacement of cracked chords, inspection of holes in frame and skin for cracks, contacting Boeing for repair for cracks in skin, inspection of holes on aft left-hand and right-hand sides of bulkhead in frame and skin for cracks, inspection of frame edge for cracks, and inspection of the holes on the forward side of bulkhead in frame and skin for cracks.
- For Groups 1 and 5 airplanes (on inboard struts only for Group 5): If more than two broken fasteners are found, do Repair 2 or 3 of the service bulletin (depending on configuration). Install doublers, chords, and CRES repair angles before further flight.

—Repair 2 includes the following related investigative and corrective actions: Detailed visual and HFEC inspections for cracks of the bulkhead frame, repair or replacement of cracked frames, inspection of holes in frames for cracks, inspection of holes in chords for cracks, replacement of cracked chords, inspection of holes on aft left-hand and right-hand sides of bulkhead in frame and skin for cracks, inspection of frame edge for cracks, and inspection of the holes on the forward side of bulkhead in frame and skin for cracks.

—Repair 3 includes the following related investigative and corrective actions: Inspection of holes in frames for cracks, replacement of cracked frames, inspection of frame edge for cracks, and replacement of cracked frames.

- For Group 1 airplanes: If any new crack, extension of stop-drilled crack, or more than two broken fasteners are found, do Repair 4 of the service bulletin. Install additional CRES repair angles before further flight. Repair 4 includes the following related investigative and corrective actions: HFEC inspections of the fastener holes and open holes of the bulkhead frame for cracks, stop drill or trim out cracks found in the frame only, contact Boeing for repair of cracks in the existing doubler or repair angle, and fabricate and install certain repair angles.
- For Groups 1, 2, and 5 airplanes: If only one or two broken fasteners are found, do Repair 5 of the service bulletin, replace the fasteners before further flight, and do Repair 2, 3, or 4, depending on configuration, within 18 or 36 months from the release date of the service bulletin, as applicable. Repair 5 includes the following related investigative and corrective actions:

HFEC inspections of the fastener holes for cracks, and repair of any cracks.

- For Groups 3, 4, and 6 airplanes: If any crack, or more than two broken fasteners are found, do the applicable repair before further flight (contact Boeing or repair per the structural repair manual, depending on configuration).
- For Groups 3, 4, and 6 airplanes: If only one or two broken fasteners are found, do Repair 5 of the service bulletin before further flight.
- For Group 5 airplanes (outboard strut only): If any crack or broken fastener is found, repair and contact Boeing before further flight.
- For airplanes that have done post-modification inspections: If any crack or broken fastener is found, repair and contact Boeing before further flight.

The procedures in the service bulletin specify doing the following modifications for Groups 1, 2, and 5 airplanes, depending on airplane configuration:

- If no crack or broken fastener is found, do Repair 2 or 3 within 18 to 36 months.
- If no new crack, extension of stop drill cracking, or broken fastener is found, do Repair 4 within 36 months.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between the Alert Service Bulletin and This Proposed AD

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

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

Clarification of Inspection Terminology

In this NPRM, the ''detailed visual inspection'' specified in Boeing Alert Service Bulletin 747–54A2202, Revision 1, is referred to as a ''detailed inspection.''

Costs of Compliance

There are about 460 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 135 airplanes of U.S. registry.

It would take about 4 work hours per airplane to accomplish the proposed detailed inspection, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed inspection is $43,200, or $320 per airplane, per inspection cycle.

It would take about 32 work hours per airplane to accomplish the proposed high frequency eddy current inspection, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed high frequency eddy current inspection is $345,600, or $2,560 per airplane, per inspection cycle.

For Groups 1, 2, and 5 airplanes, it would take between approximately 10 and 95 work hours per strut (four struts per airplane) to accomplish the proposed modification, depending on airplane configuration, at an average labor rate of $80 per work hour. Parts cost for the fasteners only would be between $269 and $897 per strut. Based on these figures, the cost impact of the proposed modification would be between $4,276 and $33,988 per airplane. We are unable to provide specific information as to the cost of the actual parts other than the fasteners that would be required to accomplish the proposed modification since the parts would be supplied from operator stock.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–0204; Directorate Identifier 2007–NM–083–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 747–100, –100B, –100B SUD, 200B, 200C, –200F, –300, 747SP, and 747SR series airplanes; certificated in any category; powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3 or JT9D–7 series engines; as identified in Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006.

Unsafe Condition

(d) This AD results from reports of web and frame cracks and sheared attachment fasteners on the inboard and outboard nacelle strut. We are issuing this AD to detect and correct cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the rear engine mount bulkhead load path and consequent separation of the engine from the airplane.

Compliance

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

Compliance Times

(f) Do all applicable actions specified in paragraphs (g), (h), and (i) of this AD at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, except that where paragraph 1.E. of the service bulletin specifies starting the compliance time from ''* * * the release date of Revision 1 of this service bulletin,'' this AD requires starting the compliance time from the effective date of this AD.

Initial and Repetitive Inspections/Corrective Actions

(g) For all airplanes: Perform detailed and high frequency eddy current inspections for cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. Repeat the applicable inspection and actions thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of the service bulletin. Accomplishing the applicable repair (Repair 1, 2, 3, or 4, or repair per the 747 structural repair manual, section 54–11–03 or 54–12–03) terminates the requirements in this paragraph for that nacelle strut only.

Modification

(h) For Groups 1, 2, and 5 airplanes: Do the applicable modification (Repair 2, 3, or 4) of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and all the applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. Accomplishing this modification terminates the requirements in paragraph (g) of this AD for that nacelle strut only.

Post-Modification Inspection/Corrective Actions

(i) For Groups 1, 2, and 5 airplanes on which the applicable corrective actions (Repair 1, 2, 3, or 4) required by paragraph (g) of this AD have been accomplished; or the applicable modification (Repair 2, 3, or 4) required by paragraph (h) of this AD has been accomplished: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, or within 6 months after the effective date of this AD, whichever occurs later, perform detailed and high frequency eddy current inspections for cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. Repeat the applicable inspections and actions thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

Exception to Service Bulletin

(j) If any crack or any broken fastener is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Issued in Renton, Washington, on November 7, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–22542 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0203; Directorate Identifier 2007–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, and –400ER Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 767–200, –300, and –300F series airplanes. The existing AD currently requires reworking the surface of the ground stud bracket of the left and right transformer rectifier units (TRUs) and the airplane structure mounting surface, and measuring the resistance from the bracket to the structure and the ground lugs to the bracket using a bonding meter. This proposed AD would revise the applicability of the existing AD to include additional airplanes and would also require, among other actions, installation of a new ground stud bracket using faying surface bonding. This proposed AD results from a report of loss of all direct current (DC) power generation during a flight, due to inadequate electrical ground path between the ground bracket of the TRUs/main battery charger (MBC) and the structure. We are proposing this AD to prevent depletion of the main battery while in flight, resulting from the loss of both TRUs and the MBC, and consequent loss of all DC power, which could impact the safe flight and landing of the airplane due to the loss of function or malfunction of essential/critical systems and displays in the cockpit.

DATES: We must receive comments on this proposed AD by January 3, 2008.

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

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

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Louis Natsiopoulous, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSE** section. Include ''Docket No. FAA–2007–0203; Directorate Identifier 2007–NM–105–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On November 3, 2004, we issued AD 2004–23–14, amendment 39–13869 (69 FR 67043, November 16, 2004), for certain Boeing Model 767–200, –300, and –300F series airplanes. That AD requires reworking the surface of the ground stud bracket of the left and right transformer rectifier units (TRUs) and the airplane structure mounting surface, and measuring the resistance from the bracket to the structure and the ground lugs to the bracket using a bonding meter. That AD resulted from a report of loss of all direct current (DC) power generation during a flight, due to inadequate electrical ground path between the ground bracket of the TRUs and the structure. We issued that AD to prevent depletion of the main battery and consequent loss of all DC power, which could cause the loss of flight critical systems.

Actions Since Existing AD Was Issued

The preamble to AD 2004–23–14 explains that we consider the requirements ''interim action'' and were considering further rulemaking to add a redundant TRU ground bracket on all 767 airplanes. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

In addition, Boeing has informed us that additional airplanes are subject to the identified unsafe condition (i.e., depletion of the main battery while in flight, resulting from the loss of both TRUs and the MBC, and consequent loss of all DC power, which could impact the safe flight and landing of the airplane due to the loss of function or malfunction of essential/critical systems and displays in the cockpit).

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–24A0162, dated May 30, 2006. The service information describes the following major procedures, depending on the airplane configuration:

• Reworking the existing ground stud bracket of the TRUs/MBC and structure mounting surface.

• Measuring the resistance from that bracket to the structure and from the ground lugs to that bracket using a bonding meter.

• Installing a new ground stud bracket using faying surface bonding.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2004–23–14 and would retain the requirements of the existing AD. This proposed AD also would require accomplishing the applicable actions specified in service information described previously. In addition, this proposed AD would expand the applicability of the existing AD to include additional airplanes.

Costs of Compliance

There are about 932 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Rework and Measurement (required by AD 2004–23–14).	1	$80	$4	$84	262	$22,008.
New proposed actions	1 or 2 [1]	80	208	$288 or $368 [1]	412	$118,656 or $151,616 [1].

[1] Depending on the airplane configuration.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13869 (69 FR 67043, November 16, 2004) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–0203; Directorate Identifier 2007–NM–105–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2008.

Affected ADs

(b) This AD supersedes AD 2004–23–14.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–24A0162, dated May 30, 2006.

Unsafe Condition

(d) This AD results from a report of loss of all direct current (DC) power generation during a flight, due to inadequate electrical ground path between the ground bracket of the left and right transformer rectifier unit (TRUs)/main battery charger (MBC) and the structure. We are issuing this AD to prevent depletion of the main battery while in flight, resulting from the loss of both TRUs and the MBC, and consequent loss of all DC power, which could impact the safe flight and landing of the airplane due to the loss of function or malfunction of essential/critical systems and displays in the cockpit.

Compliance

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

Requirements of AD 2004–23–14

Rework and Measure Resistance

(f) For Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004; on which the actions of Boeing Service Bulletin 767–24–0119, dated May 14, 1998, and/or Revision 1, dated December 16, 1999, have been done: Within 45 days after December 1, 2004 (the effective date of AD 2004–23–14), rework the ground stud bracket of the TRUs and structure mounting surface, and measure the resistance from the bracket to the structure and the grounding lug to the bracket using a bonding meter, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004, except as provided by paragraph (g) of this AD.

(g) Step 4, Sheet 3 of Figure 1 in the Accomplishment Instructions of the service bulletin only specifies to install one collar with part number (P/N) BACC30M6. However, a collar with P/N BACC30BL6 (as listed in paragraph 2.C., ''Parts Necessary for Each Airplane'' of the service bulletin) may be used as an alternative method of compliance (AMOC).

New Actions Required by This AD

Rework, Installation, Measurement, as Applicable

(h) For all airplanes: Within 36 months after the effective date of this AD, rework the existing ground stud bracket of the TRUs/MBC, measure the resistance, and install a new ground stud bracket of the TRUs by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–4A0162, dated May 30, 2006.

AMOCs

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

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

Issued in Renton, Washington, on November 7, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–22543 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Notice No. 07–15]

RIN 2120–AI92

Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements to Support Air Traffic Control (ATC) Service; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on October 5, 2007. In that document, the FAA proposed performance requirements for certain avionics equipment on aircraft operating in specified classes of airspace within the United States National Airspace System. This extension is a result of requests from the: Air Transport Association of America, Inc., Air Carrier Association of America, Civil Aviation Aerospace Industries Association, National Air Carrier Association, and Regional Airline Association; Aircraft Owners and Pilots Association; and Cargo Airline Association to extend the comment period to the proposal.

DATES: The comment period for the NPRM published on October 5, 2007 (72

FR 56947), scheduled to close on January 3, 2008, is extended until March 3, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–29305 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.
- *Hand Delivery:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 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: Cindy Nordlie, ARM–108, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7627.

SUPPLEMENTARY INFORMATION:

Comments Invited: The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov*;

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

On October 5, 2007, the Federal Aviation Administration (FAA) issued Notice No. 07–15, Automatic Dependent Surveillance—Broadcast (ADS–B) Out performance requirements to support Air Traffic Control (ATC) service (72 FR 56947; October 5, 2007). Comments to that document were to be received on or before January 3, 2008.

By request submitted to the docket on October 19, 2007, the Air Transport Association of America, Inc., Air Carrier Association of America, Civil Aviation Aerospace Industries Association, National Air Carrier Association, and Regional Airline Association requested that the FAA extend the comment period for Notice No. 07–15 for 60 days. The organizations requesting an extension noted that commenters ''will have to develop as much information as possible as to future costs associated with implementing a final rule in order to provide meaningful input.'' They also noted that the holiday season falls within the comment period and that the comment period is scheduled to close just after New Year's Day. Because of the importance of the rulemaking, in terms of advancing Air Traffic modernization, and the potential costs on the aviation industry that would result from a final rule, they requested that the public comment period be extended for an additional 60 days.

In addition, on November 1, 2007, the Aircraft Owners and Pilots Association submitted a request to extend the comment period for Notice No. 07–15 for 60 days. They noted that additional ''time is needed to assess questions surrounding making a final rule that is financially feasible for general aviation, improves ATC services at general aviation airports, results in user cost avoidance, and improves general aviation safety.''

On November 5, 2007, the Cargo Airline Association submitted a request to extend the comment period for Notice No. 07–15 for 60 days. They noted the extension was needed to provide meaningful input to the rulemaking process.

The FAA concurs with the petitioners' request for an extension of the comment period on Notice No. 07–15 for an additional 60 days, until

March 3, 2008. We must balance the length of the comment period against the need to proceed expeditiously with a key component in managing the anticipated growth in the use of the National Airspace System. The FAA believes an additional 60 days would be adequate for commenters to collect cost and operational data necessary to provide meaningful comment to Notice No. 07–15. The FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with section 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the requests submitted by the: Air Transport Association of America, Inc., Air Carrier Association of America, Civil Aviation Aerospace Industries Association, National Air Carrier Association, and Regional Airline Association; Aircraft Owners and Pilots Association; and Cargo Airline Association for extension of the comment period to Notice No. 07–15. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 07–15 is extended until March 3, 2008.

Issued in Washington, DC, on November 13, 2007.

Edie Parish,

Acting Director, System Operations, Airspace and AIM Office.

[FR Doc. E7–22544 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2007–0057]

Port Access Route Study of Potential Vessel Routing Measures To Reduce Vessel Strikes of North Atlantic Right Whales

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Route Study (PARS) on the area east and south of Cape Cod, Massachusetts, to include the northern right whale critical habitat, mandatory ship reporting system area, and the Great South Channel including Georges Bank out to the exclusive economic zone (EEZ) boundary. The purpose of the PARS is to analyze potential vessel routing measures that might help reduce ship strikes with the highly endangered North Atlantic right whale while minimizing any adverse effects on vessel operations. The recommendations of the study will inform the Coast Guard and may lead to appropriate international actions.

DATES: Comments and related material must reach the Docket Management Facility on or before January 18, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0057 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Mr. George Detweiler, Coast Guard Division of Navigation Systems, 202–372–1566, or send e-mail to *George.H.Detweiler@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2007–0057) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this notice in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Definitions

The following definitions should help you review this notice:

Area to be avoided or *ATBA* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels, or certain classes of vessels.

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Inshore traffic zone means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where vessels must

navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of vessels in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

Regulated Navigation Area or *RNA* means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation Zone or *separation line* means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme or *TSS* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Why is this study being conducted? The Administration is developing measures to reduce ship strikes of right whales. The goal of these measures is to address the lack of recovery of the right whale by reducing the likelihood and threat of ship strikes.

Section 626 of the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act) (enacted August 9, 2004) mandated that the Coast Guard: (1) Cooperate with the National Oceanic and Atmospheric Administration ''in analyzing potential vessel routing measures for reducing vessel strikes of North Atlantic Right Whales'', and (2) provide a final report of the analysis to Congress within 18 months after the date of enactment of the Act. The final report was delivered to Congress as required. A copy can be found in FDMS under this docket, USCG–2007–0057. The report contained possible future action items such as amending the Boston traffic separation scheme (TSS) and establishing a Great South Channel area to be avoided (ATBA).

The Coast Guard is charged with enforcing the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and the regulations issued under those statutes. One of the Coast Guard's primary strategic goals is the protection of the marine environment, including the conservation of living marine resources and enforcement of living marine resource laws.

The Coast Guard works in collaboration with the National Marine Fisheries Service (NMFS) to prevent ship strikes of right whales and other endangered whale species. The Coast Guard issues local and written periodic notices to mariners concerning ship strikes, issues NAVTEX messages alerting mariners to the location of right whales, and actively participates in the Mandatory Ship Reporting (MSR) System that provides information to mariners entering right whale habitat. In addition, the Coast Guard provides patrols dedicated to enforcement of the ESA and the MMPA, provides limited vessel and aircraft support to facilitate right whale research and monitoring, and disseminates NMFS information packets to vessels boarded in or near right whale waters. NMFS asked the Coast Guard for assistance in protecting right whales by conducting this PARS.

When are port access route studies required? Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The PWSA provides that such designation of fairways and TSSs must recognize, within the designated areas, the paramount right of navigation over all other uses.

The PWSA requires the Coast Guard to conduct a study of potential traffic density and the need for safe access routes for vessels before establishing or adjusting fairways or TSSs. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

What are the timeline, study area, and processes of this PARS? The Coast Guard Office of Waterways Management (CG–541) will conduct this PARS. The study will begin immediately and must be completed by December 2007 in order for us to prepare and submit documents, if deemed appropriate, to the IMO in accordance with IMO's required submission dates.

We will study the area bounded to the west by a line drawn at longitude 070° W; bounded to the north by a line drawn at latitude 43°00′ N; bounded to the east by the boundary of the exclusive economic zone; and bounded to the south by a line drawn at latitude 40° 30′ N. This area includes the northern right whale critical habitat, mandatory ship reporting system area, and the Great South Channel including Georges Bank out to the exclusive economic zone (EEZ) boundary.

As part of this study, we will consider previous studies, analyses of vessel traffic density, right whale information and agency and stakeholder experience in and public comments on vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register** and provide a copy to NMFS and the National Oceanic and Atmospheric Association (NOAA). In the study, we might—

1. Recommend creating new vessel routing measures;
2. Validate existing vessel routing measures, if any, and conclude that no changes are necessary; or
3. Recommend changes be made to existing vessel routing measures, if any, in order to reduce the threat of ship strikes of right whales.

The recommendations will inform Coast Guard and NOAA decision makers and may lead to appropriate international actions.

Possible Scope of the Recommendations

We expect that information gathered during the study will help us identify any problems with vessel operations in right whale habitat areas and make

conclusions about appropriate solutions. As a result of the study, we might decide that, in the study area, all or some of the following steps should be taken:

1. Maintain current vessel routing measures, if any;

2. Designate recommended or mandatory routes;

3. Create one or more precautionary areas;

4. Create one or more inshore traffic zones;

5. Create deep-draft routes;

6. Establish area(s) to be avoided;

7. Establish, disestablish, or modify anchorage grounds;

8. Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; or

9. Identify any other appropriate ships' routing measures to be used.

Questions

To help us conduct the port access route study, we request information that will help answer the following questions, although comments on other issues addressed in this notice are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under ''Public Participation and Request for Comments'' above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system, such as increasing traffic density? Please describe.

3. What are the benefits and drawbacks to modifying existing vessel routing measures, if any, or establishing new routing measures? Please describe.

4. What impacts, both positive and negative, would changes to existing routing measures, if any, or new routing measures, have on the study area?

Dated: November 6, 2007.

F.J. Sturm,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. E7–22557 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1013; FRL–8496–8]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern rule rescissions that address particulate matter (PM) emissions from Storage, Handling & Transport of Petroleum Coke and from Paved and Unpaved Roads, and Livestock Operations. We are proposing to approve rule rescissions to update the California SIP under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 19, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–1013, by one of the following methods:

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses rule rescissions for the following local rules: AVAQMD Rule 1158, Storage, Handling, and Transport of Petroleum Coke and Rule 1186, PM–10 Emissions from Paved and Unpaved Roads, and Livestock Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rule rescissions in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 2, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–22449 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2513, 2516, 2517, 2520, 2521, 2522, 2523, 2524, 2540 and 2550

RIN 3045–AA23

AmeriCorps National Service Program

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter, ''the Corporation'') proposes to amend several provisions relating to the AmeriCorps national service program. The proposed amendments are technical edits to clarify certain provisions and are offered in response to feedback the Corporation has received since its 2005 AmeriCorps rulemaking.

DATES: To be sure your comments are considered, they must reach the Corporation on or before January 18, 2008.

ADDRESSES: You may mail or deliver your comments to Amy Borgstrom, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 606–3476, or send them electronically to *AmeriCorpsRulemaking@cns.gov* or through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov*. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington, DC headquarters.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this rule in an alternate format.

SUPPLEMENTARY INFORMATION:

I. Invitation to Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations by contacting the Docket Manager listed in this notice.

For more information about comments, please visit our Web site at *http://www.americorps.org/rulemaking*.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

Under the National and Community Service Act of 1990, as amended (hereinafter ''NCSA'' or ''the Act,'' 42 U.S.C. 12501, *et seq.*), the Corporation makes grants to support community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides educational awards to and certain interest payments on behalf of AmeriCorps participants who successfully complete a term of service in an approved national service position.

On May 20, 2003, the Corporation's Board of Directors (the Board) approved a report issued by the Board's Grant-making Task Force in which the Task Force recommended that the Corporation undertake efforts to streamline and improve our current grant-making processes. Among other actions, the Task Force recommended that the Corporation update the grant-making review and selection criteria, simplify the application process, evaluate the Corporation's grant requirements and assess whether requirements should and could be changed, and eliminate or streamline annual guidance.

On February 27, 2004, President Bush issued Executive Order 13331 aimed at making the national and community service program better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to community organizations, including faith-based organizations. The Executive Order directed the Corporation to review and modify its policies as necessary to accomplish these goals.

This rulemaking process is the second of two, originally initiated in 2004. The first rulemaking focused on sustainability and the limitation on the Federal share of program costs. The first rulemaking was completed in July, 2005 and became effective September, 2005. This rulemaking is intended chiefly to clarify several changes made in the first rulemaking, streamline and improve our current grant-making processes, strengthen accountability, and otherwise improve upon the operations of the AmeriCorps State and National program.

III. Proposed Rule

Definitions (§ 2510.20)

The proposed rule amends the definition of the term participant to acknowledge the frequently used term *member* as synonymous.

Prohibited Activities: Voter Registration (§ 2520.60)

In 1994, the Corporation issued regulations in part 2520 regarding prohibited activities for AmeriCorps members. In 2002, the Corporation strengthened the list of prohibited activities by adding items from sub-regulatory grant provisions. At that time, the Corporation inadvertently omitted the sub-regulatory prohibition on AmeriCorps members engaging in voter registration drives in rulemaking. Our proposed rule adds this longstanding prohibition to regulation.

Participant Evaluations (§ 2522.220)

The Corporation's regulations require that grantees conduct an end-of-term evaluation for each AmeriCorps participant. The purpose of this evaluation is to answer two questions: (1) Whether the participant is eligible to earn an education award; and (2) whether the participant is eligible to serve a second or additional term of service.

Whether a participant is eligible to earn an education award depends upon whether the participant completes the agreed-upon term of service. Under Section 146 of the Act, a participant is only eligible to earn an education award if the participant completed a term of service or was released for compelling personal circumstances as described in Section 139.

According to Section 138 of the Act, whether a participant is eligible to serve a second term of service depends upon whether the participant served ''satisfactorily'' in the first term of service. The Act directs the Corporation to issue regulations on the manner and criteria for determining whether a participant's service was satisfactory.

Presently, the Corporation's regulations state that, in assessing whether a participant's performance was satisfactory, the program must assess, among other things, whether the participant completed the required number of hours for the term of service and whether the participant satisfactorily completed assignments, tasks, and projects.

The Corporation did not intend to suggest that completion of service hours should be a factor in determining whether a participant served satisfactorily. The Corporation has long

considered that those participants who are released for compelling personal circumstances may be eligible to serve a second term of service in an AmeriCorps program. Likewise, the Corporation has issued guidance in the annual AmeriCorps Grant Provisions that those participants who are released for cause, but who performed satisfactorily for the time they served, may also be eligible to serve a second term of service. The completion of service hours signifies whether the participant can earn an education award, not whether the participant served satisfactorily.

Our proposed rule amends the Corporation's regulations to clarify that those participants who are released for compelling personal circumstances, or who are released for cause but who receive a satisfactory performance review, may be eligible to serve a second term of service in AmeriCorps. To make this clear, in the proposed rule we have divided the end-of-term appraisal into two parts: (1) A determination of whether the participant earned an education award; and (2) a participant performance review to determined whether the participant served satisfactorily.

The participant performance review has been amended in the proposed rule to incorporate those participants who are released early. The performance review will assess, in addition to any criteria developed by the program, whether the participant has satisfactorily completed assignments, tasks, or projects, or, for those participants released from service early, whether the participant satisfactorily completed those assignments, tasks, or projects that the participant could reasonably have completed in the time the participant served.

For those participants who are released for cause, the reason for the release should be taken into account in determining whether the participant's term of service was satisfactory. A grantee should not conclude that a participant's term of service was satisfactory if the participant is released for cause unless the grantee determines that the reason for departure, while not within the regulatory criteria for compelling personal circumstances, is reasonable. For example, a participant who quits in order to go on vacation, or is released for bad behavior, should not be considered to have served satisfactorily regardless of how impressive the participant's service was up to that point.

Notably, individuals who were released for cause from the first term of service are required under our regulations to disclose this fact on any subsequent application for service with an AmeriCorps program. Consequently, the Corporation anticipates that programs will consider the facts surrounding the prior release when determining whether to select the individual for service.

The proposed rule would also change the language of the old rule so that the evaluation of the participant occurs ''at the end'' of the term of service, as opposed to ''upon completion'' of the term. By changing the language from ''completion'' to ''end,'' the Corporation intends that programs should evaluate all members, even those who do not technically complete the originally agreed-upon number of service hours.

Our current regulations require programs to conduct end-of-term and mid-term evaluations on AmeriCorps participants. Due to the fact that participants occasionally leave service early, either for cause or for compelling personal circumstances, the Corporation has determined that it is not always practicable or possible for a program to perform an official review of a participant's performance in the middle of the term. Our proposed rule would remove the requirement that programs conduct mid-term evaluations for those participants who leave AmeriCorps service early.

The Corporation also wishes to clarify its intent with regard to the documentation of mid-term evaluations. We require programs to engage in mid-term evaluations, but have not provided guidance as to the structure or content of these reviews. We expect programs to tailor mid-term evaluations to fit the particular needs of the individual program. Likewise, while we require that a program document that a mid-term evaluation occurred, there is no specific required format for this documentation. Rather, the grantee shall maintain documentation for each member that it has determined to be helpful to the program in conducting the end-of-term evaluation, whether that be a rating system, a narrative, notes from the evaluation interview, or other documentation.

Living Allowance Disbursement (§ 2522.245)

The Corporation is in the process of revising the AmeriCorps grant provisions and moving requirements with program-wide applicability to regulation or to the terms and conditions incorporated into individual grants. In the proposed rule, the requirement about how living allowances are to be treated and disbursed has been relocated from the grant provisions to regulation. There is no new requirement for how living allowances must be disbursed; only the location of the requirement has changed.

The intent of this regulation is to ensure that living allowances are distributed in a manner that fulfills their purpose. AmeriCorps participants are not employees of the programs with which they serve and the living allowance is not considered an hourly wage. Rather, the living allowance is intended to be a means to support participants' basic costs of living to ensure they are able to secure food, clothing, and shelter while performing national service. For this reason, it is important that programs not treat the living allowance as a wage, and not adjust the distribution of the living allowance based on the number of hours a participant serves during a given period of time. For example, a participant that serves for 50 hours one week and 25 the next should receive the same living allowance as if the participant had served 50 hours (or 25 hours) in both weeks. Generally, the living allowance must not increase or decrease but should remain steady just as a participant's living expenses are continuous. However, because the living allowance is intended to support a participant's cost of living, if the cost of food, housing, transportation, or other necessities in a particular area increases, the program may adjust the living allowance disbursement accordingly within the overall approved grant amount.

Just as the amount of the living allowance should not fluctuate, the frequency of distribution of the living allowance should be steady and reliable. Programs must provide living allowances at regular intervals, such as weekly or bi-weekly, so that a participant can have regular access to financial support.

The proposed rule would also codify the existing prohibition on the payment of ''lump sums'' to participants who complete their terms of service in shorter periods of time than originally anticipated. If a participant starts service later than other participants, the program may not pay the participant an additional sum to ''make up'' payments missed before the participant began. Likewise, if a participant completes the term of service ahead of schedule, the program may not pay the participant a lump sum equivalent to what the participant would have received.

Waiver of Living Allowance by a Participant (§ 2522.240(b)(5))

The Corporation's grant provisions have long provided that an AmeriCorps participant may waive all or part of the living allowance. Our proposed rule would add this provision to regulation. A participant who waives the living allowance may revoke the waiver at any time and may begin receiving a living allowance again prospective to that date. The participant may not receive any part of the living allowance attributable to the time period during which the living allowance was waived.

Applications for the Same Project (§ 2522.320)

Section 130(g) of the Act states that ''the Corporation shall reject an application submitted under this section if a project proposed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation.''

The Corporation's existing regulations state that ''the Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.'' 45 CFR 2522.320.

Our proposed rule would permit applicants to submit applications for the same project in separate, but overlapping, competitions, but only under specific conditions designed to prevent the project from receiving funding from two different sources. The proposed rule is intended to maximize the quality of programs in the AmeriCorps*State and National portfolio by giving applicants greater flexibility and autonomy in applying for the grant program best suited for their particular projects, while avoiding the same project receiving funding from two grants.

To ensure compliance, the proposed rule requires an applicant that submits multiple applications to the Corporation to identify any other pending application for the same project. By submitting multiple applications for the same project under this proposed rule, the applicant will be on notice that approval of one by the Corporation will be deemed a withdrawal by the applicant of any additional application for the same project.

To clarify the definition of ''same project,'' the proposed rule lists criteria by which we will determine whether proposed activities and identifying characteristics constitute the same or different projects. The Corporation may determine that two or more projects are sufficiently different based upon clear distinctions in one or more of the criteria considered. However, the criteria in the proposed rule are not exhaustive, as the Corporation may consider additional factors in determining a project's specific, identifiable activities.

For the purposes of determining whether two applications cover the same project, geographic location will be identified as narrowly as possible in order to specify the population served. For example, the operation of a homeless shelter in Brooklyn might—depending on the proposed activities and identifying characteristics—be considered a different project than the operation of a homeless shelter in the Bronx.

Performance Measures (§ 2522.620)

The Corporation proposes to remove the requirement that grantees report on end outcomes at the end of year three of each program. Grantees will continue to be required to submit at least one aligned set of performance measures in their applications. These aligned measures must include at least one output, an intermediate outcome, and an end outcome. Grantees will continue to be required to measure, analyze and report upon the outputs and the intermediate outcome. Under the proposal, however, the Corporation's national evaluation strategy will focus on measuring end outcomes. We are convinced that there is significant value in grantees articulating an end outcome for at least one performance measure, as it provides a valuable long-term context for their work. However, we do not believe it is a prudent investment of federal funds to support their measurement of these end outcomes, which often will not become evident until more than three years after the initial investment. Therefore, we are proposing to relieve grantees of the requirement to report end outcomes.

Civil Rights (§§ 2540.210 and 2540.215)

The Corporation requires all recipients of Corporation grants to abide by applicable federal non-discrimination laws, including relevant provisions of the national service legislation and implementing regulations. It is essential that all participants, staff, and beneficiaries of programs supported by Corporation grants are aware of their rights under these laws and of the availability of the Corporation's impartial discrimination complaint process.

Previously, the Corporation's civil rights notification requirements were included in the annual grant provisions. The proposed rule will relocate these requirements to regulation. There is no change in the requirements, only in the location of the requirements.

The proposed rule requires grantees to notify participants, staff, and beneficiaries of the civil rights requirements and complaint procedures by including this information in recruitment materials, member contracts, handbooks, manuals, pamphlets, and by posting it in conspicuous locations, as appropriate. Grantees should ensure that this information is accessible to those participants, staff, and beneficiaries who have limited English proficiency, or who are hearing or visually impaired by providing it in alternative formats when necessary.

Grantees may obtain sample notification language and other guidance on notification, the Corporation's discrimination complaint procedure, and other general information on prohibited discrimination by contacting the Office of Civil Rights and Inclusiveness, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525, by e-mail at *eo@cns.gov,* or by calling (202) 606–7503, (202) 606–3472 (TTY).

Use of National Service Insignia (§§ 2540.500–560)

Currently, grant recipients and other entities engaged in providing national and community services in cooperation with the Corporation are approved to use the national service insignia in accordance with the terms and conditions of their agreements with the Corporation. The Corporation anticipates continuing to administer approvals to use the national insignia in this manner.

From time to time, however, the Corporation's insignia, including the AmeriCorps logo and other logos associated with the Corporation's programs, have been used without authorization, including by individuals and entities that have no relationship with the Corporation. In some cases, the unauthorized use was for commercial purposes and other purposes that would not have been approved by the Corporation. To better protect the image and integrity of the Corporation's programs, ensure compliance with government-wide rules against improper endorsement of non-Federal entities, and protect the public from possible deception, a new subpart E is proposed to be added to part 2540 of Title 45 of the Code of Federal Regulations. The proposed regulation would provide notice regarding the restrictions on

using the Corporation's various insignia and of the possible civil and criminal penalties that may incur for unauthorized use of the insignia. Depending upon the nature of the violation, under section 425 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5065) and 18 U.S.C. 506, 701, and 1017, enforcement of the restriction could result in an injunction on the unauthorized use, a monetary fine, or imprisonment.

Disqualification and Forfeiture Based on False or Misleading Statements (§§ 2540.600–670)

The Corporation proposes to add a new subpart F to part 2540 to address individuals who are admitted to a program or who receive program benefits on the basis of false or misleading statements. Occasionally, a member, volunteer, or participant in a Corporation-funded program is discovered to have been admitted to the program or accorded a benefit from the program on the basis of false or misleading statements. The proposed regulation provides a means for the Corporation to revoke the eligibility of a person for participation in or a benefit from a national service program if the person was admitted to a program or seeks a benefit from a program on the basis of a false or misleading statement which includes material omissions or false facts that, if known at the time of application or submission of a claim, would have resulted in a finding of ineligibility.

In most cases the criteria for qualification to participate in a program or eligibility for a program benefit are set out in the NCSA and DVSA, or related appropriations acts. If it is discovered that facts material to qualification to participate or eligibility for a benefit were false or misleading, the Corporation has an obligation to revoke the person's eligibility and refrain from providing a related benefit to that person. Additionally, the Corporation may be legally obligated to recover funds from the person if funds were received on the basis of a false or misleading statement.

The proposed regulation gives individuals suspected of making false or misleading statements the opportunity to respond under a two-tier review process before their eligibility is revoked. Where there are genuine material facts in dispute, a telephonic or face-to-face meeting may be included at the second level of review.

The intent of the regulation is to provide a mechanism for revoking the eligibility of individuals who make a false or materially misleading statement in connection with their application to or enrollment in a national service program and for forfeiting eligibility for a related benefit.

The action and procedures set out in the proposed regulation are intended to supplement, not replace, remedies against offending parties that are available under other laws. Depending upon the nature and scope of a false statement or misleading statement, other legal action may be taken against the offending party under the False Claims Act, Program Fraud and Civil Remedies Act of 1986, Suspension and Debarment regulations under 45 CFR part 2542, and other applicable laws and regulations.

Inspector General Access to Grantee Records (§ 2541.420)

Section 2541.420(e)(1) is amended to specifically add the Inspector General among the authorities having access to pertinent grantee records. While it has always been understood that the Office of the Inspector General is a component of the awarding agency, the rule is being amended to match the access to records language in § 2543.53, which specifically names the Inspector General among the authorities having access to grantee records.

State Commission Composition Requirements (§ 2550.50)

Section 178(d)(1) of the Act states that ''the Chief Executive Officer of a State shall ensure, to the maximum extent practicable, that the membership for the State commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the voting members, plus one additional member, may be from the same political party.'' Section 178(c)(5) of the Act states that ''[t]he number of voting members of a State commission * * * who are officers or employees of the State may not exceed 25 percent * * * of the total membership of the State commission.''

Our proposed amendment to 45 CFR 2550.50 conforms the regulation to the specific language in the statute, including a clarification that the political affiliation provision applies only to voting members of the State commission.

State Plans (§ 2550)

Section 178(e) of the Act requires a State Commission to prepare and annually update a national service plan covering a three-year period. This Plan, previously referred to as a ''Unified State Plan,'' a ''State Service Plan,'' and, presently, a ''State Plan,'' is a document that sets forth the State's goals, priorities, and strategies for promoting national and community service. The Act specifies several components that must be present in the Plan, including the State's efforts to convene, collaborate, or otherwise coordinate with diverse national and community service groups and agencies to accomplish the State's national and community service goals.

The Act gives latitude to the Corporation to establish additional requirements for the contents of the State Plan. Over time, we have found that the State's submission of certain information is mutually beneficial. For example, to enhance communication and coordination between the Corporation and the State, it is useful for us to know how the State is utilizing statewide networks of national and community service groups to achieve its goals and priorities. In addition, the availability of such information serves as a resource for identifying best practices to be shared with other States. By including these elements with the description of a State Commission's duties we eliminated the need to publish state plan requirements as a separate part; therefore, we have stricken part 2513.

Section 2550.80 lists the duties of State entities. Our proposed rule conforms paragraph (a) of this section to the statutory list of the responsibilities of State entities with regard to preparation of a State Plan. In addition, our proposed rule amends this section to include the requirement, previously located in part 2513, that the State Plan incorporate the State's ''goals, priorities, and strategies for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan.'' This groups together relevant information and consolidates the regulatory required components of the State Plans. Our proposed rule imposes no new requirements for the contents of the State Plan, while reserving the Corporation's right to request submission of the State Plan in its entirety, in summary, or in part.

The Corporation uses State Plans principally in understanding the State's national and community service goals, priorities, and strategies, not in making future funding or monitoring determinations, risk-based assessments, or State Standards process evaluations.

Summary of Redesignations

The proposed rule will change the location of a number of regulations. The following table is a guide to the current location of a provision and its new location under the proposed rule.

Current location	Proposed location
2520.65(a)(9)	2520.65(a)(10).
2522.240(b)(5)	2522.240(b)(6).
2550.80(a)(3)	2550(a)(4).

IV. Effective Dates

The Corporation intends to make any final rule based on this proposal effective no sooner than 30 days after the final rule is published in the **Federal Register**. We will include an implementation schedule in the final rule, based on the final rule's date of publication.

V. Significant Non-Regulatory Issues

The Corporation would like to use this opportunity to notify grantees and other interested parties of certain non-regulatory changes.

*Timeframe for Requesting AmeriCorps*State Formula Allocations*

Section 129(a) of the Act (42 U.S.C. 12581(a)) requires the Corporation to allocate one-third of its AmeriCorps grants appropriation to the States using a population-based formula. If a State does not request its full formula allocation, the Act directs the Corporation to make a reallotment of unrequested funds to other States and Indian tribes.

To date, we have permitted a State to request less than its full formula allocation in the first year, and access the balance of its allocation in the second year. Many States took advantage of this flexibility and requested their remaining allocation during the second year of availability. About two-thirds of the States do not request all of the formula funds made available to them in the first fiscal year. The specific States that do not request all of their funds vary from year to year, depending on the number of applications each state receives, the Corporation's maximum cost per member and whether there is a cap placed on member enrollment in the National Service Trust.

Beginning in FY 2008, the deadline for submission of the state's formula will be much earlier. Any unrequested funds remaining after the deadline will be reallocated to small states whose initial allocations are less than $500,000 and for other authorized purposes, as appropriate.

Regulatory Flexibility Act

The Corporation has determined that the regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Under the Paperwork Reduction Act, information collection requirements which must be imposed as a result of this regulation have been reviewed by the Office of Management and Budget under OMB nos. 3045–0047, 3045–0117, and 3045–0099.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2513

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2516

Grants administration, Grant programs—social programs.

45 CFR Part 2517

Grants administration, Grant programs—social programs.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

45 CFR Part 2521

Grants administration, Grant programs—social programs.

45 CFR Part 2522

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2523

Grant programs—social programs.

45 CFR Part 2524

Grant programs—social programs, Technical assistance.

45 CFR Part 2540

Civil rights, Fraud, Grants administration, Grant programs—social programs, Trademarks—signs and symbols, Trust, Volunteers.

45 CFR Part 2541

Grant programs—social programs, Reporting and recordkeeping requirements, Investigations.

45 CFR Part 2550

Grants administration, Grant programs—social programs.

For the reasons stated in the preamble, under the authority 42 U.S.C. 12651d, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501, *et seq.*

2. Amend § 2510.20 by adding a new paragraph (3) to the definition of ''participant'' to read as follows:

§ 2510.20 Definitions.

* * * * *

Participant. * * *

(3) A participant may also be referred to by the term *member*.

* * * * *

PART 2513—[REMOVED AND RESERVED]

3. Remove and reserve part 2513.

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

4. The authority citation for part 2516 is revised to read as follows:

Authority: 42 U.S.C. 12521–12551.

§ 2516.400 [Amended]

5. Amend § 2516.400 by removing the reference ''part 2513'' and replacing it with ''§ 2550.80(a).''

§ 2516.410 [Amended]

6. Amend § 2516.410 (a)(1) by removing the reference ''part 2513'' and replacing it with ''§ 2550.80(a).''

§ 2516.500 [Amended]

7. Amend § 2516.500 (a)(3)(i) by removing the reference ''part 2513'' and replacing it with ''§ 2550.80(a).''

PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

8. The authority citation for part 2517 is revised to read as follows:

Authority: 42 U.S.C. 12541–12547.

§ 2517.400 [Amended]

9. Amend § 2517.400 (a)(3) by removing the reference ''part 2513'' and replacing it with ''§ 2550.80(a).''

§ 2517.500 [Amended]

10. Amend § 2517.500 (c)(3) by removing the reference to ''part 2513'' and replacing it with ''§ 2550.80(a).''

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

11. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

12. Amend § 2520.65 by redesignating paragraph (a)(9) as (a)(10) and adding a new paragraph (a)(9) to read as follows:

§ 2520.60 What activities are prohibited in AmeriCorps subtitle C programs?

(a) * * *

(9) Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;

* * * * *

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

13. The authority citation for part 2521 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

14. In § 2521.30, revise paragraph (a)(4) to read as follows:

§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

* * * * *

(a) * * *

(4) In making subgrants with funds awarded by formula or competition under paragraphs (a)(2) or (3) of this section, a State must ensure that a minimum of 50 percent of funds going to States will be used for programs that operate in the areas of need or on Federal or other public lands, and that place a priority on recruiting participants who are residents in high need areas, or on Federal or other public lands. The Corporation may waive this requirement for an individual State if at least 50 percent of the total amount of assistance to all States will be used for such programs.

* * * * *

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

15. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

16. Amend § 2522.220 by:

a. Revising the introductory text of paragraph

(a); and

b. Revising paragraph (d).

The revisions will read as follows:

§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve more than one term?

(a) *Term of Service.* A term of service may be defined as:

* * * * *

(d) *Participant performance review.* For the purposes of determining a participant's eligibility for an educational award as described in § 2522.240(a) and eligibility to serve a second or additional term of service as described in paragraph (c) of this section, each AmeriCorps grantee is responsible for conducting a mid-term and end-of-term performance evaluation. A mid-term performance evaluation is not required for a participant who is released early from completing a term of service. The end-of-term performance evaluation should consist of:

(1) A determination of whether the participant:

(i) Completed the required number of hours described in paragraph (a) of this section, making the participant eligible for an educational award as described in § 2522.240(a);

(ii) Was released from service for compelling personal circumstances, making the participant eligible for a pro-rated educational award as described in § 2522.230(a)(2); or

(iii) Was released from service for cause, making the participant ineligible to receive an educational award for that term of service as described in § 2522.230(b)(3); and

(2) A participant performance review which will assess whether the participant:

(i) Has satisfactorily completed assignments, tasks, or projects, or, for those participants released from service early, whether the participant satisfactorily completed those assignments, tasks, or projects that the participant could reasonably have completed in the time the participant served; and

(ii) Has met any other performance criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

* * * * *

17. Amend § 2522.230 by adding a new paragraph (b)(6) to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

* * * * *

(b) * * *

(6) An individual's eligibility for a second term of service in AmeriCorps will not be affected by release for cause from a prior term of service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.240(d)(2) for the period served in the first term.

* * * * *

18. Amend § 2522.240 by:

a. Revising the heading of paragraph (b)(4);

b. Redesignating paragraph (b)(5) as (b)(6); and

c. Adding a new paragraph (b)(5). The revisions and additions will read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

* * * * *

(b) * * *

(4) *Waiver or reduction of living allowance for programs.* * * *

(5) *Waiver or reduction of living allowance by participants.* A participant may waive all or part of the receipt of a living allowance. The participant may revoke this waiver at any time during the participant's term of service. If the participant revokes the living allowance waiver, the participant may begin receiving his or her living allowance prospective to the date of the revocation; a participant may not receive any portion of the living allowance that may have accrued during the waiver period.

* * * * *

19. Add a new § 2522.245 to read as follows:

§ 2522.245 How are living allowances disbursed?

A living allowance is not a wage and programs may not pay living allowances on an hourly basis. Programs must distribute the living allowance at regular intervals and in regular increments, and may increase living allowance payments only on the basis of increased living expenses such as food, housing, or transportation. Living allowance payments may only be made to a participant during the participant's term of service and must cease when the

participant concludes the term of service. Programs may not provide a lump sum payment to a participant who completes the originally agreed-upon term of service in a shorter period of time.

20. Revise § 2522.320 to read as follows:

§ 2522.320 Under what conditions may I submit more than one application for the same project?

You may submit more than one application for the same project only if:

(a) You submit the applications in separate competitions (i.e., National Direct, State, Education Award Program); and

(b) You disclose in each application that there is another application for the same project pending before the Corporation.

21. Add new §§ 2522.330 and 2522.340 to subpart C to read as follows:

§ 2522.330 What happens to additional applications for the same project if the Corporation approves one application?

If the Corporation approves one application for a project, you will be deemed to have withdrawn any other application (or part thereof) for the same project.

§ 2522.340 How will I know if two projects are the same?

In determining whether two projects are the same, the Corporation will consider, among other characteristics:

(a) The objectives and priorities of the project;

(b) The nature of the service provided;

(c) The program staff, participants, and volunteers involved;

(d) The geographic location in which the service is provided;

(e) The population served; and

(f) The proposed community partnerships.

22. Amend § 2522.620 by revising paragraph (c) to read as follows:

§ 2522.620 How do I report my performance measures to the Corporation?

* * * * *

(c) At a minimum you are required to report on outputs at the end of year one and outputs and intermediate outcomes at the end of years two and three. We encourage you to exceed these minimum requirements.

PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE

23. The authority citation for part 2523 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

24. Amend § 2523.90 by removing the reference ''§ 2522.240(b)(5)'' and replacing it with ''§ 2522.240(b)(6).''

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

25. The authority citation for part 2524 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

§ 2524.30 [Amended]

26. Amend § 2524.30 (b)(4) by removing the reference ''2522.240(b)(5)'' and replacing it with ''2522.240(b)(6).''

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

27. The authority citation for part 2540 is revised to read as follows:

Authority: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653; 42 U.S.C. 5065.

28. Amend § 2540.210 by adding a new paragraph (d) to read as follows:

§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

* * * * *

(d) Grantees must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable federal nondiscrimination laws, including relevant provisions of the national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint with the Corporation's Office of Civil Rights and Inclusiveness.

29. Add a new § 2540.215 to read as follows:

§ 2540.215 What should a program participant, staff members, or beneficiary do if the individual believes he or she has been subject to illegal discrimination?

A program participant, staff member, or beneficiary who believes that he or she has been subject to illegal discrimination should contact the Corporation's Office of Civil Rights and Inclusiveness, which offers an impartial discrimination complaint resolution process. Participation in a discrimination complaint resolution process is protected activity; a grantee is prohibited from retaliating against an individual for making a complaint or participating in any manner in an investigation, proceeding, or hearing.

30. Add a new Subpart E (consisting of §§ 2540.500 through 2540.560) to read as follows:

Subpart E—Restrictions on Use of National Service Insignia

Sec.
2540.500 What definition applies to this subpart?
2540.510 What are the restrictions on using national service insignia?
2540.520 What are the consequences for unauthorized use of the Corporation's national service insignia?
2540.530 Are there instances where an insignia may be used without getting the approval of the Corporation?
2540.540 Who has authority to approve use of national service insignia?
2540.550 Is there an expiration date on approvals for use of national service insignia?
2540.560 How do I renew authority to use a national service insignia?

Subpart E—Restrictions on Use of National Service Insignia

§ 2540.500 What definition applies to this subpart?

National Service Insignia. For this subpart, *national service insignia* means the former and current seal, logos, names, or symbols of the Corporation's programs, products, or services, including those for AmeriCorps, VISTA, Learn and Serve America, Senior Corps, Foster Grandparents, the Senior Companion Program, the Retired and Senior Volunteer Program, the National Civilian Community Corps, and any other program or project that the Corporation administers.

§ 2540.510 What are the restrictions on using national service insignia?

The national service insignia are owned by the Corporation and only may be used as authorized. The national service insignia may not be used by non-federal entities for fundraising purposes or in a manner that suggests Corporation endorsement.

§ 2540.520 What are the consequences for unauthorized use of the Corporation's national service insignia?

Any person who uses the national service insignia without authorization may be subject to legal action for trademark infringement, enjoined from continued use, and, for certain types of unauthorized uses, other civil or criminal penalties may apply.

§ 2540.530 Are there instances where an insignia may be used without getting the approval of the Corporation?

All uses of the national service insignia require the written approval of the Corporation.

§ 2540.540 Who has authority to approve use of national service insignia?

Approval for limited uses may be provided through the terms of a written

grant or other agreement. All other uses must be approved in writing by the director of the Corporation's Office of Public Affairs, or his or her designee.

§ 2540.550 Is there an expiration date on approvals for use of national service insignia?

The approval to use a national service insignia will expire as determined in writing by the director of the Office of Public Affairs, or his or her designee. However, the authority to use an insignia may be revoked at any time if the Corporation determines that the use involved is injurious to the image of the Corporation or if there is a failure to comply with the terms and conditions of the authorization.

§ 2540.560 How do I renew authority to use a national service insignia?

Requests for renewed authority to use an insignia must follow the procedures for initial approval as set out in § 2540.540.

31. Add a new Subpart F (consisting of §§ 2540.600 through 2540.670) to read as follows:

Subpart F—False or Misleading Statements

Sec.

2540.600 What definitions apply to this subpart?
2540.610 What are the consequences of making a false or misleading statement?
2540.620 What are my rights if the Corporation determines that I have made a false or misleading statement?
2540.630 What information must I provide to contest a proposed action?
2540.640 When will the reviewing official make a decision on the proposed action?
2540.650 How may I contest a reviewing official's decision to uphold the proposed action?
2540.660 If the final decision determines that I received a financial benefit improperly, will I be required to repay that benefit?
2540.670 Will my qualification to participate or eligibility for benefits be suspended during the review process?

Subpart F—False or Misleading Statements

§ 2540.600 What definitions apply to this subpart?

You. For this subpart, *you* refers to a participant in a national service program.

§ 2540.610 What are the consequences of making a false or misleading statement?

If it is determined that you made a false or misleading statement in connection with your eligibility for a benefit from, or qualification to participate in, a Corporation-funded program, it may result in the revocation of the qualification or forfeiture of the benefit. Revocation and forfeiture under this part is in addition to any other remedy available to the Federal Government under the law against persons who make false or misleading statements in connection with a federally-funded program.

§ 2540.620 What are my rights if the Corporation determines that I have made a false or misleading statement?

If the Corporation determines that you have made a false or misleading statement in connection with your eligibility for a benefit from, or qualification to participate in, a Corporation-funded program, you will be hand delivered a written notice, or sent a written notice to your last known street address or e-mail address or that of your identified counsel at least 15 days before any proposed action is taken. The notice will include the facts surrounding the determination and the action the Corporation proposes to take. The notice will also identify the reviewing official in your case and provide other pertinent information. You will be allowed to show good cause as to why forfeiture, revocation, the denial of a benefit, or other action should not be implemented. You will be given 10 calendar days to submit written materials in opposition to the proposed action.

§ 2540.630 What information must I provide to contest a proposed action?

Your written response must include specific facts that contradict the statements made in the notice of proposed action. A general statement of denial is insufficient to raise a dispute over the facts material to the proposed action. Your response should also include copies of any documents that support your argument.

§ 2540.640 When will the reviewing official make a decision on the proposed action?

The reviewing official will issue a decision within 45 days of receipt of your response.

§ 2540.650 How may I contest a reviewing official's decision to uphold the proposed action?

If the Corporation's reviewing official concludes that the proposed action, in full or in part, should still be implemented, you will have an opportunity to request an additional proceeding. A Corporation program director or designee will conduct a review of the complete record, including such additional relevant documents you submit. If deemed appropriate, such as where there are material facts in genuine dispute, the program director or designee may conduct a telephonic or in person meeting. If a meeting is conducted, it will be recorded and you will be provided a copy of the recording. The program director or designee will issue a decision within 30 days of the conclusion of the review of the record or meeting. The decision of the program director or designee is final and cannot be appealed further within the agency.

§ 2540.660 If the final decision determines that I received a financial benefit improperly, will I be required to repay that benefit?

If it is determined that you received a financial benefit improperly, you may be required to reimburse the program for that benefit.

§ 2540.670 Will my qualification to participate or eligibility for benefits be suspended during the review process?

If the reviewing official determines that, based on the information available, there is a reasonable likelihood that you will be determined disqualified or ineligible, your qualification or eligibility may be suspended, pending issuance of a final decision, to protect the public interest.

PART 2541—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

32. The authority citation for part 2541 continues to read as follows:

Authority: 42 U.S.C. 4950, *et seq.* and 12501, *et seq.*

33. Revise § 2541.420(e)(1) to read as follows:

§ 2541.420 Retention and access requirements for records.

* * * * *

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency, the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

34. The authority citation for part 2550 continues to read as follows:

Authority: 42 U.S.C. 12638.

35. Amend § 2550.50 by revising paragraph (e) to read as follows:

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

* * * * *

(e) *Other composition requirements.* To the extent practicable, the chief executive officer of a State shall ensure that the membership for the State commission is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent plus one of the voting members of a State commission may be from the same political party. In addition, the number of voting members of a State commission who are officers or employees of the State may not exceed 25% of the total membership of that State commission.

* * * * *

36. Amend § 2550.80 by revising paragraph (a) to read as follows:

§ 2550.80 What are the duties of the State entities?

* * * * *

(a) *Development of a three-year, comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service covering a three year period that is consistent with the Corporation's broad goals of meeting human, educational, environmental, and public safety needs and meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for the maximum participation and input from a broad cross-section of individuals and organizations, including national service programs within the State, community-based agencies, organizations with a demonstrated record of providing educational, public safety, human, or environmental services, residents of the State, including youth and other prospective participants, State Educational Agencies, traditional service organizations, labor unions, and other interested members of the public.

(2) The plan must ensure outreach to diverse, broad-based community organizations that serve underrepresented populations by creating State networks and registries or by utilizing existing ones.

(3) The plan must set forth the State's goals, priorities, and strategies for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan.

(4) The plan may contain such other information as the State commission considers appropriate and must contain such other information as the Corporation may require.

(5) The plan must be submitted, in its entirety, in summary, or in part, to the Corporation upon request.

* * * * *

37. Add a new § 2550.85 to read as follows:

§ 2550.85 How will the State Plan be assessed?

The Corporation will assess the quality of your State Plan as evidenced by:

(a) The development and quality of realistic goals and objectives for moving service ahead in the State;

(b) The extent to which proposed strategies can reasonably be expected to accomplish stated goals; and

(c) The extent of input in the development of the State plan from a broad cross-section of individuals and organizations as required by § 2550.80(a)(1).

Dated: November 8, 2007.

Frank R. Trinity,

General Counsel.

[FR Doc. E7–22298 Filed 11–16–07; 8:45 am]

BILLING CODE 6050–$$–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 07–253; FCC 07–194]

Satellite Ancillary Terrestrial Components

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Ancillary terrestrial components (ATC) allow MSS operators to integrate terrestrial services into their satellite networks in order to augment coverage in areas where their satellite signals are largely unavailable due to blocking, by re-using their assigned MSS frequencies. In the Big LEO bands, the Federal Communications Commission (Commission) has limited ATC operations to the 1610–1615.5 MHz, 1621.35–1626.5 MHz in the L-band and 2487.5–2493 MHz in the S-band. The Commission seeks comment on expanding the L-band and S-band spectrum in which satellite operator Globalstar, Inc. is authorized to operate ATC. The Commission also seeks comment on what measures would be needed to protect services with which the Mobile-Satellite Service (MSS) shares the S-band.

DATES: Comments due on or before December 19, 2007 and reply comments due on or before January 3, 2008.

ADDRESSES: You may submit comments, identified by IB Docket No. 07–253, 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:* Federal Communications Commission, 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: 202–418–2530 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: Howard Griboff, 202/418–0657.

SUPPLEMENTARY INFORMATION: Ancillary terrestrial components (ATC) allow MSS operators to integrate terrestrial services into their satellite networks in order to augment coverage in areas where their satellite signals are largely unavailable due to blocking, by re-using their assigned MSS frequencies. In 2003, the Commission adopted the ATC Order, permitting MSS licensees to seek authority to implement ATC to be integrated into MSS networks in MSS bands, including the Big LEO bands. In the Big LEO bands, the Commission limited ATC operations to the 1610–1615.5 MHz, 1621.35–1626.5 MHz and 2492.5–2498 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority. Subsequently the Commission shifted the S-band ATC block to 2487.5–2493 MHz, so that ATC and the fixed and mobile services allocation at 2495–2500 MHz would not overlap.

The Commission seeks comment on expanding the L-band and S-band spectrum in which Globalstar is authorized to operate ATC. Such an increase in spectrum would allow Globalstar to offer a higher-capacity ATC than would be possible with its currently authorized 11 megahertz of

ATC spectrum. The Commission tentatively concludes that ATC is not feasible in the L-band spectrum Globalstar shares with Iridium, at 1617.775–1618.725 MHz. The Commission also tentatively concludes that ATC cannot share spectrum with co-primary Fixed and Mobile services in the 2495–2500 MHz segment of the S-band, and seeks comment on what measures would be needed to protect services with which MSS shares the S-band.

The Notice of Proposed Rulemaking 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).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–22567 Filed 11–16–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF STATE

48 CFR Parts 604, 637 and 652

[Public Notice: 5992]

RIN 1400–AC32

Department of State Acquisition Regulation

AGENCY: State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule will add a contract clause to implement the requirements of Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors; Federal Information Processing Standards Publication (FIPS PUB) Number 201, Personal Identity Verification (PIV) of Federal Employees and Contractors; and associated OMB guidance M–05–24 (August 5, 2005).

DATES: The Department will accept comments from the public up to January 18, 2008.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *E-mail: ginesgg@state.gov* You must include the RIN in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602.
- *Fax:* 703–875–6155.

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: *ginesgg@state.gov.*

SUPPLEMENTARY INFORMATION: On January 3, 2006, the Federal Acquisition Regulation (FAR) was revised to implement the contractor personal identification requirements of Homeland Security Presidential Directive 12 (HSPD–12), and Federal Information Processing Standards Publication (FIPS PUB) Number 201, Personal Identity Verification (PIV) of Federal Employees and Contractors. (See 71 FR 208, January 3, 2006). The FAR required compliance with FIPS PUB 201 and associated OMB guidance M–05–24 (August 5, 2005) for solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. However, it recognized that Federal agencies needed to customize these policies and procedures to meet mission needs. Therefore, the FAR did not provide specific procedural language for inclusion in affected contracts, but merely required that contractors ''comply with agency personal identity verification procedures identified in the contract''.

This proposed rule will add a new contract clause to the Department of State Acquisition Regulation (DOSAR) to implement the Department's requirements regarding personal identity verification of contractor personnel. The clause will apply to contracts that require contractor employees to perform on-site at a Department of State location and/or that require contractor employees to have access to DOS information systems.

The clause directs contractors to an Internet web site document that outlines the personal identity verification procedures for various types of contractors (cleared and uncleared), location of performance (domestic facilities; domestic—Washington, DC metro area facilities; and overseas facilities), and the access requirements (physical; logical; or both).

Finally, DOSAR clause 652.237–71, Identification/Building Pass, and its associated prescription at 637.110(b), are removed. This clause outlined the process for issuing building passes to contractors working on-site at DOS facilities. HSPD–12 and FIPS PUB 201 require more stringent forms of identification to ensure personal identity verification than was reflected in this clause.

Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department is publishing this proposed rule and inviting public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive

Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Information collection requirements have been approved under the Paperwork Reduction Act of 1980 by OMB, and have been assigned OMB control number 1405–0050.

List of Subjects in 48 CFR Parts 604, 637 and 652

Government procurement.

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for 48 CFR parts 604, 637 and 652 continue to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subchapter A—General

PART 604—ADMINISTRATIVE MATTERS

2. A new subpart 604.13 is added as follows:

Subpart 604.13—Personal Identity Verification of Contractor Personnel

Sec.
604.1300 Policy.
604.1301 Contract clause.
604.1301–70 DOSAR contract clause.

Subpart 604.13—Personal Identity Verification of Contractor Personnel

604.1300 Policy.

The DOS official responsible for verifying contractor employee personal identity is the Assistant Secretary for Diplomatic Security.

604.1301 Contract clause.

604.1301–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.204–70, Department of State Personal Identification Card Issuance Procedures, in solicitations and contracts that require contractor employees to perform on-site at a DOS location and/or that require contractor employees to have access to DOS information systems.

Subchapter F—Special Categories of Contracting

PART 637—SERVICE CONTRACTING

3. Section 637.110 is amended by removing paragraph (b) and re-designating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subchapter H—Clauses and Forms

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 652.204–70 is added as follows:

652.204–70 Department of State Personal Identification Card Issuance Procedures.

As prescribed in 604.1301–70, insert the following clause:

Department of State Personal Identification Card Issuance Procedures (DATE)

(a) The Contractor shall comply with the Department of State (DOS) Personal Identification Card Issuance Procedures for all employees performing under this contract who require frequent and continuing access to DOS facilities, or information systems. The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to DOS facilities, or information systems.

(b) The DOS Personal Identification Card Issuance Procedures may be accessed at *http://www.state.gov/m/ds/rls/rpt/c21664.htm.*

(End of clause)

5. Section 652.237–71 is removed and reserved.

6. Section 652.237–72 is amended by removing ''637.110(c)'' and inserting ''637.110(b)'' in its place in the clause prescription.

7. Section 652.237–73 is amended by removing ''637.110(d)'' and inserting ''637.110(c)'' in its place in the clause prescription.

Dated: November 7, 2007.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. E7–22460 Filed 11–16–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AV35

Migratory Bird Permits; Revisions to Migratory Bird Import and Export Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing migratory bird permitting. We propose to amend 50 CFR part 21 to resolve problems related to export of species covered by Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits or certificates; to allow the importation and possession without an import permit of legally acquired migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, or Scolopacidae that were lawfully hunted in a foreign country; to extend the period of time for which an Import and Export permit is valid from 3 to 5 years; and to reorganize and reword the regulations to make them easier to understand.

DATES: Send comments on this proposal by February 19, 2008.

ADDRESSES: For detailed instructions on submitting comments and viewing others' comments, please see ''Public Participation'' below. You may submit comments, identified by RIN 1018–AV35, by any one of the following methods:

- *E-mail: Import/Export@fws.gov.* Include RIN number 1018–AV35 in the subject line of the message;
- *Fax:* 703–358–2217;
- *Mail:* Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, VA 22203–1610;
- *Hand Delivery:* Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, VA 22203–1610; or
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency that has been delegated the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

Among other things, we manage the import and export of migratory birds and their parts, eggs, and nests. The regulations at 50 CFR 21.21 set forth the requirements for import and export permits for migratory birds and their parts, eggs, and nests. Currently at § 21.21, we set forth requirements for import and export permits, application procedures for these permits, additional permit conditions, and the term for which a permit is valid. These regulations are nearly 18 years old and are, in part, outdated. In particular, these regulations do not mention the requirements associated with CITES, addressed in part 23 of our regulations. In addition, many of the requirements currently set forth at § 21.21 simply reference another part or section of our regulations. They are therefore difficult to read and understand.

We propose to update and revise the regulations at § 21.21 to, among other things: Address the export of species covered by CITES; allow the importation and possession of legally acquired migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae that were lawfully hunted in a foreign country; extend the period of time for which an Import and Export permit is valid from 3 to 5 years; and reorganize and reword the regulations to make them easier to understand. Specifically, we propose changes to § 21.21 as follows.

General requirements (proposed § 21.21(a)): Current § 21.21(a) provides the general requirements for import and export permits, as well as the exceptions to these requirements. We would reorganize current § 21.21(a) to separate the general requirements (proposed § 21.21(a)) from the exceptions to the requirements (proposed § 21.21(b), (c) and (d)). In proposed § 21.21(a), we would also acknowledge all of the regulations, including the CITES regulations at 50 CFR part 23, that apply to imports and exports of migratory birds and their parts, eggs, and nests. These proposed revisions would help ensure that importers and exporters of migratory birds or their parts, eggs, or nests understand all of the requirements applicable to their imports and exports.

Exceptions for import permits (proposed § 21.21(b)): Current § 21.21(a)(1) provides the requirements for import permits; it does not provide any exceptions to import permit requirements for migratory birds or their parts, eggs, or nests. Current § 21.21(a)(2) does have one import permit exception for raptors for falconry that will be discussed later in this document. We would add, in a new § 21.21(b), a provision to allow the importation and possession without an import permit of legally hunted migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae that were lawfully hunted in a foreign country. The imported specimens could be carcasses, skins, or mounts and would have to be accompanied by evidence of lawful export from the country of origin. These families may be legally hunted under the provisions of the migratory bird treaties with Canada and Mexico, though hunting seasons have not been established for all of them. We wish to allow hunters to import birds in these families that they legally hunted outside the United States without requiring an import permit to do so.

Exceptions for export permits (proposed § 21.21(c)): As stated above, current § 21.21(a) provides the requirements for import and export permits, and exceptions to these requirements. Current § 21.21(a) does provide exceptions to the export permit requirements for certain captive-bred migratory game birds exported to Canada or Mexico and for raptors used for falconry exported to or imported from Canada or Mexico. Our proposed § 21.21(c) would retain these exceptions, with certain changes.

Instead of simply directing readers to 50 CFR 21.13(b) of the regulations for the marking requirements for captive-bred migratory game birds exported to Canada or Mexico, we would detail those requirements in this new paragraph. This proposed revision would help ensure that exporters of migratory game birds understand the exceptions to our export permit requirements.

We would also move the provisions concerning the exception to the import and export permit requirements for raptors for falconry to their own paragraph in this section of the regulations. We believe that this change would help readers find this information in the regulations.

In addition, we would add a provision to allow export of lawfully acquired captive-bred raptors, provided that the exporter holds both a valid raptor propagation permit and a CITES export permit, and has full documentation of the lawful origin of the raptor(s). The raptor(s) would also have to be properly identified by a captive-bred raptor band (see 21.30 of this Part). This change would eliminate redundant permitting reviews for export of captive-bred raptors and would help ensure that border inspectors can easily and accurately identify birds for export.

Exception for transport of falconry birds (proposed § 21.21(d)): The exception to the import and export permit requirements for falconry birds currently resides in § 21.21(a)(2), with the general export permit requirements for migratory birds. We propose to put the exception to the requirements for falconry birds into its own paragraph (proposed new § 21.21(d)) so that it is easier to find in the regulations. For clarity, we would revise the language concerning the exception, and we would acknowledge the CITES regulations at 50 CFR part 23 that apply to exports of these birds. This proposed revision would help ensure that importers and exporters of falconry birds understand this exception to the transport requirements for falconry birds.

We believe it is reasonable to allow temporary transport of birds held for falconry out of the United States. Therefore, a proposed provision in the regulation makes it clear that we allow this action. The provision states that unless you have the necessary CITES permit or certificate to permanently export a raptor from the United States, you must bring any raptor you transport out of the country for use in falconry back to the United States when you return. However, if the raptor dies or is lost, the permittee must document the loss of the bird as required by his or her State falconry regulations and any conditions on the CITES document.

Inspection procedures (proposed § 21.21(e)): The current § 21.21 is silent on inspection procedures for imported and exported migratory birds and their parts, eggs, and nests, even though these inspections occur regularly. We propose to add a paragraph explaining that migratory birds imported into, or

exported from, the United States, and any associated documentation, may be inspected by the Service or Customs and Border Protection.

Application procedures (proposed § 21.21(f)): Current § 21.21(b) provides the application procedures for permits to import or export migratory birds or their parts, eggs, or nests. The current regulations set forth the information required on the application forms. The ''additional information,'' specified in current § 21.21(b)(1) through (b)(6), has been incorporated into the relevant application forms, so we are proposing to remove that information from the regulations. Instead, we propose to list the specific forms required to apply for an import or export permit (FWS form 3–200–6) or a permit for scientific collecting (FWS form 3–200–7). We also propose to add language reminding applicants of the application fee that must accompany their application to import or export migratory birds or their parts, eggs, or nests. This change would help ensure that persons interested in importing or exporting know which form to complete and its associated application fee.

Service criteria for issuing a permit (proposed § 21.21(g)): The current § 21.21 is silent on the criteria we consider when deciding whether or not to issue a permit to import or export migratory birds or their parts, eggs, or nests. We propose to include the issuance criteria in this section to ensure that the public understands how we make our decisions.

Standard conditions for a permit (proposed § 21.21(h)): The current § 21.21(c) provides information on additional permit conditions. We would retain this information, but rewrite it for clarity. We would also add a reference to 50 CFR part 14 to ensure that importers and exporters of migratory birds or their parts, eggs, or nests understand that they must also comply with the general regulations concerning the importation, exportation, and transportation of wildlife.

Term of permit (proposed § 21.21(i)): The current § 21.21(d) provides information on the length of time that a permit is valid. We also propose to extend the period of time for which an import or export permit is valid from 3 to 5 years. In recent years, as we have completed regulations revisions we have extended the duration of some permit types that we believe have a limited potential effect on bird populations, to ease the burden on both permittees and our permits examiners. We believe that is also true of the import and export regulations, so we propose to extend the term of an Import and Export permit from 3 to 5 years.

Plain Language: Throughout our proposed revisions to § 21.21, we have used short sentences and active voice to make the regulations easy to understand.

Public Participation

If you submit electronic comments, please include your name and return address in your message, and identify it as comments on RIN 1018–AV35 in the subject line of your message.

If you submit hard copy comments, please include your name and return address in your letter and identify it as comments on RIN 1018–AV35. To facilitate compilation of the Administrative Record for this action, you must submit hard copy comments on 8½ -inch by 11-inch paper.

All comments on the proposed rule, including any personal information received, will be available for public inspection during normal business hours at Room 4091 at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, VA 22203–1610. The supporting file for this proposed rule is available, by appointment, during normal business hours at the same address. You may call 703–358–1825 to make an appointment to view the file.

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. We will not consider anonymous comments.

Following review and consideration of comments, we will issue a final rule on the proposed regulation changes.

Required Determinations

Clarity of This Regulation

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol § and a numbered heading; for example: ''§ 21.21 Import and export permits.'') (5) Does the description of the rule in the ''Supplementary Information'' section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov.*

Regulatory Planning and Review

In accordance with the criteria in E.O. 12866, this proposed rule is not a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This proposed rule would not raise novel legal or policy issues. The proposed provision is in compliance with other laws, policies, and regulations.

b. This proposed rule would not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are no costs associated with this proposed rule.

c. This proposed rule would not create inconsistencies with other agencies' actions. The proposed rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

d. This proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of migratory birds.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available

for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities, because the changes we are proposing are intended primarily to simplify export for a limited number of raptor propagators.

There would be no costs associated with this regulatory change. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This proposed rule would not have an annual effect on the economy of $100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this proposed rule would not have significant takings implications because it would not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from changing exemptions in migratory bird permit requirements.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these proposed regulations under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The Office of Management and Budget approved the information collection requirements for this part, and assigned OMB Control Number 1018–0022. There are no new information collection requirements associated with this regulations change.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and Part 516 of the U.S. Department of the Interior Manual (516 DM). We have no date on the number of legally hunted birds that individuals might wish to import, though we doubt that the number will be large. Because these species are legally hunted elsewhere, we doubt that this proposed regulations change would appreciably change the impact of hunting on these species. Therefore, we do believe that there would be a significant environmental impact due to the proposed regulations change.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This proposed rule would not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would affect only import and export of birds in limited circumstances, it is not a significant regulatory action under E.O. 12866, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

The primary change we propose is to allow export of lawfully acquired captive-bred raptors provided that the exporter holds a valid raptor propagation permit and has been issued a Convention on International Trade in Endangered Species (CITES) export permit. This change should eliminate redundant permitting required for this activity. Another important change we propose is to allow the import of legally acquired migratory game birds without a permit. A permit is currently required to import such species. We believe that there are no significant environmental impacts of this action.

Socioeconomic. This proposed rule would not have discernible socioeconomic impacts.

Migratory bird populations. This proposed rule would not affect migratory bird populations.

Endangered and threatened species. The proposed regulation is for migratory bird species that are not threatened or endangered. It would not affect threatened or endangered species or critical habitats.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). The proposed regulations change will not affect listed species.

Author

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Revise § 21.21 to read as follows:

§ 21.21 Import and export permits.

(a) *What is the permit requirement?* Except as provided in paragraphs (b), (c), and (d) of this section, you must have a permit to import or export migratory birds, their parts, nests, or eggs. You must meet the applicable permit requirements of parts 14, 15, 17, 21, 22, or 23 of this subchapter B, even if the activity is exempt from a migratory bird import or export permit.

(b) *What is the exception to the import permit requirements?* You do not need a migratory bird permit to import or possess migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae for personal use that were lawfully hunted by you in a foreign country if you comply with the requirements of part 20 of this subchapter B (Migratory Bird Hunting). The game birds may be carcasses, skins, or mounts. You must provide evidence that you lawfully took the bird or birds in, and exported them from, the country of origin. This evidence must include a hunting license and any export documentation required by the country of origin. You must keep these documents with the imported bird or birds permanently.

(c) *What are the exceptions to the export permit requirements?* You do not need a migratory bird export permit to:

(1) Export live captive-bred migratory game birds to Canada or Mexico if they are marked by one of the following methods:

(i) Removal of the hind toe from the right foot;

(ii) Pinioning of a wing by removal of all or some of the metacarpal bones of one wing, which renders the bird permanently incapable of flight;

(iii) Banding of one metatarsus with a seamless metal band; or

(iv) Tattooing of readily discernible numbers and/or letters on the web of one foot.

(2) Export live lawfully acquired captive-bred raptors provided you hold a valid raptor propagation permit issued under § 21.30 and you obtain a CITES permit or certificate issued under part 23 to do so. You must have full documentation of the lawful origin of each raptor, and each must be identifiable with a seamless band issued by the Service, including those with an implanted microchip for identification.

(d) *What is the exception for the transport of falconry birds?* You are not required to obtain a migratory bird import or export permit for the temporary transport of a raptor or raptors you lawfully possess for falconry to and from another country for use in falconry. Each raptor must be covered by a CITES certificate of ownership issued under part 23 of this chapter. You must have full documentation of the lawful origin of each raptor, and each must be identifiable with a seamless band issued by the Service, including those with an implanted microchip for identification. Unless you have the necessary CITES permit or certificate to permanently export a raptor from the United States, you must bring any raptor you transport out of the country for falconry back to the United States when you return. If the raptor dies or is lost, you are not required to bring it back but must report the loss immediately upon your return to the United States in the manner required by the falconry regulations of your State, and any conditions on your CITES certificate.

(e) *Will my imported or exported migratory birds be inspected?* All migratory birds imported into, or exported from, the United States, and any associated documentation, may be inspected by the Service or Customs and Border Protection. You must comply with the import and export regulations in Part 14 of this chapter.

(f) *What must I do to apply for a migratory bird import or export permit?* You must apply to the appropriate Regional Director—Attention Migratory Bird Permit Office. You can find the address for your Regional Director in § 2.2 of subchapter A of this chapter. Your application package must include a completed application (form 3–200–6, or 3–200–7 if the import or export is associated with an application for a scientific collecting permit), and a check or money order made payable to the U.S. Fish and Wildlife Service in the amount of the application fee for permits issued under this section, as listed in § 13.11 of this chapter.

(g) *What criteria will the Service consider before issuing a permit?* After we receive a completed import or export application, the Regional Director will decide whether to issue you a permit based on the general criteria of § 13.21 of this chapter and whether you meet the following requirements:

(1) You are at least 18 years of age;

(2) The bird was lawfully acquired;

(3) The purpose of the import or export is consistent with the conservation of the species;

(4) For an import permit, you are authorized to lawfully possess the migratory bird after it is imported.

(h) *Are there standard conditions for the permit?* Yes, standard conditions for your permit are set forth in part 13 of this subchapter B. You also must comply with the regulations in part 14 (importation, exportation, and transportation of wildlife). We may place additional requirements or restrictions on your permit as appropriate.

(i) *How long is a migratory bird Import and Export permit valid?* Your migratory bird import or export permit expires on the date designated on its face unless it is amended or revoked, but it will not be valid for more than 5 years.

Dated: November 2, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–22182 Filed 11–16–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 72, No. 222

Monday, November 19, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

DATE: November 13, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Phytophthora Ramorum; Quarantine and Regulations.

OMB Control Number: 0579–0310.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pest new to the United States or not widely distributed throughout the United States. Under ''Subpart-Phytophthora Ramorum'' (7 CFR 301.92 through 301.92–11, referred to as the regulation), USDA's Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain regulated and restricted articles from quarantined areas in California and Oregon to prevent the artificial spread of Phytophthora ramorum, the pathogen that causes the plant disease commonly known as sudden oak death, ramorum left blight, and ramorum dieback.

Need and Use of the Information: APHIS will collect information through a compliance agreement to establish restrictions on the interstate movement of nursery stock from nurseries in non-quarantined counties in California, Oregon, and Washington. If California, Oregon, and Washington State did not comply with provisions by signing a compliance agreement, *P. ramorum* would have the potential to spread to eastern forests adversely impacting the ecosystem balances, foreign/domestic nursery stocks, and lumber markets.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondent: 1,425.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,263.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 07–5720 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 14, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.

OMB Control Number: 0581–0093.

Summary of Collection: The U.S. Department of Agriculture has the responsibility for implementing and

overseeing programs for a variety of commodities including beef, blueberries, cotton, diary, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons. Various Acts authorizes these programs to carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. The Agricultural Marketing Service (AMS) has the responsibility to appoint board members and approve the boards' budgets, plans, and projects and for foreign projects, the Foreign Agricultural Service. AMS' objective in carrying out this responsibility is to assure the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by enabling legislation; and (3) the board's administration of the programs conforms to USDA policy.

Need and Use of the Information: The boards administer the various programs utilizing a variety of forms to carry out their responsibilities. Only authorized employees of the various boards and USDA employees will use the information collected. If this data were collected less frequently, (1) it would hinder data needed to collect and refund assessments in a timely manner and result in delayed or even lost revenue; (2) boards would be unable to carry out the responsibilities of their respective Acts; and (3) requiring reports less frequently than monthly would impose additional record keeping requirements.

Description of Respondents: Business or other for profit, Farms.

Number of Respondents: 231,404.

Frequency of Responses: Reporting: On occasion, Weekly, Monthly, Semi-annually, Annually; Recordkeeping.

Total Burden Hours: 154,913.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–22563 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 14, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: Technical & Supervisory Assistance Grants.

OMB Control Number: 0575–0188.

Summary of Collection: Section 525(a) of title V of the Housing Act of 1949 gives authorization to the Rural Housing Service (RHS) to make grants to enter into contracts with eligible organizations, ''to pay part or all of the cost of developing, conducting, administering or coordinating comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, state, and local housing programs in rural areas.''

Need and Use of the Information: RHS staff in its local, State and National offices will collect information from applicants to determine eligibility for a grant, project feasibility, and to monitor performance after grants have been awarded. Failure to collect this information could result in waste and improper use of Federal funds.

Description of Respondents: Not for profit institutions.

Number of Respondents: 30.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 623.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–22565 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 14, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Specified Risk Materials—Transport Documentation.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), These statutes mandate that FSIS protect the public by ensuring that meat products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS is requiring official slaughter establishments that transport carcasses or parts of cattle that contain vertebral columns from cattle 30 months of age and older to another federally-inspected establishment for further processing and to maintain records that verify that the official establishment that received the carcasses or parts removed and properly disposed of the portions of the vertebral column designated as specified risk materials (SRMs).

Need and Use of the Information: FSIS will collect information that requires establishments that transport carcasses or parts from cattle 30 months or older for further processing will have to maintain records that verify that the receiving establishment removed and properly disposed of the SRMS.

Description of Respondents: Business or other for-profit.

Number of Respondents: 70.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 700.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–22566 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Annual List of Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Proposed Actions and Legal Notices of Decisions Subject to Administrative Appeal Under 36 CFR 215

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Alaska Region will use to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and to publish legal notices for public comment on actions subject to the notice and comment provisions of 36 CFR part 215, as updated on June 4, 2003. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of actions subject to public comment and decisions subject to appeal under 36 CFR part 215, thereby allowing them to receive constructive notice of a decision or proposed action, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers begins on January 1, 2008. This list of newspapers will remain in effect until it is superceded by a new list, published in the **FEDERAL REGISTER**.

ADDRESSES: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; Forest Service, Alaska Region; P.O. Box 21628; Juneau, Alaska 99802–1628.

FOR FURTHER INFORMATION CONTACT: Robin Dale; Alaska Region Group Leader for Appeals, Litigation and FOIA; (907) 586–9344.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of decisions subject to notice, comment, and appeal under 36 CFR part 215. The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspapers of record identified in this notice. The timeframe for appeal under 36 CFR part 215 shall be based on the date of publication of the legal notice of the decision in the newspaper of record identified in this notice.

The newspapers to be used for giving notice of Forest Service decisions in the Alaska Region are as follows:

Alaska Regional Office

Decision of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor and the Glacier and Seward District Rangers: Anchorage Daily News, published daily in Achorage, Alaska.

Decisions of the Cordova District Ranger: Cordova Times, published weekly in Cordova, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor and the Craig, Ketchikan/Misty, and Thorne Bay District Rangers: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Decisions of the Admiralty Island National Monument Ranger, the Juneau District Ranger, the Hoonah District Ranger, and the Yakutat District Ranger: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Petersburg District Ranger: Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions of the Sitka District Ranger: Daily Sitka Sentinel, published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the timeframes for making comments or filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: November 5, 2007.

Denny Bschor,

Regional Forester.

[FR Doc. 07–5704 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest, CA; Notice of Intent To Prepare an Environmental Impact Statement for Public Wheeled Motorized Travel Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Stanislaus National Forest (STF) will prepare an environmental impact statement disclosing the impacts of the following proposed actions:

1. Add approximately 126.2 miles of existing unauthorized routes to the National Forest System (NFS) of trails open to public wheeled motorized use.

2. Add approximately 0.03 miles of unauthorized routes to the NFS of roads open to public wheeled motorized use.

3. Convert approximately 16.3 miles of existing NFS roads to NFS trails open to public wheeled motorized use.

4. Change approximately 11.6 miles of existing NFS roads closed to public wheeled motorized use to NFS roads open to public wheeled motorized use.

5. Change approximately 24.5 miles of existing NFS roads open to public wheeled motorized use to NFS roads closed to public wheeled motorized use.

6. Change approximately 73.7 miles of existing NFS roads open to highway legal vehicles only to NFS roads open to all public wheeled motorized use.

7. Change approximately 214.2 miles of existing NFS roads open to all public wheeled motorized use to NFS roads open to highway legal vehicles only.

8. Prohibit public motorized travel off of designated NFS roads and trails except where: (a) traveling up to 100 feet off of designated NFS roads and NFS trails for direct access to campsites, parking, woodcutting, or gathering forest products provided that no resource damage occurs and such access is not otherwise prohibited, totaling approximately 2,272.9 miles or, (b) allowed by permit or other authorization, totaling 1.0 miles.

9. Provide for certain seasonal closures to wheeled motorized travel on NFS roads and trails to protect resources, totaling approximately 837.5 miles.

DATES: Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent. Completion of the draft environmental impact statement is expected in May 2008 and the final environmental impact statement is expected in October 2008.

ADDRESSES: Send written comments to: Stanislaus National Forest, Attn: Motorized Travel; 19777 Greenley Road; Sonora, CA 95370. Electronic comments, in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) formats, may be submitted to *comments-pacificsouthwest-stanislaus@fs.fed.us* with Subject: Motorized Travel.

FOR FURTHER INFORMATION CONTACT: Sue Warren, Stanislaus National Forest, 19777 Greenley Road; Sonora, CA 95370; phone: (209) 532–3671 ext. 321; e-mail: *swarren@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

General Background

Over the past few decades, the availability and capability of motorized vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased tremendously. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. The ten states with the largest populations also have the most OHV use. California has 4.5 million OHV recreationists, accounting for almost 11% of the U.S. total (Off-Highway Vehicle Recreation in the United States, Regions, and States: A National Report from the National Survey on Recreation and the Environment (NSRE); Cordell, Betz, and Owens, June 2005). There were 786,914 ATVs and OHV motorcycles registered in 2004, up 330% since 1980. Annual sales of ATVs and OHV motorcycles in California were the highest in the U.S. for the last 5 years. Four-wheel drive vehicle sales had also increased by 1500% to 3,046,866 from 1989 to 2002 in California.

On August 11, 2003, the Pacific Southwest Region of the Forest Service entered into a Memorandum of Intent (MOI) with the California Off-Highway Motor Vehicle Recreation Commission and the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation. That MOI set in motion a region-wide effort to ''designate OHV roads, trails, and any specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California by 2007.'' On November 9, 2005, the Forest Service published final travel management regulations in the **Federal Register** (FR Vol. 70, No. 216–Nov. 9, 2005, pp 68264–68291). This final Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use on National Forests. Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule prohibits the use of motor vehicles off the designated system as well as use of motor vehicles on routes and in areas that are not designated.

Unmanaged Off-Highway Vehicle (OHV) use has resulted in unplanned roads and trails; erosion, watershed and habitat degradation; and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on soils. Riparian areas and aquatic dependent species are particularly vulnerable to OHV use. Unmanaged recreation, including impacts from OHVs, is one of ''Four Key Threats Facing the Nation's Forests and Grasslands.'' (USDA Forest Service, June 2004).

Forest Background

In accordance with the MOI, the STF completed an inventory of motorized use on NFS lands in 2005 and identified approximately 270 miles of unauthorized routes. The STF then used an interdisciplinary process to conduct travel analysis that included working with the public to determine whether any of the inventoried motorized routes should be proposed for addition to the STF transportation system. Roads and trails that are currently part of the STF transportation system and are open to wheeled motorized vehicle travel will be designated for such use as described below under the Proposed Action. The proposed action focuses only on the prohibition of wheeled motorized vehicle travel off designated routes and needed changes to the STF transportation system, including the addition of unauthorized routes to the STF transportation system and changes to existing motor vehicle restrictions.

The proposed action is being carried forward in accordance with the Travel Management Rule (36 CFR Part 212). Following a decision on this proposal, the STF will publish a Motor Vehicle Use Map (MVUM) identifying all STF roads and trails that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Purpose and Need for Action

Recent travel analysis identified a need to make changes to the NFS of roads and motorized trails. These needs include:

1. There is a need for regulation of unmanaged wheeled motorized vehicle travel by the public. Currently, wheeled motorized vehicle travel by the public is not prohibited off designated routes. As a result, motorized vehicle users have created numerous unauthorized routes. The number of such routes continues to grow each year with unaddressed environmental impacts and safety concerns. The Travel Management Rule, 36 CFR Part 212, provides policy for ending this trend of unauthorized route proliferation and managing the Forest transportation system in a sustainable manner through designation of motorized NFS roads, trails and areas, and the prohibition of cross-country travel.

2. There is a need for limited changes to the National Forest Transportation System to:

2.1 Provide a diversity of wheeled motorized recreation opportunities (4WD, motorcycles, ATVs, passenger vehicles, etc.).

2.2 Provide wheeled motorized access to dispersed recreation opportunities such as camping, hunting, fishing, hiking, horseback riding, etc.

2.3 Protect FS administrative sites and protect hydropower facilities.

It is Forest Service policy to provide a diversity of road and trail opportunities for experiencing a variety

of environments and modes of travel consistent with the National Forest recreation role and land capability (FSM 2353.03(2)). In meeting these needs the proposed action must also achieve the following purposes:

a. Avoid impacts to cultural resources.

b. Provide for public safety.

c. Provide for a diversity of recreational opportunities.

d. Assure adequate access to public and private lands.

e. Provide for adequate maintenance and administration of designations based on availability of resources and funding to do so.

f. Minimize damage to soil, vegetation and other forest resources.

g. Avoid harassment of wildlife and significant disruption of wildlife habitat.

h. Minimize conflicts between wheeled motor vehicles and existing or proposed recreational uses of NFS lands.

i. Minimize conflicts among different classes of wheeled motor vehicle uses of NFS lands or neighboring federal lands.

j. Assure compatibility of wheeled motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, etc.

k. Honor valid existing rights of use and access (rights-of-way).

Proposed Action

Based on the stated purpose and need for action, and as a result of the travel analysis process, the STF proposes to change the use of 324 miles of NFS roads and add approximately 142.5 miles to its NFS motorized trails. These changes would adjust the total NFS roads to approximately 3,415 miles and the total NFS motorized trails to 186.2 miles. The proposed action includes the following items:

1. Add approximately 126.2 miles of existing unauthorized routes to the National Forest System (NFS) of trails open to public wheeled motorized use.

2. Add approximately 0.03 miles of unauthorized routes to the NFS of roads open to public wheeled motorized use.

3. Convert approximately 16.3 miles of existing NFS roads to NFS trails open to public wheeled motorized use.

4. Change approximately 11.6 miles of existing NFS roads closed to public wheeled motorized use to NFS roads open to public wheeled motorized use.

5. Change approximately 24.5 miles of existing NFS roads open to public wheeled motorized use to NFS roads closed to public wheeled motorized use.

6. Change approximately 73.7 miles of existing NFS roads open to highway legal vehicles only to NFS roads open to all public wheeled motorized use.

7. Change approximately 214.2 miles of existing NFS roads open to all public wheeled motorized use to NFS roads open to highway legal vehicles only.

8. Prohibit public motorized travel off of designated NFS roads and trails except where: (a) Traveling up to 100 feet off of designated NFS roads and NFS trails for direct access to campsites, parking, woodcutting, or gathering forest products provided that no resource damage occurs and such access is not otherwise prohibited, totaling approximately 2,272.9 miles or, (b) allowed by permit or other authorization, totaling 1.0 miles.

9. Provide for certain seasonal closures to wheeled motorized travel on NFS roads and trails to protect resources, totaling approximately 837.5 miles.

Maps and tables describing in detail both the STF transportation system and the proposed action can be found at *http://www.fs.fed.us/r5/stanislaus/projects/ohv*. In addition, maps and tables will be available for viewing at: Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370; Calaveras Ranger District, PO Box 500 (Highway 4), Hathaway Pines, CA 95233; Groveland Ranger District, 24545 Highway 120, Groveland, CA 95321; Mi-Wok Ranger District, PO Box 100 (24695 Highway 108), Mi-Wuk Village, CA 95346, and Summit Ranger District, #1 Pinecrest Lake Road, Pinecrest, CA 95364.

Responsible Official

Tom Quinn, Forest Supervisor, Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

Nature of Decision To Be Made

The project area is forestwide (outside of Wilderness and other non-motorized areas). The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to the existing Stanislaus National Forest Transportation System and prohibit cross country wheeled motorized vehicle travel by the public off the designated system. Previous NEPA decisions that addressed motorized use of NFS roads and trails on three areas on the Forest: The Summit Ranger District, the Interface Trails, and the Granite Watershed Enhancement Project on Groveland, are not being reconsidered at this time.

Once the decision is made, the Stanislaus National Forest will publish a Motor Vehicle Use Map (MVUM) identifying the roads, trails and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Scoping Process

Public participation is important at numerous points during the analysis. The Forest Service seeks information, comments, and assistance from the federal, state, and local agencies and individuals or organizations that may be interested in or affected by the proposed action.

Comments on the proposed action should be submitted within 60 days of the date of publication of this Notice of Intent. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by approximately May 2008. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Stanislaus National Forest participate at that time.

The final EIS is scheduled to be completed in October 2008. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision. Substantive comments are defined as ''comments within the scope of the proposed action, specific to the proposed action, and have a direct relationship to the proposed action, and include supporting reasons for the responsible official to consider'' (36 CFR 215.2). Only those who submit comment during the comment period on the draft EIS are eligible to appeal the subsequent decision under the 36 CFR part 215 regulations.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: November 13, 2007.

Tom Quinn,

Forest Supervisor.

[FR Doc. E7–22571 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest

AGENCY: Forest Service, USDA.

ACTION: Notice of contract extensions.

SUMMARY: On November 2, 2007, the Chief of the Forest Service determined there is Substantial Overriding Public Interest in extending certain National Forest System timber sale contracts for up to one year, subject to a maximum total contract length of 10 years. Pursuant to the November 2, 2007, finding, timber sale contracts awarded prior to January 1, 2007, are eligible for extension and deferral of periodic payment due dates for up to one year. This finding does not apply to (1) contracts that have been or are currently eligible to be extended under market related contract term addition (MRCTA) contract provisions, except sales using the Hardwood Lumber index that were awarded after December 31, 2005, (2) salvage sale contracts that were sold with the objective of harvesting deteriorating timber, (3) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that have developed following award of the contract, or (4) contracts that are in breach. To receive an extension, purchasers must make a written request to the appropriate Contracting Officer. Purchasers also must agree to release the Forest Service from all claims and liability if a contract extended pursuant to the November 2, 2007, finding is suspended, modified, or terminated in the future.

The intended effect of the Substantial Overriding Public Interest finding and contract extensions is to minimize contract defaults, mill closures, and company bankruptcies. The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with Forest Service authorizing legislation. See Act of June 4, 1897 (Ch. 2, 30 Stat. 11 as amended, 16 U.S.C. 475) (Organic Administration Act). In addition, by extending contracts and avoiding defaults, closures, and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible process of collecting default damages.

DATES: The determination was made on November 2, 2007, by the Chief of the Forest Service.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management Staff, (202) 205–0858 or Richard Fitzgerald, Forest Management Staff (202) 205–1753; 1400 Independence Ave., SW., Mailstop 1103, Washington, DC 20250–1103.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service sells timber and forest products from National Forest System lands to individuals or companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA). Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms and provisions of the sale including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately two to three years, although a few contracts have terms of five or more years.

Rules in 36 CFR 223.52 (Market Related Contract Term Additions) permit contract extensions when the Chief of the Forest Service determines that adverse wood product market conditions have resulted in a drastic decline in wood product prices. Under market-related contract addition procedures, the Forest Service refers to the following three producer price indices maintained by the Bureau of Labor Statistics: Softwood Lumber #0811 and Hardwood Lumber #0812 in the Commodity Series, and Wood Chips #PCU32113321135 in the Industry Series.

The Softwood and Hardwood Lumber indices indicate a major downturn in those markets began following a peak in September 2004 and was still on a downward trend as of September 2007, with the relative Softwood Lumber index decreasing by about 36 percent and the Hardwood Lumber index decreasing by about 19 percent, during this time. While most purchasers holding contracts with those indices have received or are eligible to receive MRCTA, an anomaly in the wood

products markets and indices used in contracts in the Lake States area and some other parts of the country has left many purchasers without this remedy.

Section 472a(c) of NFMA provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of two years or more, unless the purchaser has diligently performed in accordance with an approved plan of operations or the ''Substantial Overriding Public Interest'' justifies the extension. The authority to make this determination has been delegated to the Deputy Under Secretary of Agriculture for Natural Resources and Environment in 7 CFR 2.59.

Accordingly, based on current data, the Chief has made a finding that there is a Substantial Overriding Public Interest in extending certain sales for up to one year. This finding does not apply to (1) contracts that have been or are currently eligible to be extended under MRCTA contract provisions, except sales using the Hardwood Lumber index that were awarded after December 31, 2005, (2) salvage sale contracts that were sold with the objective of harvesting deteriorating timber, (3) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that have developed following award of the contract, or (4) contracts that are in breach. In addition to extending contracts pursuant to the Chief's finding, periodic payments will be deferred for up to one year on the extended sales. To receive an extension and periodic payment deferral, purchasers must make a written request to the appropriate Contracting Officer. Purchasers must also agree to release the Forest Service from all claims and liability if a contract is suspended, modified, or terminated, after the contract is extended pursuant to the Chief's November 2, 2007 finding. The text of the finding, as signed by the Chief of the Forest Service is set out at the end of this notice.

Dated: November 2, 2007.

Joel D. Holtrop,

Deputy Chief for National Forest System.

Determination of Substantial Overriding Public Interest for Extending Certain Timber Sale Contracts

The National Forest Management Act of 1976 (16 U.S.C. 472a(c) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of two years or more unless he finds that the purchaser has diligently performed in accordance with an approved plan of operations or that the ''Substantial Overriding Public Interest'' justifies the extension.

As a result of continued drastic reductions in forest product prices, there is a Substantial Overriding Public Interest in extending certain timber sale contracts.

Background

On December 7, 1990, the Forest Service published a final rule (55 FR 50643) establishing procedures in 36 CFR 223.52 for extending contract termination dates in response to adverse conditions in the timber markets. These procedures, known as Market Related Contract Term Additions (MRCTA), authorize extensions of timber sale contracts up to one additional year when qualifying market conditions are met. When the MRCTA procedures were established, experience indicated that the type and magnitude of lumber market declines that would trigger MRCTA generally coincide with low numbers of housing starts and are usually indicative of substantial economic dislocation in the wood products industry. Such economic distress broadly affects community stability, the ability of industry to supply construction lumber and other products for public use, and threatens maintaining plant capacity necessary to meet future demands for wood products from domestic sources. The Department has determined that a drastic reduction in wood product prices can result in a Substantial Overriding Public Interest sufficient to justify a contract term extension for existing contracts, as authorized by the National Forest Management Act of 1976 (16 U.S.C. 472a(c)) and existing regulations at 36 CFR 223.115(b).

Following promulgation of the rule in 1990, the Forest Service began tracking four producer price indices provided by the Bureau of Labor Statistics as indicators of a drastic reduction in wood product prices. Those indices were the Southern Pine Dressed, Douglas-fir Dressed, Other Species Dressed, and Hardwood Lumber. Beginning in the first quarter of 1994 through the first quarter of 1996, government indices indicated a major downturn in the lumber markets throughout the country was occurring, but only the Douglas-fir Dressed Lumber index used in contracts in Washington and Oregon dropped sufficiently to trigger MRCTA. Meanwhile, purchasers in other parts of the country were facing defaults, mill closures, and bankruptcies but were not eligible for MRCTA. To avert these problems, the Chief of the Forest Service determined that it was in the Substantial Overriding Public Interest to extend for a period of up to one year certain contracts that had not received any MRTCA. The Forest Service also initiated a study of the MRTCA procedures and indices to determine why they did not appear to perform as expected. Findings in that study led the Forest Service to adopt four different producer price indices from the Bureau of Labor Statistics in May 1998; (1) Hardwood Lumber (SIC 24211), (2) Eastern Softwood Lumber (SIC 24213), (3) Western Softwood Lumber (SIC 24214), and (4) Wood Chips (SIC 24215). However, after December 2003, the Bureau of Labor Statistics discontinued publishing the Western Softwood Lumber index (SIC 24214), Eastern Softwood Lumber index (SIC 24213), and Hardwood Lumber index (SIC 24211). At the same time the Wood Chips index (SIC 24215) was renumbered as PCU32113321135. In January 2006, the Forest Service published a notice in the **Federal Register** (71 FR 3409) adopting the Softwood Lumber index 0811 and the Hardwood Lumber index 0812 to replace the three indices that were no longer supported by the Bureau of Labor Statistics. The Forest Service continued to rely upon the Wood Chips index, now numbered PCU32113321135, to gauge certain market conditions. The three indices the Forest Service adopted to gauge most market conditions, however, are not able to address market conditions for all forest products, e.g. biomass. Additionally, because the indices are national in scope, they may fail to address drastic declines in local markets.

Market Conditions Leading to the November 2006, Determination of Substantial Overriding Public Interest To Extend Certain Sales

The Softwood Lumber index #0811 began declining, after peaking in September 2004, and with adjustments for inflation the relative index had declined 47.9 points or 31 percent by September 2006. Between the third quarter 2005 and the third quarter 2006, there were five consecutive calendar quarters where the declines were large enough to trigger MRCTA. This was a substantially larger drop than the one in the period between 1994–1996, when the index declined about 38 points or 21 percent. The period from 1994–1996 was also the last time there were five consecutive qualifying quarters for MRCTA.

The Hardwood Lumber index #0812 also began declining, after peaking in September 2004, and with adjustments for inflation declined 18.6 points or 14 percent as of September 2006. There

were three consecutive quarters beginning with the third quarter of 2005 through the first quarter of 2006, where the quarterly declines were large enough to trigger MRCTA equal to one calendar year plus one normal operating season. The Hardwood Lumber index continued to decline in the second and third quarters of 2006, but the decline was not sufficient to trigger MRCTA. Consequently, some hardwood purchasers were expected to begin facing additional hardships as the MRCTA time they previously obtained expired.

Between September 2004 and January 2006, the Wood Chips index remained fairly static but was on a steady rise since then. The last time the Wood Chips index had a qualifying quarter was the third quarter of 1997.

As of November 2006, the MRCTA procedures on softwood lumber and hardwood lumber sales were generally functioning as expected. Additional contract time was being offered for qualifying sale, which assisted purchasers by allowing more time to wait for markets to recover or to spread out harvesting of high priced sales. But, as was the case in 1996, there were exceptions.

For example, in the Lake States area, a combination of factors contributed to a more drastic decline in forest product prices than was occurring in other parts of the country and/or the producer price indices were not triggering MRCTA. The predominant forest products produced in that area are wood chips used in pulping for paper and oriented strand board (OSB). Both the pulp and OSB sales used the Wood Chips index which had not had a qualifying quarter for MRCTA since 1997. National Forest System timber sales in the Lake States area often contain a diverse mix of forest products, which attracted strong competition leading to relatively high bid rates. Problems began in 2005, when prices for both pulp and OSB chips started declining sharply.

OSB is a building product with prices that tend to follow lumber market prices. Because lumber market prices were declining significantly across most of the country, contracts tied to the Softwood Lumber index were eligible to receive MRCTA. But in places, such as much of the Lake States region, many purchasers marketing OSB material were not getting this relief because most of their contracts were tied to the wood chips index which had not declined and was not triggering market related contract term additions. Concurrently, while lake states area pulp prices were declining national wood chip prices were stable or increasing, so purchasers marketing pulp material were not eligible for market related contract term additions. The principal cause of this anomaly was due to the location along the great lakes and Canadian border, where competition from cheaper imported wood chips was driving prices down. As a result of these factors, purchasers in the Lake States area were faced with high bid prices on their existing contracts, low product prices, and no MRCTA to provide additional time for markets to recover or to mix the higher priced timber with lower priced timber for other sources. The MRCTA procedures were not functioning as expected here.

In another example, the sale of biomass material has been increasing in recent years with most of that material utilized for generating electricity in co-generation facilities. A reliable index for tracking this new product has not been found, so most sales of biomass material also use the Wood Chips index. Energy prices can differ substantially in different parts of the country and don't necessarily follow the Wood Chips index. Consequently, in areas where energy prices have drastically declined and purchasers are holding high price timber sale contracts, they are not currently eligible to receive a MRCTA because the Wood Chips index has not triggered.

The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible, process of collecting default damages.

Therefore, on November 2, 2006, the Deputy Under Secretary of Agriculture for Natural Resources and Environment determined there was a Substantial Overriding Public Interest in extending certain National Forest System timber sale contracts for up to one year, subject to a maximum total contract length of 10 years. Pursuant to the November 2, 2006, finding, timber sale contracts awarded prior to January 1, 2006, were eligible for extension and deferral of periodic payment due dates for up to one year. Contracts that were in breach, have been or were currently eligible to be extended under MRCTA contract provisions, or salvage sale contracts that were sold with the objective of harvesting deteriorating timber were not eligible for extension pursuant to the November 2, 2006, finding. To receive an extension, purchasers were required to make a written request to the appropriate Contracting Officer. Purchasers were also required to agree to release the Forest Service from all claims and liability if a contract extended pursuant to the November 2, 2006, finding was suspended, modified, or terminated in the future.

2007 Market Conditions

Market conditions leading to the November 2, 2006, determination of Substantial Overriding Public Interest have continued to decline. Between September 2006, and September 2007, the relative Softwood Lumber index dropped an additional 9.4 points bringing the total decline since September 2004 to 57 points or 36.4 percent. Including the third quarter of calendar year 2007, the Softwood Lumber index has triggered for MRCTA, an unprecedented nine consecutive calendar quarters, which is the longest sustained decline since the Forest Service established the MRCTA procedures in December 1990. Between September 2006 and September 2007, the relative Hardwood Lumber index dropped an additional 7.5 points, bringing the total decline since September 2004 to 26.1 points or 19.1 percent. But, although the Hardwood Lumber index has steadily declined, the rate of decline has not been sufficient to trigger MRCTA for sales awarded since January 1, 2006. Between September 2006 and September 2007, the Wood Chips index continued an upward trend. In recognition of the seriousness of the market problems, the State of Minnesota and some counties within Minnesota have provided price relief to purchasers of their sales. The U.S. Forest Service has no statutory authority at this time to provide price relief but can offer additional contract time based on a determination of Substantial Overriding Public Interest.

Determination of Substantial Overriding Public Interest

The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided over large geographic areas by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in

accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible, process of collecting default damages.

Therefore, pursuant to 16 U.S.C. 472a, and the authority delegated to me at 7 CFR 2.60, I have determined that it is in the Substantial Overriding Public Interest to extend for up to one year certain National Forest System timber sales that were awarded prior to January 1, 2007. This finding does not apply to (1) contracts that have been or are currently eligible to be extended under MRCTA contract provisions, except sales using the Hardwood Lumber index that were awarded after December 31, 2005, (2) salvage sale contracts that were sold with the objective of harvesting deteriorating timber, (3) contracts the Forest Service determines are in urgent need of harvesting due to deteriorating timber conditions that have developed following award of the contract, or (4) contracts that are in breach. Total contract length shall not exceed 10 years as a result of this extension. For those contracts extended pursuant to this finding, periodic payments due after the date of this determination will also be deferred for up to one year. To receive the extension and periodic payment deferral, purchasers must make written request and agree to release the Forest Service from all claims and liability if a contract extended pursuant to this finding is suspended, modified, or terminated in the future.

Dated: November 2, 2007.

Abigail R. Kimbell,

Chief.

[FR Doc. E7–22534 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Request Comments on a Currently Approved Information Collection.

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the intention of the Natural Resources Conservation Service (NRCS) to request comments on a currently approved information collection for which approval will expire, 0578–0030, Emergency Watershed Protection Program.

Public Participation: The NRCS invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Emergency Watershed Protection (EWP) Program are urged to provide comments.

Scoping Process: Public participation is requested throughout the scoping process. The NRCS is soliciting comment the public indicating what issues and impacts the public believes should be encompassed within the scope of the EWP Program. 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 burden of the proposed collection of information, including the validity of the methodology and assumptions used, (c) Ways to enhance the quality, utility, and clarity of the information to be collected, and (d) Ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology.

Date Scoping Comments Are Due: Comments on this notice must be received by January 18, 2008 to ensure consideration. Comments may be sent to Phyllis I. Watkins, Agency OMB Clearance Officer, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, MD 20705–5000; (301) 504–2170; *phyllis.i.watkins@wdc.usda.gov.*

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13), and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies in general, and NRCS in particular, to provide the option of submitting information or transacting business electronically to the maximum extent possible.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Phyllis I. Watkins, Agency Office of Management and Budget Clearance Officer, USDA, Natural Resources Conservation Service, 5602 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; telephone: (301) 504–2170.

SUPPLEMENTARY INFORMATION:

Title: Emergency Watershed Protection Program.

OMB Number: 0578–0030.

Expiration Date of Approval: July 31, 2008.

Type of Request: To request comments on a currently approved collection for which approval will expire.

Abstract: The primary objective of the Natural Resources Conservation Service (NRCS) is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of Emergency Watershed Protection Program (EWP) information collection is to provide EWP assistance to sponsors to undertake emergency measures to retard runoff and prevent soil erosion to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural disaster is causing or has caused a sudden impairment of that watershed.

The sponsor's request is submitted formally as a letter (now the Appendix to the NRCS–PDM–20A) to the NRCS State Conservationist for consideration. The NRCS–PDM–20, Damage Survey Report (DSR), is the agency decision-making document that includes the economic, social, and environmental evaluation and the engineer's cost estimate.

This information collection allows the responsible Federal official to make EWP Program eligibility determinations and provide Federal cost-share contribution to complete the measures. This request is necessary to implement the EWP Program for which NRCS has statutory authority.

The table below lists the forms in this collection, the uses for each document, and the applicable programs. These forms constitute this information collection and reflect the documents used by EWP sponsors to request participation in the recovery program.

Form No.	Form title	OMB No.	Program
NRCS–PDM–20	Damage Survey Report	0578–0030	EWP Recovery.
NRCS–PDM–20A	Appendix to the DSR, Request for Participation in the Program	0578–0030	EWP Recovery.

NRCS will ask OMB for 3-year approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.5 hours or 117 minutes per response.

Respondents: State government or State agency or a legal subdivision thereof, local unit of government, or any Native American Tribe or Tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency. All of the foregoing entities must be capable of obtaining necessary land rights and capable of carrying out any operation and maintenance responsibilities that may be required.

Estimated Number of Respondents: 400.

Estimated Total Annual Burden on Respondents: 5,900 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on October 3, 2007.

Arlen L. Lancaster,

Chief.

BILLING CODE 3410–16–P

United States Department of Agriculture
Natural Resources Conservation Service

OMB No. 0578-0030
NRCS-PDM-20

DAMAGE SURVEY REPORT (DSR)
Emergency Watershed Protection Program – Recovery

NRCS Entry Only
Eligible: YES ☐ NO ☐
Approved: YES ☐ NO ☐
Funding Priority Number (from Section 4) ____
Limited Resource Area: YES ☐ NO ☐

Section 1A

Date of Report: _____

DSR Number: _____ Project Number: _____

Section 1B Sponsor Information

Sponsor Name: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____ Fax: _____

Section 1C Site Location Information

County: _____ State: _____ Congressional District: _____

Latitude: _____ Longitude: _____ Section: _____ Township: _____ Range: _____

UTM Coordinates: _____

Drainage Name: _____ Reach: _____

Damage Description: _____

Section 1D Site Evaluation

All answers in this Section must be YES in order to be eligible for EWP assistance.

Site Eligibility	**YES**	**NO**	**Remarks**
Damage was a result of a natural disaster?*	☐	☐	
Recovery measures would be for runoff retardation or soil erosion prevention?*	☐	☐	
Threat to life and/or property?*	☐	☐	
Event caused a sudden impairment in the watershed?*	☐	☐	
Imminent threat was created by this event?**	☐	☐	
For structural repairs, not repaired twice within ten years?**	☐	☐	
Site Defensibility			
Economic, environmental, and social documentation adequate to warrant action (Go to pages 3, 4, 5 and 6 ***)	☐	☐	
Proposed action technically viable? (Go to Page 9 ***)	☐	☐	

Have all the appropriate steps been taken to ensure that all segments of the affected population have been informed of the EWP program and its possible effects? YES ☐ NO ☐

Comments: _____

* Statutory
** Regulation
*** DSR Pages 3 through 5 are required to support the decisions recorded on this summary page. If additional space is needed on this or any other page in this form, add appropriate pages.

DSR NO: _____

Section 1E Proposed Action

Describe the preferred alternative from Findings: Section 5 A:

Total installation cost identified in this DSR: Section 3: $ 0.00

Section 1F NRCS State Office Review and Approval

Reviewed By: _____ Date Reviewed: _____
State EWP Program Manager

Approved By: _____ Date Approved: _____
State Conservationist

PRIVACY ACT AND PUBLIC BURDEN STATEMENT

NOTE: The following statement is made in accordance with the Privacy Act of 1974, (5 U.S.C. 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is 7 CFR 624 (EWP) and Section 216 of the Flood Control Act of 1950, Public Law 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127, 16 U.S.C. 2203. EWP, through local sponsors, provides emergency measures for runoff retardation and erosion control to areas where a sudden impairment of a watershed threatens life or property. The Secretary of Agriculture has delegated the administration of EWP to the Chief or NRCS on state, tribal and private lands.

Signing this form indicates the sponsor concurs and agrees to provide the regional cost-share to implement the EWP recovery measure(s) determined eligible by NRCS under the terms and conditions of the program authority. Failure to provide a signature will result in the applicant being unable to apply for or receive a grant the applicable program authorities. Once signed by the sponsor, this information may not be provided to other agencies. IRS, Department of Justice, or other State or Federal Law Enforcement agencies, and in response to a court or administrative tribunal.

The provisions of criminal and civil fraud statutes, including 18 U.S.C. 286, 287, 371, 641, 651, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729 may also be applicable to the information provided. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0030. The time required to complete this information collection is estimated to average 117/1.96 minutes/hours per response, including the time for reviewing instructions, searching existing data sources, field reviews, gathering, designing, and maintaining the data needed, and completing and reviewing the collection information.

USDA NONDISCRIMINATION STATEMENT

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, martial status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programms.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202)720-2600 (vocie and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800)795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Civil Rights Statement of Assurance

The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Amendments of 1972, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR 15, 15a, and 15b), which provide that no person in the United States shall on the grounds of race, color, national origin, gender, religion, age or disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the U.S. Department of Agriculture or any agency thereof.

DSR NO: _____

Section 2 Environmental Evaluation

2A Resource Concerns	2B Existing Condition	2C Alternative Designation		
		Proposed Action	No Action	Alternative
		2D Effects of Alternatives		
Soil				
Water				
Downstream water rights				
Air				
Plant				
Animal				
Other				

DSR NO: _____

Section 2E Special Environmental Concerns

Resource Consideration	Existing Condition	Alternatives and Effects		
		Proposed Action	No Action	Alternative
Clean Water Act Waters of the U.S.				
Coastal Zone Management Areas				
Coral Reefs				
Cultural Resources				
Endangered and Threatened Species				
Environmental Justice				
Essential Fish Habitat				
Fish and Wildlife Coordination				
Floodplain Management				
Invasive Species				
Migratory Birds				
Natural Areas				
Prime and Unique Farmlands				
Riparian Areas				
Scenic Beauty				
Wetlands				
Wild and Scenic Rivers				

Completed By: _____ Date: _____

DSR NO: _____

Section 2F Economic

This section must be completed by each alternative considered (attach additional sheets as necessary).

	Future Damages ($)	Damage Factor (%)	Near Term Damage Reduction
Properties Protected (Private)			
Properties Protected (Public)			
Business Losses			
Other			
Total Near Term Damage Reduction $			0.00
Net Benefit (Total Near Term Damage Reduction minus Cost from Section 3)			0.00

Completed By: _____ Date: _____

Section 2G Social Consideration This section must be completed by each alternative considered

(attach additional sheets as necessary).

	YES	NO	Remarks
Has there been a loss of life as a result of the watershed impairment?	☐	☐	
Is there the potential for loss of life due to damages from the watershed impairment?	☐	☐	
Has access to a hospital or medical facility been impaired by watershed impairment?	☐	☐	
Has the community as a whole been adversely impacted by the watershed impairment (life and property ceases to operate in a normal capacity)	☐	☐	
Is there a lack or has there been a reduction of public safety due to watershed impairment?	☐	☐	

Completed By: _____ Date: _____

DSR NO: _____

Section 2H Group Representation and Disability Information

This section is completed only for the preferred alternative selected.

Group Representation	Number
American Indian/Alaska Native Female Hispanic	
American Indian/Alaska Native Female Non-Hispanic	
American Indian/Alaska Native Male Hispanic	
American Indian/Alaska Native Male Non-Hispanic	
Asian Female Hispanic	
Asian Female Non-Hispanic	
Asian Male Hispanic	
Asian Male Non-Hispanic	
Black or African American Female Hispanic	
Black or African American Female Non-Hispanic	
Black or African American Male Hispanic	
Black or African American Male Non-Hispanic	
Hawaiian Native/Pacific Islander Female Hispanic	
Hawaiian Native/Pacific Islander Female Non-Hispanic	
Hawaiian Native/Pacific Islander Male Hispanic	
Hawaiian Native/Pacific Islander Male Non-Hispanic	
White Female Hispanic	
White Female Non-Hispanic	
White Male Hispanic	
White Male Non-Hispanic	
Total Group	0

Census tract(s)_____

Completed By: _____ Date: _____

DSR NO: _____

Section 2I. Required consultation or coordination between the lead agency and/or the RFO and another governmental unit including tribes:

Easements, permissions, or permits:

Mitigation Description:

Agencies, persons, and references consulted, or to be consulted:

DSR NO: _____

Section 3 Engineering Cost Estimate

Completed By: _____ Date: _____

This section must be completed by each alternative considered (attach additional sheets as necessary).

Proposed Recovery Measure (including mitigation)	Quantity	Units	Unit Cost ($)	Amount ($)
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
			Total Installation Cost (Enter in Section 1F)$	0.00

Unit Abbreviations:

AC	Acre	LS	Lump Sum
CY	Cubic Yard	SF	Square Feet
EA	Each	SY	Square Yard
HR	Hour	TN	Ton
LF	Linear Feet	Other (Specifiy)	

DSR NO: _____

Section 4 NRCS EWP Funding Priority

Complete the following section to compute the funding priority for the recovery measures in this application (see instructions on page 10).

Priority Ranking Criteria	**Yes**	**No**		**Ranking Number Plus Modifer**
1. Is this an exigency situation?	☐	☐		
2. Is this a site where there is serious, but not immediate threat to human life?	☐	☐		
3. Is this a site where buildings, utilities, or other important infrastructure components are threatened?	☐	☐		
4. Is this site a funding priority established by the NRCS Chief?	☐	☐		
The following are modifiers for the above criteria			**Modifier**	
a. Will the proposed action or alternatives protect or conserve federally-listed threatened and endangered species or critical habitat?				
b. Will the proposed action or alternatives protect or conserve cultural sites listed on the National Register of Historic Places?				
c. Will the proposed action or alternatives protect or conserve prime or important farmland?				
d. Will the proposed action or alternatives protect or conserve existing wetlands?				
a. Will the proposed action or alternatives maintain or improve current water quality conditions?				
f. Will the proposed action or alternatives protect or conserve unique habitat, including but not limited to, areas inhabited by State-listed species, fish and wildlife management area, or State identified sensitive habitats?				

Enter priority computation in Section 1A, NRCS Entry, Funding priority number.

Remarks:

DSR NO: _____

Section 5A Findings

Finding: Indicate the preferred alternative from Section 2 (Enter to Section 1E):

I have considered the effects of the action and the alternatives on the Environmental Economic, Social; the Special Environmental Concerns; and the extraordinary circumstances (40 CFR 1508.27). I find for the reasons stated below, that the preferred alternative:

____ Has been sufficiently analyzed in the EWP PEIS (reference all that apply)
Chapter _____
Chapter _____
Chapter _____
Chapter _____
Chapter _____

____ May require the preparation of an environmental assessment or environmental impact statement.
The action will be referred to the NRCS State Office on this date:

NRCS representative of the DSR team

Title: _____ Date: _____

Section 5B Comments:

Section 5C **Sponsor Concurrence:**

Sponsor Representative

Title: _____ Date: _____

Section 6 Attachments:

A. Location Map
B. Site Plan or Sketches
C. Other (explain)

INSTRUCTIONS FOR COMPLETING THE NRCS-PDM-20, DSR

	Explanation of Requested Item	Who Completes
Section 1	Enter Site Sponsor, Location, Evaluation, Selected Alternative, and Reviewed and Approval Signatures.	NRCS completes with voluntary assistance from Sponsor except for NRCS only portion of Section 1A.
1A	Enter the Date, DSR Number, Project Number. For NRCS only enter Eligible Yes/No, Approved Yes/No, Funding Priority Number, and Limited Resource Area Yes/No.	
1B	Enter Sponsor Name, Address, Telephone, Fax	
1C	Enter site location County, State, Congressional District, Latitude, Longitude, Section, Township, Range, UTM Coordinates, Drainage Name, Reach within drainage, and Damage Description.	
1D	Enter Yes/No and any Remarks for the Site Evaluation information. Any No response means the site is not eligible for EWP assistance and no further information is necessary to complete the DSR. (See NEWPPM 390-502.03 and 390-502-04) Enter Yes/No regarding whether the affected public has been informed of the EWP program.	
1E	Enter the proposed treatment and the cost of installation.	NRCS only.
1F	NRCS Review and Approval.	

	Explanation of Requested Item	Who Completes
Section 2	Use available natural resource, economic, and social, information, including the EWP Programmatic Environmental Impact Statement (PEIS), to briefly describe the effects of the alternatives to the proposed action including the "no action" alternative. Typically, the proposed action and no action are the alternatives considered for EWP recovery measures due to the focus on repairing or preventing damages within a watershed. However, in cases where additional alternatives are considered, include all pertinent information to adequately address the additional alternatives (e.g., proposed action would be bio-engineering for bank stabilization, no action alternative, and an additional alternative may be riprap for bank stabilization). Do not leave blanks where a consideration is not applicable, use NA to indicate the factor was considered but not applicable for the alternative.	NRCS completes with voluntary assistance from Sponsor.
2A	List all resource concerns which are relevant to the area of the proposed action and alternatives. Refer to National Bulletin 450-5-8 TCH-COMPLETING AND FILING MEASUREMENT UNITS FOR RESOURCE CONCERNS IN THE FIED OFFICE TECHNICAL GUIDE (FOTG). Note: the affected area may extend beyond the construction foot print (ex. where water quality or water rights are affected downstream of the site).	
2B	Provide a brief description of the present condition of each resource concern listed in 2A. Quantify conditions where possible. Reference accompanying photo documentation.	
2C	Briefly summarize the practice/system of practices being proposed, as well as the "no action" alternative, and any other alternatives being considered. The "no action" alternative is the predicted future condition if no action is taken.	
2D	Document the efforts of the proposed action and alternatives for the considerations listed in 2A. Reference applicable quality criteria, information in the CPPE, and quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects which may be individually minor but cumulatively significant at a larger scale or over an extended time period. Clearly define the differences between proposed action, no action, and the other alternatives.	

2E	Enter Special Environmental Concerns for Clean Water Act Waters of the U.S., Coastal Zone Management Areas, Coral Reefs, Cultural Resources, Endangered and Threatened Species, Environmental Justice, Essential Fish Habitat, Fish and Wildlife Coordination, Floodplain Management, Invasive Species, Migratory Birds, Natural Areas, Prime and Unique Farmlands, Riparian Areas, Scenic Beauty, Wetlands, and Wild and Scenic Rivers for each alternative considered. In the case where the selected alternative from Section 5A impacts a Special Environmental Concern, additional information, coordination, permitting or mitigation may be required and adequate documentation should be prepared and attached to the DSR to identify how NRCS or the Sponsor addressed the concern	
2F	Identify Property Protected both private and public, business losses and other economic impacts considered for each alternative. Enter the dollar value of the potential future damages if no action is taken in the Future Damage (5) column. This would be the estimate of the value lost if the EWP recovery measure is not installed. Use the repair cost or damage dollar method to determine the estimate of future damages. The repair cost method uses the costs to return the impaired property, good, or services based on their original pre-event condition or value. The damage dollar method uses an estimate of the future damage to value (e.g. if the structure is condemned, then enter the value of the structure). Enter the estimated amount based upon existing information or information furnished by the sponsor, contractors or others with specific knowledge for recovery from natural disasters for each alternative considered. Often market values for properties or services can be obtained from personnel at the local county/parish tax assessment office. The DSI team needs to determine the Damage Factor (%) which is a coefficient that indicates the degree of damage reduction to a property that is attributed to the effect of the proposed EWP recovery measures. Use an appropriate estimate of how much of the damage the EWP recovery measure will avoid for the alternative being considered. If the recovery measures from a single site will prevent 100 percent of the damage use 100 percent. The Near Term Damage Reduction is the Future Damage ($) times the Damage Factor (%). Sum the Near Term Damage Reduction values to calculate the Total Near Term Damage Reduction. Enter the Net Benefit which is computed by subtracting the Cost from section 3 from the total near term damage reduction. The economic section must be completed for each alternative considered. Attach additional sheets as necessary.	
2G	Enter information to describe the potential social impacts and considerations for each alternative. Answer Yes or No and any remarks necessary to adequately address each question. The information may be obtained through interviews with community leaders, government officials or sponsors. Factors such as road closures, loss of water, electricity, access to emergency services are used when answering whether the community as a whole has been impaired. This information is part of the environmental evaluation portion of the DSR but may be pertinent in Section 4 regarding priorities. The Social Considerations Section must be completed for each alternative considered. Attach additional sheets as necessary.	
2H	Enter the Group Representation Information for the preferred alternative. Use the most recent census tract information based upon where the EWP recovery measures are located.	Sponsor completes.

2I	Enter whether easement, permissions, or permits, and mitigation will require consultation or coordination for the selected alternative (e.g., Clean Water Act section 404 permit, Endangered Species Act section 10 permits, and any State or county permits or requirements). Describe mitigation to be applied that will offset any adverse impacts and attach any documentation from other agencies regarding mitigation requirements.	NRCS completes with voluntary assistance from Sponsor.

	Explanation of Requested Item	**Who Completes**
Section 3	Enter Proposed Recovery Measure(s) including Quantity, Units, Unit Cost, and Total Amount Cost. Enter sum of all Proposed Recovery Measure Costs to calculate Total Costs. Enter Total Installation Costs in Section 1F. The Engineering Cost Estimate must be completed for each alternative considered. Attach additional sheets as necessary.	NRCS completes with voluntary assistance from Sponsor.

	Explanation of Requested Item	**Who Completes**
Section 4	This section is used to determine the Funding Priority for the preferred alternative and sequence for initiating recovery measures. Enter Yes/No for questions 1 through 4 and enter the number (exigency 1, serious threat to human life 2, etc.) in the right column, Ranking Number Plus Modifier. Complete the Modifier portion by placing the alphabetic indicator a. through f. in the Modifier column. Complete the Ranking Number Plus Modifier column by entering the alphabetic indictor(s) that exists within the site. The number of the site designates the priority (e.g., a site with a designation of 2 is a higher priority that a site with a designation of 3). The modifiers increase the priority for the same numeric site (e.g., a site with a designation of 1a, would be a higher priority than a site with a designation of 1, a site with a designation of 2bc would be a higher priority than a site designated as 2b). Enter the Funding Priority in Section 1A.	NRCS completes with voluntary assistance from Sponsor.

	Explanation of Requested Item	**Who Completes**
Section 5	Enter the Findings, Rationale Supporting Findings, NRCS Representative signature and Comments, and Concurrence signature by the Sponsor(s).	NRCS completes.
5A	Indicate the preferred alternative and check the applicable finding being made. The NRCS Representative signs indicating the Finding selected. If the proposed action was adequately addressed in the PEIS, check all appropriate chapter paragraphs.	
5B	Enter any additional Comments.	
5C	Sponsor(s) review and concurrence.	Sponsor(s) signature.

Section 6	Include attachments for location map, site sketch or plan and other information as needed.	NRCS completes with voluntary assistance from Sponsor.

Appendix to the NRCS-PDM-20

OMB No. 0578-0030
NRCS-PDM-20A
Exp. 7/31/2008

<<Enter the State Conservationist Name>>
Natural Resources Conservation Service
<<Enter the Street Address for the NRCS State Office>>
<<Enter City, State, Zip+4>>

<<Enter Date>>

Dear <<Enter STC Name>>:

We request Federal assistance under the provision of Section 216, Public Law 516, to restore damages sustained in <<County Name>> County by storms of <<Enter name and/or type of disaster that occurred>> on <<enter date disaster occurred>>. This work is needed to safeguard lives and property from an imminent hazard of <<enter hazard type>>.

We understand, as sponsors of an Emergency Watershed Protection project that our responsibilities will include acquiring land rights and any permits needed to construct, and if required, to operate and maintain the proposed measures. We are prepared to provide local <<enter type of local contribution>> of the cost of construction work in dollars or in-kind services.

The names, addresses, and telephone numbers of the administrative and technical contact persons in our organization are as follows:

<<enter Name, Title, Address, Telephone, FAX of Sponsor's Representative>>

Please contact him or her for any additional information that you might need in assessing our request.

Sincerely,

[FR Doc. 07–5747 Filed 11–16–07; 8:45 am]
BILLING CODE 3410–16–C

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has obtained information with respect to Pasta Lensi S.r.l. (Lensi), a producer/exporter of pasta from Italy, and American Italian Pasta Company (AIPC), Lensi's corporate parent and importer of subject merchandise produced by Lensi, sufficient to warrant the self–initiation of a changed circumstances review. Interested parties are invited to submit comments, as indicated below.

EFFECTIVE DATE: November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 485–5973 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy (61 FR 38547). Neither Lensi nor its predecessor IAPC[1] was individually investigated during the less–than-fair–value investigation. The Department conducted administrative reviews of Lensi/IAPC for the following periods: July 1, 2000 - June 30, 2001, July 1, 2001 - June 30, 2002, and July 1, 2002 - June 30, 2003. A *de minimis* margin was found for IAPC in the 2000–2001 review

[1] *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Review: Certain Pasta from Italy*, 68 FR 41553 (July 14, 2003), in which the Department determined that Lensi was the successor-in-interest to IAPC.

period.[2] A *de minimis* margin was found for Lensi in the 2001–2002 review period.[3] In the final results of the 2002–2003 administrative review, we again found a *de minimis* margin for Lensi and also found that Lensi had met the requirements for revocation from the order under 19 CFR 351.222(b)(2) and 351.222(e)(1).[4] Effective July 1, 2003, the antidumping duty order was revoked with respect to Lensi based on the three consecutive reviews resulting in *de minimis* dumping margins (see 19 CFR 351.222(b)).[5]

Lensi and AIPC voluntarily disclosed to the Department in letters and in meetings with Department officials[6] that if Lensi had correctly reported its U.S. sales data in the seventh review, the data would have resulted in the Department calculating an above *de minimis* dumping margin in the *Seventh Review Final* and the antidumping duty order would not have been revoked with respect to Lensi. In their submissions, AIPC and Lensi suggest various processes for the Department to address this voluntary disclosure including reinstating Lensi under the order.[7]

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Instituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from this order.

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Initiation of Changed Circumstances Review

As a result of information submitted to the Department by Lensi and AIPC, the Department finds, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), that there is sufficient cause to warrant initiation of a changed circumstances review of the antidumping duty order on certain pasta from Italy with respect to Lensi.

AIPC informed the Department that certain information was not included in the data reported to the Department during the seventh review. Lensi and AIPC acknowledge that, contrary to the final results of the seventh administrative review, Lensi did, in fact, make sales at less than normal value during the 2002 - 2003 review period. As a result, Lensi was not entitled to the *de minimis* rate it received in the seventh review. Nor was Lensi entitled to revocation from the order because it did not satisfy the criteria of having made sales at not less than normal value for a period of at least three consecutive years.

Interested parties are invited to comment on this initiation and to address this voluntary disclosure, the possible reinstatement of the order with respect to Lensi, and the appropriate rate in the event that we reinstate the order. Interested parties may submit comments within 14 days of publication of this notice, or the first workday thereafter. Rebuttal comments may be filed not later than 21 days after the date of publication of this notice.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based. In the event that the Department preliminarily finds that Lensi should be reinstated in the existing antidumping duty order on pasta from Italy, we will order U.S. Customs and Border Protection to suspend liquidation of entries for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the preliminary results. The Department will also issue its final results of review within 270 days of the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these final results in the **Federal Register**.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: November 9, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–22554 Filed 11–16–07; 8:45 am]

BILLING CODE 3510–DS–S

[2] *See Notice of Final Results of the Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy*, 68 FR 6882 (February 11, 2003).

[3] *See Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004).

[4] *See Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 6832 (February 9, 2005) (*Seventh Review Final*).

[5] *See Seventh Review Final.*

[6] *See* August 31, September 18, and December 7, 2006, letters to the Secretary of Commerce from Lensi and AIPC. *See also* Memo to The File from Gary Taverman re: *Ex Parte* Meeting with Counsel for Lensi, August 31, 2006; Memorandum to The File from Eric B. Greynolds re: *Ex Parte* Meeting with Representatives of Lensi and the American Italian Pasta Company, September 7, 2006; and Memorandum to The File from Eric B. Greynolds re: *Ex Parte* Meeting with Representatives of Lensi and the American Italian Pasta Company, November 14, 2006.

[7] *See* September 18 and December 7, 2006, letters.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2007, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Review'' of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey for the period of review April 1, 2006, through March 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request a*

Review, 72 FR 15650 (April 2, 2007). The Department received timely requests for review from the following foreign producers/exporters in this proceeding: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively ''Colakoglu''); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S. (collectively ''Diler''); Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. (collectively ''Ekinciler''); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); Izmir Demir Celik Sanayi A.S.; and Nursan Celik Sanayi ve Haddecilik A.S. The Department also received a timely request for review from Nucor Corporation, Gerdau Ameristeel Corporation, and Commercial Metals Company, domestic producers of rebar and interested parties in this proceeding, for the producers/exporters referenced above, as well as for Ege Celik Endustrisi Sanayi ve Ticaret A.S. and Ege Dis Ticaret A.S.; Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S.; and Kroman Celik Sanayii A.S. On May 30, 2007, the Department published a notice of initiation of administrative review of the antidumping duty order on rebar from Turkey. *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 29968 (May 30, 2007). The Department issued quantity and value questionnaires to the producers/exporters for which an administrative review was requested in May 2007. After selecting Colakoglu, Diler, Ekinciler, and Habas as mandatory respondents, the Department issued the antidumping duty questionnaire to them in July 2007. Ekinciler and Habas responded to the Department's questionnaire in September 2007. The preliminary results for this proceeding are due no later than April 29, 2008.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot–rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low–alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Determination to Rescind, in Part

On November 6, 2007, the Department published its final results for the April 1, 2005, through March 31, 2006, administrative review and found that Colakoglu and Diler met the requirements of revocation as described in 19 CFR 351.222. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part*, 72 FR 62630 (Nov. 6, 2007). Due to Colakoglu's and Diler's revocation in 2005–2006 administrative review, we are rescinding the April 1, 2006, through March 31, 2007, administrative review with respect to them because there is no statutory or regulatory basis to conduct an administrative review for a producer/exporter that has been revoked from the antidumping duty order.

The Department will issue appropriate assessment instructions directly to the U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. Because we have revoked the order with respect to subject merchandise produced and exported by Colakoglu, as well as with respect to subject merchandise produced and exported by Diler, we will instruct CBP that entries of such merchandise that were suspended on or after April 1, 2006, should be liquidated without regard to antidumping duties and that all cash deposits collected will be returned with interest.

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 13, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–22556 Filed 11–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 070927542–7543–01]

Voting Equipment Evaluations Phase II

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Help America Vote Act (HAVA), the National Institute of Standards and Technology (NIST) conducted initial benchmark research (Phase I) on voting equipment used in the 2004 elections. (See: *http://vote.nist.gov/meeting-08172007/Usability-Benchmarks-080907.doc)*. NIST is soliciting interest in Phase II of the benchmark research for voting equipment certified or submitted for certification to the 2005 Voluntary Voting System Guidelines. The NIST research is designed to: (1) Determine the realistic usability benchmarks for current and future voting system technology to support usability performance standards in next generation voluntary voting systems standards, and (2) develop usability test protocols for conformance testing of such standards. NIST may also examine relevant instructions, documentation and error messages, without doing any direct usability studies thereon. Manufacturers interested in participating in Phase II of this research will be asked to execute a Letter of Understanding. Interested parties are invited to contact NIST for information regarding participation, Letters of Understanding and shipping.

DATES: Manufacturers who wish to participate in the program must submit a request and an executed Letter of Understanding by 5 p.m. Eastern Standard Time on March 18, 2008.

ADDRESSES: Letters of Understanding may be obtained from and should be submitted to Allan C. Eustis, National Institute of Standards and Technology, Information Technology Laboratory Office, Technology Building 222, Room A328, 100 Bureau Drive, Mail Stop 8970, Gaithersburg, MD 20899–8970. Letters of Understanding may be faxed to: Allan C. Eustis at (301) 975–6097.

FOR FURTHER INFORMATION CONTACT: For shipping and further information, you may telephone Allan C. Eustis at (301) 975–5099, or e-mail: *allan.eustis@nist.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Help America Vote Act (Pub. L. 107–

252), the National Institute of Standards and Technology (NIST) will be conducting Phase II research on voting equipment certified or submitted for certification to the 2005 Voluntary Voting System Guidelines. NIST Phase I and NIST Phase II research support Technical Guidelines Development Committee Resolution 05–05, Human Performance-Based Standards and Usability Testing, and are designed to: (1) Determine the realistic usability benchmarks for current voting system technology to support usability performance standards in next generation voluntary voting systems standards, and (2) develop usability test protocols for conformance testing of such standards. NIST may also examine relevant instructions, documentation and error messages, without doing any direct usability studies thereon. Phase I provided research for determining initial benchmarks (see: *http://vote.nist.gov/meeting-08172007/Usability-Benchmarks-080907.doc*), and Phase II continues the research to develop usability test protocols.

Interested manufacturers should contact NIST at the address given above. NIST will supply a Letter of Understanding, which the manufacturer must execute and send back to NIST. NIST will then provide the manufacturer with shipping instructions for the manufacturer's equipment.

The equipment provided will be returned to the manufacturer after the NIST experiments, approximately one year from commencement of the experiments. Manufacturers should be aware that some of the testing could damage or destroy the equipment, although NIST expects only normal wear and tear associated with approximately 100 to 1,000 votes cast on the equipment by simulated voters. At the conclusion of the experiments, the equipment will be returned to the manufacturer in its post-testing condition. Neither NIST, nor the Election Assistance Commission, nor the Technical Guidelines Development Committee, will be responsible for the condition of the equipment when returned to the manufacturer. As a condition for participating in this program, each manufacturer must agree in advance to hold harmless all of these parties for the condition of the equipment.

Information acquired during the tests regarding potential usability problems will be reported to the respective manufacturer. Results for identifiable vendor equipment will not be released. Comparative information may be released in a blind manner. Performance standards benchmarks and conformance test procedures will be made publicly available.

Participating manufacturers should include or provide a technical tutorial on the setup and deployment of the equipment. NIST will pay all shipping costs, and there is no cost to the manufacturer for the testing. No modification to the equipment is permitted during the testing process.

Voting equipment certified or submitted for certification to the 2005 Voluntary Voting System Guidelines that will be accepted for the experiments includes Direct Recording Electronic, and Optical Scan systems and Accessible Voting Systems used to cast and count votes as well as software used for ballot design and creation.

Dated: November 9, 2007.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E7–22570 Filed 11–16–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XD96

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its, Scientific and Statistical Committee (SSC), Spiny Lobster Committee, Joint Executive and Finance Committees, Southeast Data, Assessment, and Review (SEDAR) Committee, Snapper Grouper Committee, Ecosystem-based Management Committee, SSC Selection Committee (Closed Session), Standard Operations, Policy, and Procedures (SOPPs) Committee, and a meeting of the full Council. The Council will also hold a meeting of the Limited Access Privilege (LAP) Program Exploratory Workgroup and public hearings regarding Amendment 15A to the Snapper Grouper Fishery Management Plan (FMP) to address rebuilding plans for snowy grouper, black sea bass, and red porgy, and Amendment 15B to the Snapper Grouper FMP addressing the sale of recreationally-caught snapper grouper species, methods to reduce the effects of incidental hooking on sea turtles and smalltooth sawfish, commercial permit renewal periods and transferability requirements, implementation of a plan to monitor and access bycatch, establishment of reference points, such as Maximum Sustainable Yield (MSY) and Optimum Yield (OY) for golden tilefish, and establishment of allocations for snowy grouper and red porgy. In addition, the Council will hold a public scoping meeting for: 1) Amendment 7 to the Shrimp FMP addressing current qualifying criteria for a limited access program for the South Atlantic rock shrimp fishery and 2) allocation of the South Atlantic commercial king mackerel quota. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meetings will be held in December 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Atlantic Beach Oceanfront Hotel, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512; telephone: (1–800) 624–8875 or (252) 240–1155. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Scientific and Statistical Committee Meeting: December 2, 2007, 3 p.m. until 6 p.m.; December 3, 2007 from 8 a.m. until 6 p.m., and December 4, 2007 from 8 a.m. until 5 p.m (Concurrent Sessions)

The Scientific and Statistical Committee will meet to identify an independent reviewer and SSC participants for SEDAR assessments, review scheduling and planning for upcoming SEDAR assessment activities, and discuss fishing level recommendations. The SSC will also receive an update on the status of Amendment 14 to the Snapper Grouper FMP addressing marine protected areas. The Committee will be provided with at status update and provide recommendations on Amendment 16 to the Snapper Grouper FMP to address overfishing for gag and vermilion snapper, and Amendments 15A and Amendment 15B to the Snapper Grouper FMP. The SSC will also review additional proposed amendments to the Snapper Grouper FMP, a proposed Comprehensive Allocation Amendment,

Amendment 7 to the Shrimp FMP, the Council's Fishery Ecosystem Plan (FEP) and the FEP Comprehensive Amendment, and potential methods for allocation of the commercial king mackerel quota, and conduct other business as required.

2. Spiny Lobster Committee Meeting: December 3, 2007, 1:30 p.m. until 3 p.m.

The Spiny Lobster Committee will meet to discuss the development of a three-Council amendment to address imports, with the Caribbean Fishery Management Council as the administrative lead. The Committee will review and discuss other issues in the fishery and develop a timeline for the next amendment.

3. Joint Executive and Finance Committees Meeting: December 3, 2007, 3 p.m. until 4:30 p.m.

The Executive and Finance Committees will meet to discuss and approve the Calendar Year (CY) 2008 FMP/Amendment/Framework Schedule, Activities Schedule, and the 2008 budget. The Committees will also discuss a proposed new Scoping/Public Hearing Process and develop recommendations for the Council.

4. SEDAR Committee Meeting: December 3, 2007, 4:30 p.m. until 5 p.m.

The SEDAR Committee will meet to review and discuss actions from the recent SEDAR Steering Committee meeting, review and discuss SEDAR 17 addressing South Atlantic Spanish mackerel and vermilion snapper, and develop recommendations for the May 2008 SEDAR Steering Committee meeting.

Note: The Council will hold a public scoping meeting and public hearings on December 3, 2007 beginning at 7 p.m. Public scoping will be held for Amendment 7 to the Shrimp FMP addressing permit renewal qualifications for the South Atlantic rock shrimp fishery. A scoping session will also be held to address potential methods for allocation of the South Atlantic commercial king mackerel quota.

Public hearings will be held for Amendment 15A to the Snapper Grouper FMP addressing stock rebuilding plans for snowy grouper, black sea bass, and red porgy, and Amendment 15B to the Snapper Grouper FMP that addresses: (1) the sale of recreationally-caught snapper grouper species, (2) methods to reduce the effects of incidental hooking on sea turtles and smalltooth sawfish, (3) changes to commercial permit renewal periods and transferability requirements, (4) implementation of a plan to monitor and access bycatch, (5) establishment of reference points, such as Maximum Sustainable Yield (MSY) and Optimum Yield (OY) for golden tilefish, and (6) establishment of allocations for snowy grouper and red porgy.

5. Snapper Grouper Committee Meeting: December 4, 2007, 8 a.m. until 5 p.m. and December 5, 2007, from 8 a.m. until 12 noon

The Snapper Grouper Committee will begin its meeting with a legal briefing on recent litigation (CLOSED SESSION). The Committee will then complete its meeting in Open Session. The Committee will review amendment content and timing, and review and approve Amendment 16 for public hearing. The Committee will also review Amendment 15A public hearing and SSC comments and approve the amendment for formal review by the Secretary of Commerce. They will also review Amendment 15B public hearing comments and SSC comments and provide direction to staff, and review Amendment 17 and approve for public scoping. Management issues covered in Amendment 17 include but are not limited to: allocation overages, bycatch reduction in the deepwater snapper grouper fishery, changes in the golden tilefish fishing year, regional quotas for snowy grouper, snapper grouper longline fishery, etc.

6. LAP Program Exploratory Workgroup Meeting: December 5, 2007, 8 a.m. until 6 p.m. and December 6, 2007, 8 a.m. until 3 p.m. (Concurrent Sessions)

The LAP Program Workgroup will meet to review the updated LAP Program Workgroup Draft Working Document, receive updates from the Outreach Sub-Committee and the Monitoring Sub-Committee, and receive a presentation on Status Quo Expectations. The Workgroup will receive law enforcement option recommendations, a presentation on Initial Allocation Analyses, and discuss Initial Allocation Options. The Workgroup will also discuss LAP Program options that consider regional differences, community quota and regional fishing associations, and cooperatives and sector allocation programs.

7. Joint Habitat and Ecosystem-based Management Committees Meeting: December 5, 2007, 1:30 p.m. until 6 p.m.

The Habitat Committee will meet jointly with the Ecosystem-based Management Committee to review recommendations from the recent meeting of the joint Habitat and Coral Advisory Panels, review a proposal from Gray's Reef National Marine Sanctuary for a closed research area, and receive updates on the development of the Fishery Ecosystem Plan (FEP) and the FEP Comprehensive Amendment. The Committee will discuss and develop a position on a Liquefied Natural Gas (LNG) proposal, and receive reports on Ocean Observing Systems and an alternative energy workshop.

8. SSC Selection Committee Meeting: December 6, 2007, 8 a.m. until 10:30 a.m. (CLOSED SESSION)

The SSC Selection Committee will discuss SSC tasks, personnel requirements, and technical committees.

9. SOPPs Committee Meeting: December 6, 2007, 10:30 a.m. until 12 noon

The SOPPs Committee will receive an update on the review of the Council's SOPPs by the Secretary of Commerce and develop changes if necessary.

10. Council Session: December 6, 2007, 1:30 p.m. until 6 p.m. and December 7, 2007, 8 a.m. until 12 noon

Council Session: December 6, 2007, 1:30 p.m. until 7 p.m.

From 1:30 p.m. - 1:45 p.m., the Council will call the meeting to order, adopt the agenda, and approve the September 2007 meeting minutes.

From 1:45 p.m. - 2:15 p.m., the Council will receive a presentation from the NOAA Fisheries Southeast Fisheries Science Center on the Data Improvement Plan.

From 2:15 p.m. - 2:45 p.m., the Council will receive a presentation on the South Atlantic Alliance.

From 2:45 p.m. - 3:15 p.m., the Council will receive a report from the SSC.

From 3:15 p.m. - 3:45 p.m., the Council will receive a presentation on the Marine Recreational Fisheries Statistics Survey (MRFSS) Program.

From 3:45 p.m. - 4 p.m., the Council will receive a report from the Spiny Lobster Committee and take action as appropriate.

From 4 p.m. - 5:30 p.m., the Council will receive a report from the Snapper Grouper Committee, approve Amendment 15A for submission to the Secretary of Commerce, and consider other recommendations and take action as appropriate.

4 p.m - Public Comment Session: Public comment on Amendment 15A to the Snapper Grouper FMP.

From 5:30 p.m. - 5:45 p.m., the Council will receive a report from the LAP Program Work Group and take action as appropriate.

From 5:45 p.m. - 6 p.m., the Council will receive a report from the Joint Executive and Finance Committees and take action as appropriate.

From 6 p.m. - 7 p.m., the Council will receive a presentation on the Gulf of Mexico Council's Aquaculture Plan (that will amend the joint Spiny Lobster and Coastal Migratory Pelagics FMPs), allow for public comment (immediately following the presentation) and take Council action.

Council Session: December 7, 2007, 8 a.m. - 12 noon.

From 8 a.m. - 8:15 a.m., the Council will receive a report from the SEDAR Committee and take action as appropriate.

From 8:15 a.m. - 8:30 a.m., the Council will receive a report from the joint Habitat and Ecosystem-based Committees and take action as appropriate.

From 8:30 a.m. - 8:45 a.m., the Council will receive a report from the SSC Selection Committee and take action as appropriate.

From 8:45 a.m. - 9 a.m., the Council will receive a report from the SOPPs Committee and take action as appropriate.

From 9 a.m. - 10 a.m., the Council will discuss a Comprehensive Allocation Amendment and provide guidance to staff.

From 10 a.m. - 10:30 a.m., the Council will review and develop comments on the Environmental Assessment for ''Atlantic Highly Migratory Species Pelagic Longline Research''.

From 10:30 a.m. - 10:45 a.m., the Council will review and develop recommendations on Experimental Fishing Permits as necessary.

From 10:45 a.m. - 12 noon, the Council will receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 30, 2007.

Dated: November 13, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–22516 Filed 11–16–07; 8:45 am]

BILLING CODE 3510–22–S

PATENT AND TRADEMARK OFFICE

Patent Prosecution Highway (PPH) Pilot Program

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed addition to this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 18, 2008.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0058 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert A. Clarke, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7735; or by e-mail at *Robert.Clarke@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A work-sharing pilot program is being established between the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO). This work-sharing program is called the ''New Route.'' Under the New Route, a filing in one member office of this arrangement would be deemed a filing in all member offices. The first office and applicant would be given a 30-month processing time frame in which to make available a first office action and any necessary translations to the second office(s), and the second office(s) would exploit the search and examination results in conducting their own examination. The New Route proposal permits the search and examination results of the first office to be transmitted to the second office(s) according to an internationally coordinated time frame. By allowing the second office to exploit the search and examination results of the first office, the primary benefits of the New Route program would be to reduce overall office workload, minimize duplication of search efforts, and increase examination quality.

Because the New Route, as envisioned, would require changes in law in both the USPTO and JPO, the USPTO and JPO agreed to commence a pilot program to test the New Route concept based on the two filing scenarios currently available under existing law in both offices. The two filing scenarios eligible to participate in the New Route pilot program are: (1) A priority application is filed in the first office and a Patent Cooperation Treaty (PCT) application claiming priority to that application is filed with the same office as the PCT Receiving Office; if the priority application is examined within about 24 months and the corresponding PCT application enters the national stage in the second office, that national stage application would be eligible to participate in the New Route pilot program based on the priority application; and (2) a PCT application is filed at the first office as the PCT Receiving Office (no priority application), the PCT application enters the national stage early in the first office so that search and examination results on the national stage application are available by about the 24th month, and the PCT application enters national stage in the second office at the 30th month. That national stage application in the second office would be eligible to participate in the New Route pilot program based on the national stage application in the first office.

In order to participate in the New Route pilot program, applicants must submit the following at the time of entry into the national stage of the PCT application in the USPTO: (a) A copy of the first office action by the JPO and English translation thereof; (b) a copy of the claims searched and examined by the JPO and English translation thereof; (c) a statement that the translations are accurate; and (d) a request to participate in the New Route pilot program along with a petition to make special and the required petition fee.

The pilot program will begin on January 28, 2008, and will end when the number of requests reaches 50 or the expiration of one year, whichever occurs first. The information collection includes one proposed form, Request for Participation in the New Route Pilot Program Between the JPO and the USPTO (PTO/SB/10), which may be used by applicants to request participation in the pilot program and to ensure that they meet the program requirements.

II. Method of Collection

Requests to participate in the New Route pilot program must be submitted by fax to the Office of the Commissioner for Patents (571–273–0125) to ensure that the request is processed in a timely manner. The USPTO will consider alternative methods of submission under this program after the pilot period is concluded.

III. Data

OMB Number: 0651–0058.

Form Number(s): PTO/SB/10, PTO/SB/20.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 800 responses per year, including 50 responses per year using the Request for Participation in the New Route Pilot Program.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 1.5 hours to gather the necessary information, prepare the form, and submit the completed Request for Participation in the New Route Pilot Program to the USPTO.

Estimated Total Annual Respondent Burden Hours: 1,575 hours per year, including 75 hours for using the Request for Participation in the New Route Pilot Program.

Estimated Total Annual Respondent Cost Burden: $478,800 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $304 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the Request for Participation in the New Route Pilot Program will be approximately $22,800 per year, which would result in a total annual respondent cost burden of $478,800 for this collection.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Request for Participation in the New Route Pilot Program Between the JPO and the USPTO (PTO/SB/10)	1.5	50	75
Total		50	75

Estimated Total Annual Non-hour Respondent Cost Burden: $104,000 per year. There are no capital start-up, maintenance, postage, or recordkeeping costs associated with this collection. However, there are additional filing fees associated with the proposed Requests for Participation in the New Route Pilot Program.

The filing fee for a Request for Participation in the New Route Pilot Program is $130 under 37 CFR 1.17(h), and up to 50 filings are expected per year, for a total of $6,500 in filing fees due to these requests. When added to the previously approved burden for this collection, the total annual (non-hour) cost burden for this collection is estimated to be $104,000 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 8, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–22541 Filed 11–16–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare an Environmental Impact Statement (EIS) for Disposal and Reuse of Fort McPherson, GA, Resulting From the 2005 Base Closure and Realignment Commission's Recommendations

AGENCY: Department of the Army, DoD

ACTION: Notice of Intent (NOI).

SUMMARY: The Department of the Army intends to prepare an EIS for the disposal and reuse of Fort McPherson in Atlanta, Georgia. Pursuant to the BRAC law, Fort McPherson is to close by September 14, 2011. Other actions included in the closing of Fort McPherson are relocating the tenant headquarters organizations to Fort Sam Houston, Texas; Fort Eustis, Virginia; Pope air Force Base (AFB), North Carolina; and Shaw AFB, South Carolina. These relocations have been or will be addressed in separate National Environmental Policy Act documents for those locations.

ADDRESSES: For further information regarding the EIS, please contact Mr.

Victor Bonilla, BRAC Environmental Division, 2053 North D Avenue, Building 400, Fort Gillem, GA 30297–5161.

FOR FURTHER INFORMATION CONTACT: Mr. Bonilla at (404) 469–3557; fax: (404) 469–3565; e-mail: *bonillav@forscom.army.mil.*

SUPPLEMENTARY INFORMATION: Fort McPherson is a 487-acre installation located approximately 4 miles southwest of downtown Atlanta and 3 miles north of Hartsfield-Jackson Atlanta International Airport.

The proposed action (Army primary action) is to dispose of the surplus property generated by the BRAC-mandated closure of Fort McPherson. Reuse of Fort McPherson by others is a secondary action resulting from disposal. The Army has identified two disposal alternatives (early transfer and traditional disposal), a caretaker status alternative, and the no action alternative (as required by the National Environmental Policy Act). Reuse scenarios are evaluated as secondary actions.

The EIS will analyze each alternative's impact upon a wide range of environmental resource areas including, but not limited to, air quality, traffic, noise, biological resources, cultural resources, socioeconomic, utilities, land use, hazardous and toxic substances, and cumulative environmental effects. Impacts to air quality conditions in the region, traffic conditions, land use, and community facilities and services could possibly be significant. Additional resources and conditions may be identified as a result of the scoping process initiated by this NOI.

Opportunities for public participation will be announced in the respective local news media. The public will be invited to participate in scoping activities for the EIS and comments from the public will be considered before any action is taken to implement the disposal and reuse of Fort McPherson.

Dated: November 9, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 07–5702 Filed 11–16–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Use of Government Sources by Contractors (OMB Control Number 0704–0252)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through February 29, 2008. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by January 18, 2008.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0252, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow *the instructions for submitting comments.*
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0252 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, *Attn:* Mr. Michael Benavides, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, 703–602–1302. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Mr. Michael Benavides, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 251, Use of Government Sources by Contractors, and related clauses in DFARS 252.251; OMB Control Number 0704–0252.

Needs and Uses: This information collection requirement facilitates contractor use of Government supply sources. Contractors must provide certain information to the Government to verify their authorization to purchase from Government supply sources or to use Interagency Fleet Management System vehicles and related services.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 5,250.

Number of Respondents: 3,500.

Responses Per Respondent: 3.

Annual Responses: 10,500.

Average Burden Per Response: .5 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.251–7000, Ordering from Government Supply Sources, requires a contractor to provide a copy of an authorization when placing an order under a Federal Supply Schedule, a Personal Property Rehabilitation Price Schedule, or an Enterprise Software Agreement.

The clause at DFARS 252.251–7001, Use of Interagency Fleet Management System Vehicles and Related Services, requires a contractor to submit a request for use of Government vehicles when the contractor is authorized to use such vehicles, and specifies the information to be included in the contractor's request.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–22591 Filed 11–16–07; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0969; FRL–8495–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Residential Lead-Based Paint Hazard Disclosure Requirements; EPA ICR No. 1710.05, OMB No. 2070–0151

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 19, 2007.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2006–0969 to (1) EPA online http://www.regulations.gov (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by *mail to:* Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Mailcode:* 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 13, 2007 (72 FR 11354), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2006–0969, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Residential Lead-Based Paint Hazard Disclosure Requirements.

ICR Numbers: EPA ICR No. 1710.05; OMB Control No. 2070–0151.

ICR Status: This ICR is currently scheduled to expire on November 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) requires that sellers and lessors of most residential housing build before 1978 disclose known information on the presence of lead-based paint and lead-based paint hazards, and provide an EPA-approved pamphlet to purchasers and renters before selling or leasing the housing. Sellers of pre-1978 housing are also required to provide prospective purchasers with 10 days to conduct an inspection or risk assessment for lead-based paint hazards before obligating purchasers under contracts to purchase the property. The rule does not apply to rental housing that has been found to be free of lead-based paint, zero-bedroom dwellings, housing for the elderly, housing for the handicapped or short-term leases. Responses to the collection of information are mandatory (see 40 CFR part 745, subpart F, and 24 CFR part 35, subpart H). This information collection addresses the information collection-related requirements related to each affected party as described below.

1. Sellers of pre-1978 residential housing. Sellers of pre-1978 housing must attach certain notification and disclosure language to their sales/leasing contracts. The attachment lists the information disclosed and acknowledges compliance by the seller, purchaser and any agents involved in the transaction.

2. Lessors of pre-1978 residential housing. Lessors of pre-1978 housing must attach notification and disclosure language to their leasing contracts. The attachment, which lists the information disclosed and acknowledges compliance with all elements of the rule, must be signed by the lessor, lessee and any agents on their behalf. Agents and lessees must retain the information for 3 years from the completion of the transaction.

3. Agents acting on behalf of sellers or lessors. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 specifically directs EPA and HUD to require agents acting on behalf of sellers or lessors to ensure compliance with the disclosure regulations.

Burden Statement: The total annual burden for this ICR is estimated to be 7,744,616 hours and involves slightly more than 49.5 million estimated annual responses. These responses correspond to the various information activities related to an estimated 3,720,000 annual target housing sales and an estimated 7,500,000 annual target housing rentals. The burden associated with the vast majority of these response activities is estimated to be 5 minutes or less. For new sellers, lessors, and agents, the burden associated with one-time rule

familiarization activities is estimated to be 1 hour per event. The burden associated both with disclosures and related acknowledgements by sellers, lessors, offerors, their respective agents, and tenants is estimated to be about 5 minutes per event. The burden associated with related recordkeeping activities by sellers, lessors, and their agents is estimated to be less than 1 minute per event. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are persons engaged in selling, purchasing or leasing certain residential dwellings built before 1978, or who are real estate agents representing such parties.

Estimated No. of Responses: 49,501,582.

Frequency of Collection: On occasion.

Estimated Total Annual Hour Burden: 7,744,616 hours.

Estimated Total Annual Labor Costs: $136,475,304.

Changes in Burden Estimates: There is a decrease of 1,110,994 hours (from 8,855,610 hours to 7,744,616 hours) in the total estimated respondent burden compared with that currently in the OMB inventory. This decrease reflects a gradual reduction in the annual number of real estate sales and residential property rentals involving target housing subject to the rule's requirements. The decrease is an adjustment.

Dated: November 8, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. 07–5709 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[Docket #: EPA–R10–OAR–2007–0112; FRL–8497–2]

Adequacy Status of the Vancouver, WA, Carbon Monoxide, Second 10-year Limited Maintenance Plan (2006–2016)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the Vancouver, Washington, carbon monoxide, second 10-year limited maintenance plan (2006–2016) adequate for transportation conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has found them adequate. As a result of this adequacy finding, the area automatically meets the budget test for future transportation conformity. This affects future transportation conformity determinations prepared, reviewed and approved by the Southwest Washington Regional Transportation Council, Washington State Department of Transportation, Federal Highway Administration and the Federal Transit Administration.

DATES: This finding is effective December 4, 2007.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/,* (once there, click on the ''Transportation Conformity'' button, then look for ''Adequacy Review of SIP Submissions''). You may also contact Wayne Elson, U.S. EPA, Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Ave, Suite 900, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to the Washington Department of Ecology November 7, 2007, stating that the SIP is adequate for transportation conformity purposes.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a SIP adequate for conformity, the SIP could later be disapproved.

We have described our process for determining the adequacy in SIPs in guidance dated May 14, 1999. This guidance is reflected in the amended transportation conformity rule, July 1, 2004 (69 FR 40004). We followed this process in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 8, 2007.

Ronald A. Kreizenbeck,

Deputy Regional Administrator, Region 10.

[FR Doc. E7–22589 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8495–7]

Request for Nominations to the Good Neighbor Environmental Board.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of a diverse range of qualified candidates to be considered for appointment to fill vacancies on the Good Neighbor Environmental Board. Vacancies are expected to be filled by February 15, 2008, and so nominations are requested to be received by December 15, 2007.

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. Under Executive Order 12916, implementation authority is delegated to the Administrator of EPA. The Board is responsible for providing advice to the President and Congress on environmental and infrastructure issues and needs within the states contiguous to Mexico. The statute calls for the Board to have representatives from U.S. government agencies; the states of Arizona, California, New Mexico and Texas; local government; tribes; and a variety of non-governmental officials including the private sector; academic

officials; environmental group representatives; health groups; ranching and grazing interests; and other relevant sectors. U.S. government agency representatives are appointed by the heads of their agencies. Non-federal members are appointed by the Administrator of the U.S. Environmental Protection Agency. The Board meets twice each calendar year at various locations along the U.S.-Mexico border, and once in Washington, DC. The average workload for Board members is approximately 10 to 15 hours per month. Members serve on the Board in a voluntary capacity. However, EPA provides reimbursement for travel expenses associated with official government business.

Nominees will be considered according to the mandates of the Federal Advisory Committee Act, which requires committees to maintain diversity across a broad range of constituencies, sectors, and groups. The following criteria will be used to evaluate nominees:

- Resident of a U.S.-Mexico border state, ideally within the border region itself.
- Extensive professional knowledge of the unique environmental and infrastructure issues that are found in the region, including the bi-national dimension of these issues.
- Representative of a sector or group that helps to shape border-region environmental policy.
- Senior-level experience that fills a current need on the Board for a representative with that particular type of expertise.
- Demonstrated ability to work in a consensus building process with a wide range of experts from diverse constituencies.
- Ability to volunteer approximately 10 to 15 hours per month to the Board's activities, including participation on meeting planning committees and preparation of text for annual reports and Comment Letters.

Nominations must include a cover letter and a resume describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, e-mail address, and daytime telephone number. Interested candidates may self-nominate. A letter of reference may accompany the nomination, but is not necessary.

ADDRESSES: Submit nominations to: Elaine Koerner, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please also e-mail nominations to *koerner.elaine@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, U.S. Environmental Protection Agency (1601–M), Washington, DC 20460; telephone (202) 564–2586; fax (202) 564–8129; e-mail *koerner.elaine@epa.gov*.

Dated: November 5, 2007.

Elaine Koerner,

Designated Federal Officer.

[FR Doc. 07–5708 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0484; FRL–8497–3]

Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee Meeting—2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) National Center for Environmental Research (NCER) Standing Subcommittee.

DATES: The meeting (a teleconference call) will be held on Friday, December 14, 2007 from 10 a.m. to 12 noon. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the conference call will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Susan Peterson, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0484, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee—2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC., *Attention:* Docket ID No. EPA–HQ–ORD–2007–0484. Note: this is not a mailing 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–HQ–ORD–2007–0484. 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*.

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 Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee—2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Participation in the meeting will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in the conference call may contact Susan Peterson, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above, by 4 working days prior to the conference call.

The purpose of the meeting is to discuss the subcommittee's draft letter report. Proposed agenda items for the conference call include, but are not limited to: Discussion of NCER responses to action items that resulted from the November 1, 2007 teleconference, and subcommittee responses to the charge questions. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Susan Peterson at (202) 564–1077 or *peterson.susan@epa.gov*. To request accommodation of a disability, please contact Susan Peterson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 8, 2007.

Jeff Morris,

Acting Director, Office of Science Policy.

[FR Doc. E7–22598 Filed 11–16–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, December 6, 2007, from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a briefing of the Advisory Committee members on challenges for 2008, their roles and responsibilities and an ethics briefing.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 29, 2007, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Voice (202) 565–3232 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Howard A. Schweitzer,

General Counsel.

[FR Doc. 07–5717 Filed 11–16–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: ATLANTIC COAST RADIO, LLC, Station WLOB–FM, Facility ID 9180, BPH–20070924AGC, To GRAY, ME, From RUMFORD, ME; CHRISTYAHNA BROADCASTING, INC., Station NEW, Facility ID 160820, BNP–20070926AMO, To SANTEE, CA, From LEMON GROVE, CA; COLLEGE CREEK MEDIA, LLC, Station KYEN, Facility ID 164151, BMPH–20071010ACF, To SEVERENCE, CO, From CHEYENNE, WY; MITCHELL COMMUNITY BROADCASTING CO., Station WPHZ, Facility ID 43248, BPH–20070831ACV, To ORLEANS, IN, From MITCHELL, IN; SHOECRAFT BROADCASTING, INC., Station KIKO, Facility ID 72477, BP–20071002ADQ, To QUEEN CREEK, AZ, From MIAMI, AZ; THE LAST BASTION STATION TRUST, LLC, AS TRUSTEE, Station WCLZ, Facility ID 56569, BPH–20070917ABH, To NORTH YARMOUTH, ME, From BRUNSWICK, ME; TICHENOR LICENSE CORPORATION, Station KPTY, Facility ID 57806, BPH–20070914ACP, To DEER PARK, TX, From MISSOURI CITY, TX; UNIVISION RADIO HOUSTON LICENSE CORPORATION, Station KLTN, Facility ID 65310, BPH–20070914ACQ, To MISSOURI CITY, TX, From HOUSTON, TX.

DATES: Comments may be filed through January 18, 2008.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application 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

1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E7–22602 Filed 11–16–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 07–157; Report No. AUC–07–73–D (Auctions 73 and 76); DA 07–4514]

Auction of 700 MHz Band Licenses Revised Procedure for Auctions 73 and 76; Additional Default Payment for D Block Set at Ten Percent of Winning Bid Amount

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a revised procedure for the upcoming auction(s) of 700 MHz Band licenses scheduled to begin on January 24, 2008 (Auctions 73 and 76), specifically setting the additional default payment percentage at ten percent for the D Block license, and provides further guidance regarding negotiation of the Network Sharing Agreement between the winning bidder of D Block license and the new national Public Safety Broadband Licensee.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: William Huber or Scott Mackoul at (202) 418–0660. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auctions 73 and 76 Revised Procedure Public Notice* released on November 2, 2007. The complete text of the *Auctions 73 and 76 Revised Procedure Public Notice*, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auctions 73 and 76 Revised Procedure Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 07–4514 for the *Auctions 73 and 76 Revised Procedure Public Notice.* The *Auctions 73 and 76 Revised Procedure Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/73/.*

1. The Wireless Telecommunications Bureau (Bureau) announces a revised procedure for the upcoming auction(s) of licenses for services in the 700 MHz Band scheduled to begin on January 24, 2008 (Auctions 73 and 76). Specifically, the Bureau sets the additional default payment percentage at ten percent for the D Block license. The additional default payment percentage amount for licenses in the A, B, and E Blocks remains at fifteen percent, as previously announced. The Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau also provide further guidance as to how they intend to exercise their delegated authority in the event that disputes arise during the negotiation of the terms of the Network Sharing Agreement between the winning bidder for the D Block license and the new national Public Safety Broadband Licensee.

2. Any winning bidder that defaults or is disqualified after the close of an auction is liable for a default payment under § 1.2104(g)(2) of the Commission's rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. In the *700 MHz Auction Procedures Public Notice*, 72 FR 62360, November 2, 2007, the Bureau set the additional default payment percentage at fifteen percent of the defaulted bid for all licenses in blocks that are not subject to package bidding, including the D Block.

3. In establishing the percentage used to calculate the additional default payment, the Bureau seeks to deter defaults and thereby promote the public interest in rapid deployment of new wireless services. As the Bureau noted in the *700 MHz Auction Procedures Public Notice*, the public interest costs of a default on the D Block are likely to be high given the role of the D Block in the establishment of a public/private partnership for the provision of public safety broadband services. At the same time, the Bureau recognizes that factors that may contribute to a default by a winning bidder for the D Block may be different in nature from those affecting winning bidders in other blocks. For example, the D Block winning bidder must negotiate and enter into a Commission-approved Network Sharing Agreement with the new national Public Safety Broadband Licensee consistent with terms and procedures set forth in the *700 MHz Second Report and Order*, 72 FR 48814, August 24, 2007.

4. In the *700 MHz Auction Comment Public Notice*, 72 FR 48272, August 23, 2007, the Bureau proposed adopting a fifteen percent additional default payment for the A, B, D and E Blocks. The Bureau made this proposal with respect to the A, B, and E Blocks because the possibility that no licenses in those blocks will be assigned if the reserve price is not met may give bidders an additional incentive to bid on a license and later default (after determination that the reserve price has been met), in order to help ensure that the reserve price is met and other initial licenses in the block are assigned. In contrast, the Bureau made its proposal with respect to the D Block, for which there is a single nationwide license which will not be assigned unless the D Block reserve price is met, because a default by the winning bidder will delay the especially time-sensitive process of establishing a public/private partnership for the provision of public safety broadband services. As noted in the *700 MHz Auction Procedures Public Notice*, none of the parties responding to the *700 MHz Auction Comment Public Notice* addressed the specific percentage for the additional default payment for licenses in any of the blocks.

5. On further review, the Bureau concludes that a slightly lower percentage should be used for the additional default payment in the case of the D Block license. The Commission must balance the public interest in avoiding defaults on winning bids against the risk of deterring otherwise qualified bidders from participating in the auction. A winning bidder of the D Block license may be presented with unique issues that may result in the bidder defaulting on its bid. The potential impact of those issues is difficult to quantify, and may vary from bidder to bidder. On further review, the Bureau concludes that the additional default percentage on the D Block

should be lower than it is with respect to the A, B, and E Blocks, where the structure of the auction actually may provide an incentive for bidders to default. Accordingly, for the D Block license the Bureau sets the additional default payment percentage at ten percent of the defaulted bid or of the subsequent winning bid, whichever is less. While the Bureau remains mindful that a default could harm the public interest by delaying the deployment of service to the public safety community as well as to consumers, the Bureau concludes that the ten percent additional payment used in several recent auctions serves as a sufficient deterrent to defaults for the D Block.

6. In the *700 MHz Second Report and Order*, the Commission delegated to the Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (Bureaus) the authority to take certain actions jointly in the public interest in the event of a dispute between the winning bidder for the D Block license and the Public Safety Broadband Licensee at the end of the six-month negotiation period for the Network Sharing Agreement (NSA), or on their own motion at any time. In particular, the Commission indicated that these actions may include but are not limited to one or more of the following: (1) Granting additional time for negotiation; (2) issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with that decision; (3) directing the parties to further brief the remaining issues in full for immediate Commission decision; and/or (4) immediate denial of the long-form application filed by the winning bidder for the D Block license.

7. The Bureaus believe that it is in the public interest to provide potential bidders for the D Block license, as well as the public safety community, with further guidance as to how the Bureaus intend to exercise their delegated authority in the event that disputes arise with respect to the negotiation of the terms of the NSA. As a result, the Bureaus announce that they will not exercise their authority for immediate denial of the long-form application filed by the winning bidder for the D Block license, as a result of any dispute over the negotiation of the terms of the NSA, until the Bureaus take one of two steps: (1) Issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with their decision; or (2) referring the issues to the Commission for an immediate decision and the Commission issues such a decision.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E7–22501 Filed 11–16–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the digital Age (''Diversity Committee'') will hold a meeting on December 10, 2007, at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. Reports from the subcommittees will be presented. Barbara Kreisman is the Diversity Committee's Designated Federal Officer.

DATES: December 10, 2007.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Designated Federal Officer of the FCC's Diversity Committee (202) 418–1600 or e-mail: *Barbara.kreisman@fcc.gov*.

SUPPLEMENTARY INFORMATION: At this meeting, the Diversity Committee will discuss and consider possible areas in which to develop recommendations that will further enhance the ability of minorities and women to participate in the telecommunications and related industries.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated Federal Officer for the Diversity Committee by e-mail: *Barbara.Kreisman@fcc.gov* or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission Room 2–A665, 445 12th Street, SW., Washington, DC 20554).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *http://www.fcc.gov/DiversityFAC*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–5745 Filed 11–16–07; 8:45 am]

BILLING CODE 6712–07–M

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 December 4, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Nancy C. Wilson, Memphis, Tennessee; Charles D. Newell, Jr., Germantown, Tennessee; Michael B. Baird, Cordova, Tennessee; Jon A. Reeves, Olive Branch, Mississippi; and Peter T. Hodo, West Point, Mississippi; to acquire voting shares of Merchants & Planters Bancshares, Inc., and thereby indirectly acquire voting shares of Merchants & Planters Bank, both of Toone, Tennessee.

November 14, 2007.

Board of Governors of the Federal Reserve System,

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E7–22551 Filed 11–16–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—10/15/2007			
20072025	Fiserv, Inc	CheckFree Corporation	CheckFree Corporation
20072248	TomTom N.V	Tele Atlas N.V	Tele Atlas N.V.
20080007	Ariba, Inc	Procuri, Inc	Procuri, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/16/2007			
20072209	Higher Liner Foods Incorporated	FPI Limited	Fishery Products International, Inc., Fishery Products International Limited.
20072245	ZAM Holdings, L.P	AutoNation, Inc	AutoNation, Inc.
20072246	ESL Partners, L.P.	AutoNation, Inc.	AutoNation, Inc.
20080005	Idearc Inc	InfoSpace, Inc	InfoSpace.com, Switchboard.com.
20080012	Linsalata Capital Partners Fund V, L.P.	Jesse Ma and Emily Wang	Transpac Imports, Inc.
20080018	Aldabra 2 Acquisition Corp	Madison Dearborn Capital Partners IV, L.P.	Boise Paper Holdings, LLC.
20080031	Lindsay Goldberg & Bessemer, L.P	Michael Gray	The Sweet Life Enterprise, Inc.
20080032	Long Point Capital Fund II, L.P	Stephen C. DeTommaso	Torrent Resources Incorporated.
20080036	Audax Private Equity Fund III, L.P	Callisto Capital, L.P	Mini-Skool Early Learning Centres Holdings, Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—10/17/2007			
20071635	Intel Corporation	Newco B.V	Newco B.V.
20080014	Media Tek Inc	Analog Devices, Inc	Analog Devices APS, Analog Devices, B.V., Analog Devices (China) Co., Ltd., Analog Devices Hong Kong, Ltd., Analog Devices, Inc., Analog Devices India Private Limited, Analog Devices Korea, Ltd., Analog Devices Limited, Analog Devices (Shanghai) Co., Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—10/22/2007			
20072225	Esmark Incorporated	Wheeling-Pittsburgh Corporation	Wheeling-Pittsburgh Corporation.
20072226	Wheeling-Pittsburgh Corporation	Esmark Incorporated	Esmark Incorporated.
20080050	Steel Dynamics, Inc	OmniSource Corporation	OmniSource Corporation.
20080051	Daniel M. Rifkin	Steel Dynamics, Inc	Steel Dynamics, Inc.
20080052	Richard S. Rifkin	Steel Dynamics, Inc	Steel Dynamics, Inc.
20080055	United Natural Foods, Inc	Richard A. Bernstein	Distribution Holdings, Inc.
20080058	UBS International Infrastructure Fund	UBS AG	AIG Highstar Generation LLC, UBS Northern A LLC, UBS Northern B LLC.
20080063	Martin S. Rifkin	Steel Dynamics, Inc	Steel Dynamics, Inc.
20080066	OCM Principal Opportunities Fund IV AIF (Delaware), L.P.	Clear Channel Communications, Inc	Capstar Radio Operating Company; Capstar TX Limited Partnership; CC Licenses, LLC, Citicasters Co.; Citicasters Licenses LP; Clear Channel Broadcasting, Inc., Clear Channel Broadcasting Licenses, Inc.; Clear Channel Identity, LP.
20080071	Sodexho Alliance, S.A	Circle Company Associates, Inc	Circle Company Associates, Inc.

Trans No.	Acquiring	Acquired	Entities
20080074	Quest Midstream Partners, L.P	Enbridge Energy Partners, L.P	Enbridge Pipelines (KPC), Midcoast Holdings No. One, L.L.C., Midcoast Kansas General Partner, L.L.C., Midcoast Kansas Pipeline, L.L.C.
20080076	John T. Chambers	Cisco Systems, Inc	Cisco Systems, Inc.
20080079	Oak Investment Partners XII, Limited Partnership.	PharMedium Healthcare Corporation	PharMedium Healthcare Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—10/23/2007			
20080001	Chier Badger Mining Voting LLC	Atlas Resin Proppants LLP	Atlas Resin Proppants LLP.
20080003	CommunityAmerica Credit Union	Midwest United Credit Union	Midwest United Credit Union.
20080013	Vedior N.V	B2B Workforce, Inc	B2B Workforce, Inc.
20080037	Providence Equity Partners VI L.P	ZeniMax Media Inc	ZeniMax Media Inc.
20080038	Providence Equity Partners VI–A L.P	ZeniMax Media Inc	ZeniMax Media Inc.
20080044	Blackfriars Corp	U.S. Electrical Services, LLC	U.S. Electrical Services D.C. Inc., U.S. Electrical Services Mid-Atlantic, Inc., U.S. Electrical Services New England, Inc., U.S. Electrical Services Southeast, Inc.
20080056	Catterton Partners VI, L.P	OTM Master, LLC	On Target Media, LLC.
20080062	GateHouse Media, Inc.	William S. Morris III and Mary Sue Morris.	Morris Publishing Group, LLC.
20080065	Harron Sharing Partners, L.P	Providence Growth Investors L.P	Northland Cable Networks, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—10/24/2007			
20080041	Natixis	J. Patrick Rogers	Gateway Investment Advisers, L.P.
20080042	Koninklijke Philips Electronics N.V	SHL Telemedicine Ltd	Cardiac Evaluation Services, Inc., Raytel Cardiac Services, Inc., Raytel Imaging Network, Inc.
20080053	DNL 1 Beteiligungsgesellschaft mbH	Wind Point Partners V, L.P.	BIPC Holding Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—10/25/2007			
20080026	John L. Ocampo	RF Micro Devices, Inc.	RF Micro Devices, Inc.
20080090	Ramon Calderon	Pueblo International, LLC	Pueblo International, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—10/26/2007			
20080009	Montagu III L.P	2003 Riverside Capital Appreciation Fund, L.P.	Orthopedic Holding Company.
20080030	Deutsche Telekom AG	Suncom Wireless Holdings, Inc	Suncom Wireless Holdings, Inc.
20080059	ARRIS Group, Inc	C–COR Incorporated	C–COR Incorporated.
20080078	Roark Capital Partners, LP	BP Holdings, Inc	Square Brands International, LLC.
20080087	Emerson Electric Co	Motorola, Inc	Blue Wave Systems, Inc., Blue Wave Systems Limited, Force Computers, Inc., Force Computers (UK) Limited, Motorola Japan Limited, Motorola A.B., Motorola B.V., Motorola Canada Limited, Motorola (China) Electronics, Ltd., Motorola de Nogales Operaciones, S.de R.L. de C.V., Motorola GmbH, Motorola India Private Limited, Motorola Israel Ltd., Motorola Limited, Motorola S.A.S., Motorola Technology Sdn Bhd.
20080094	PAETEC Holding Corp	McLeodUSA Incorporated	McLeodUSA Incorporated.
20080100	James J. Cotter	Michael R. Forman's GST Exempt Trust.	Consolidated Amusement Theatres, Inc., Kenmore Rohnert, LLC, Pacific Theatres Exhibition Corp.
20080101	Vector Capital IV, L.P	Printronix, Inc	Printronix, Inc.
20080104	The Goldman Sachs Group, Inc	Credit-Based Asset Servicing and Securitization LLC..	Litton Loan Servicing LP.
TRANSACTIONS GRANTED EARLY TERMINATION—10/29/2007			
20080016	Susser Holdings Corporation	TCFS Holdings, Inc	TCFS Holdings, Inc.
20080057	RDR Holdings, Inc	J. Roger Kent	Rug Doctor, L.P.
20080095	CRH plc	Quad-C Partners VI, L.P	AMS Holdings, Inc.

Trans No.	Acquiring	Acquired	Entities
20080096	The Resolute Fund II, L.P	David B. Garcia	CEDRA Corporation, Cedra Holding, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/30/2007			
20080011	SRAM Corporation	Andrew J. Ording	Compositech, Inc.
20080021	ValueAct Capital Master Fund, L.P	Sara Lee Corporation	Sara Lee Corporation.
20080025	ValueAct Capital Master Fund III, L.P	Sara Lee Corporation	Sara Lee Corporation.
20080040	Sims Group Limited	Metal Management, Inc.	Metal Management, Inc.
20080080	AMB Industries Incorporated	Lord Ashcroft	OneSource Services, Inc.
20080105	Gores Capital Partners II, LP	Charterhouse Equity Partners III, L.P	United Road Services, Inc.
20080119	MX International S.a.r.l.	Gryphon Partners III, L.P	Consolidated Fire Protection Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—10/31/2007			
20080116	Getco Holding Company, LLC	BATS Trading, Inc	BATS Trading, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/01/2007			
20072091	Reuters Group PLC	StarMine Corporation	StarMine Corporation.
20080027	Coinstar, Inc	Jose Francisco Leon	GroupEx Financial Corporation, JRJ Express Inc.
20080060	Thomas F. Marsico	Bank of America Corporation	Marsico Capital Management, LLC, Marsico Fund Advisors, LLC.
20080122	Honeywell International Inc	Hand Held Products, Inc	Hand Held Products, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—11/02/2007			
20071867	Helix Energy Solutions Group, Inc	Horizon Offshore, Inc	Horizon Offshore, Inc.
20080019	Petroliam Nasional Berhad	KKR European Fund II, Limited Partnership.	Sole Italia S.p.A.
20080084	Svoboda, Collins Fund II, L.P	John C. Tlapek	Cape Electrical Supply, Inc.
20080130	Renaissance Health Service Corporation.	Delta Dental Plan of Michigan, Inc	Delta Dental Plan of Michigan, Inc.
20080134	Electronic Arts Inc	Elevation Partners, L.P.	VG Holding Corp.
20080137	ADC Telecommunications, Inc	LGC Wireless, Inc	LGC Wireless, Inc.
20080147	Spectrum Equity Investors V, L.P	The Generations Network, Inc	The Generations Network, Inc.
20080153	Inverness Medical Innovations, Inc	TA X L.P	Alere Medical Incorporated.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative OR Renee Hallman, Contract Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–5727 Filed 11–06–07; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2008–B1]

Delegations of Lease Acquisition Authority—Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations

AGENCY: General Services Administration.

ACTION: Notice of bulletin.

SUMMARY: The Government Accountability Office and the General Services Administration Office of Inspector General have reported that some Federal agencies using the delegated leasing authority issued to Federal agencies on September 25, 1996, are not following properly the instructions specified as a condition for use of the leasing delegation. The attached bulletin re-emphasizes and updates the conditions, restrictions and reporting requirements specified in the delegation of authority and its supporting information. This bulletin is in keeping with the spirit of Executive Order 13327, ''Federal Real Property Asset Management,'' to maximize the increased governmentwide emphasis on real property inventory management. The Federal Management Regulation and any associated documents may be accessed at GSA's Web site at *http://www.gsa.gov/fmr.* Click on FMR Bulletins.

SUPPLEMENTARY INFORMATION: FPMR D–239, published in the **Federal Register** on October 16, 1996, announced a new GSA leasing program called ''Can't Beat GSA Leasing'' and the delegation of lease acquisition authority issued by the Administrator of General Services to the heads of all Federal agencies in his letter of September 25, 1996. GSA Bulletin FPMR D–239, Supplement 1, published in the **Federal Register** on December 18, 1996, issued supporting information for the delegation. GSA Bulletin FMR 2005–B1, published in the **Federal Register** on May 25, 2005, revised and re-emphasized certain procedures associated with the delegation of General Purpose leasing authority.

There have been several instances reported of agencies failing to meet the conditions required for use of the lease delegation:

1. Several agencies have failed to notify GSA prior to conducting a specific leasing action;

2. Semi-annual performance reports on use of the lease delegation are not being submitted to GSA on a regular basis;

3. Some agencies have exceeded the authority of the delegation, which is

restricted to below prospectus level actions; and

4. Some agencies have used untrained and non-warranted and, therefore, unauthorized contracting personnel to execute contracts on behalf of the Government.

The following bulletin re-emphasizes and updates the conditions, restrictions, and reporting requirements applicable to GSA leasing delegations.

DATES: *Effective Date:* November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, 202–501–1737, or *Stanley.langfeld@gsa.gov.*

Dated: October 5, 2007.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

Real Property

To: Heads of Federal Agencies.

Subject: Revised Implementation Requirements for Delegations of Lease Acquisition Authority.

1. *Purpose.* This bulletin re-emphasizes and modifies certain procedures associated with the use of the delegation of General Purpose leasing authority provided by GSA in 1996 as part of the leasing program called ''Can't Beat GSA Leasing,'' and two other longstanding delegations for Categorical and agency-specific Special Purpose space as currently provided in 41 CFR part 102–73.

2. *Expiration.* This bulletin cancels and replaces Federal Management Regulation (FMR) Bulletin 2005–B1, Delegations of Lease Acquisition Authority—Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations, which was published in the **Federal Register** on May 25, 2005. It contains information of a continuing nature and will remain in effect until canceled.

3. *Background.*

(a) GSA has the statutory authority for acquiring and providing Federal agencies with space. The General Purpose leasing delegation was an outgrowth of GSA's commitment to streamline its leasing operations. Under this program, GSA provided each Federal agency a simple choice: Either engage GSA to acquire the space, or use the delegated leasing authority to perform the space acquisition on its own. This bulletin establishes new requirements for agencies requesting authorization to use the General Purpose and Special Purpose delegation authority and establishes revised reporting requirements, including the submission of documents to GSA at various points in the lease acquisition process, and requires agencies to have in place an organizational structure to address customer issues, correct property deficiencies and enforce all provisions of the lease. This bulletin also addresses requirements for another longstanding delegation for Categorical space, as currently provided in 41 CFR part 102–73.

(b) Executive Order No. 13327, ''Federal Real Property Asset Management'' (69 FR 5897), dated February 4, 2004, promotes the efficient and economical use of Federal real property resources. Among other things, the Executive Order requires Federal agencies to establish performance measures addressing the cost, value, and efficiency of all acquisitions, within the scope of an overall agency asset management plan. Agencies using any of the three GSA lease delegations ((1) General Purpose, (2) Categorical [41 CFR 102–73.140] and (3) Special Purpose [41 CFR 102–73.155]) are expected to apply these measures to their acquisitions.

(c) By letter of September 25, 1996, the Administrator delegated authority to the heads of all Federal agencies to perform all functions related to the leasing of General Purpose space for a term of up to 20 years regardless of geographic location. Lease procurements using this delegation must be compatible with the GSA community housing plans for new Federal construction or any suitable space that will become available in GSA-controlled Federally-owned or -leased space. GSA will advise the agency about any limiting factors (*e.g.*, length of term), so that the lease will be consistent with any community housing plans. The 1996 delegation of authority does not alter the space delegation authorities in Part 102–73 of the FMR, which pertain to ''Categorical Space Delegations'' and ''Special Purpose Space Delegations.'' None of the GSA delegations provide authorization for agencies to conduct procurements on behalf of or to collect rent from other agencies.

4. *General Conditions for the Use of All Leasing Delegations.*

(a) Relocation of Government employees from GSA-controlled Federally-owned or -leased space may not take place unless prior written confirmation has been received from GSA that suitable Government-controlled owned or vacant leased space cannot be provided for them. See 41 CFR 102–73.10.

(b) The average net annual rent (gross annual rent excluding services and utilities) of any lease action executed under these delegations must be below the threshold applicable to GSA's submission of a lease prospectus to its Congressional oversight committees under 40 U.S.C. 3307. The prospectus threshold may be adjusted annually in accordance with 40 U.S.C. 3307(g). The current threshold for each fiscal year can be accessed by entering GSA's Web site at *http://www.gsa.gov/annualprospectusthreshold.*

(c) The authority to lease granted by the delegations may only be exercised by a warranted realty contracting officer fully meeting the experience and training requirements of the Contracting Officer Warrant Program as specified in section 501.603–1 of the General Services Administration Acquisition Manual (GSAM).

(d) Agencies using the GSA leasing delegations are responsible for compliance with all laws, Executive orders, regulations, and Office of Management and Budget (OMB) Circulars governing warranted GSA realty contracting officers. GSA retains the right to assess, at any time, both the integrity of each individual lease action as well as the capability of an agency to perform all aspects of the delegated leasing activities, and, if necessary, to revoke an agency's delegation in whole or in part. Improper use of any delegation may result in revocation of the delegation and denial of future delegation requests.

(e) Federal agencies must acquire and use the space in accordance with all applicable laws, Executive Orders, regulations, and OMB Circulars that apply to Federal space acquisition activities. Attachment 1 is a non-exhaustive list of laws, regulations, Executive Orders, and OMB Circulars governing the space acquisition process. This list may be added to or amended from time to time. As discussed in greater detail in OMB Circular A–11, all leases must be scored prior to execution and must be budgeted in accordance with OMB's scorekeeping rules.

(f) Agencies are responsible for maintaining the capacity to support all delegated leasing activities, including the use of a warranted realty contracting officer, legal review and oversight, construction and inspection management, cost estimation, lease management and administration, and program oversight. Prior to each leasing action, the agency must conduct an assessment of its needs to establish technical requirements and the amount of space necessary to meet mission requirements. Additionally, agencies are expected to acquire space at charges consistent with prevailing market rates

for comparable facilities in the community. Accountability for all leasing activities shall be coordinated through the agency's Senior Real Property Officer.

(g) As a condition for the use of GSA leasing delegation authorizations, agencies are required to make their lease files available for audit by GSA Office of Inspector General personnel or other GSA personnel or authorized agents as determined by the GSA Director, Real Estate Acquisition Division, or his or her successor.

(h) Agencies using the General Purpose delegation are required to provide GSA no less than 18 months advance notice of lease expiration, if there is a continuing need for the space and the agency wishes to use the delegation again to satisfy the requirement.

(i) Effective immediately upon issuance of this bulletin, agencies are no longer authorized to use the General Purpose delegation to enter into leases in excess of 19,999 rentable square feet of space. In addition, agencies are prohibited from using the General Purpose leasing delegation to enter into a Supplemental Lease Agreement to expand the amount of space currently under lease, if such an expansion will cause the agency to lease a total of more than 19,999 rentable square feet of General Purpose space at the leased premises.

5. *Additional Delegation Requirements.*

(a) Pre-authorization submittal requirements from requesting agency for all general purpose lease delegations and for special purpose lease delegations involving 2,500 or more square feet of such special purpose space.

Prior to instituting any new, succeeding, extension or superseding lease action under the General Purpose delegation or the Special Purpose delegation involving 2,500 or more square feet of such Special Purpose space, the head of a Federal agency or its designee shall submit a request for authorization to use this General or Special Purpose lease delegation authority, in writing, to the GSA Director for Real Estate Acquisition Division, Public Buildings Service, 1800 F Street, NW., Washington, DC 20405, or his or her successor, to satisfy the agency's need for General or Special Purpose space. The request also may be submitted electronically to *delegationrequest@gsa.gov.* The requesting agency must submit:

1. A detailed narrative, including cost estimates, explaining why the granting of the request is in the best interests of the Government and how the agency's use of the delegated authority is cost-effective for the Government;

2. The name of the warranted realty contracting officer conducting the procurement; such individual must fully meet the experience and training requirements of the contracting officer warrant program as specified in section 501.603–1 of the GSAM;

3. An acquisition plan for the procurement in accordance with the requirements specified by Subpart 507.1—Acquisition Plans of the GSAM. A sample limited acquisition plan is available online at *http://www.gsa.gov/leasingform;*

4. Justification for the delineated area in accordance with applicable laws and Executive Orders, including the Rural Development Act of 1972, as amended (7 U.S.C. 2204b–1), Executive Order 12072 and Executive Order 13006;

5. A floodplain check in accordance with Executive Order 11988, ''Floodplain Management;''

6. An organizational structure and staffing plan to support the delegation, identifying trained and experienced warranted contracting staff, post-occupancy lease administration staff, real estate legal support, and technical staff to ensure compliance with all applicable laws, regulations and GSA directives governing lease acquisitions and administration of lease contracts;

7. A plan for meeting or exceeding GSA's performance measures (lease cost); GSA's performance measures can be found on OMB's Web site at *http://www.whitehouse.gov/omb/expectmore/detail/10001157.2005.html*; and

8. The total amount of space required, any special requirements, and any associated parking requirements.

GSA will decide whether the requesting agency's exercise of the delegation is in the Government's best interest. Prior to granting the agency's request for a leasing delegation, GSA will consider the following factors: Compatibility with the GSA community housing plan and GSA activities in the specific market, adequacy of the organizational structure and staffing proposed for the delegation, demonstrated ability of the requesting agency to meet or exceed GSA's Public Buildings Service published performance measures for cost of leased space, whether the requesting agency has complied with all applicable laws, Executive Orders, regulations, OMB Circulars, and reporting requirements under previously authorized delegations, and whether the granting of the delegation authorization is cost-effective for the Government. Failure to demonstrate compliance with any of the enumerated factors shall be a basis for denying the agency's request. No delegation will be granted solely for the purpose of accelerated delivery, and no delegation will be granted for space acquisitions totaling more than 19,999 rentable square feet of General Purpose space.

The requesting agency may exercise the authority contained in this delegation only after the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor, notifies the requesting agency, in writing, that suitable GSA-controlled Federally-owned or -leased space is not available to meet its space need and GSA authorizes the agency to conduct the lease procurement. If the agency subsequently decides not to exercise the requested authority, it must provide written notice of such to the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor.

(b) Additional post-award submittal requirements from requesting agency.

If the awarded lease is for an average annual rental in excess of $100,000, including option periods and excluding the cost of operational services, within thirty days after the lease award, the agency must submit to the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor, the following documents or evidence of compliance:

1. The fully-executed lease document and all attachments;

2. The solicitation for offers (SFO) (and any amendments issued during the procurement);

3. The pre-solicitation ad posted on FEDBIZOPPS or in a local publication;

4. If a sole source contract, a Justification for Other Than Full and Open Competition in accordance with section 6.303 of the Federal Acquisition Regulation (FAR) and sections 502.101 and 504.803 of the GSAM;

5. The market survey data identifying properties considered in connection with the space need, including historic buildings considered in accordance with Executive Order 13006;

6. Documentation of compliance with the National Environmental Policy Act of 1969, as amended, in accordance with 40 CFR § 1508.9 and GSA guidance;

7. Documentation that vending facilities will be provided in accordance with the Randolph-Sheppard Act;

8. The final scoring evaluation in accordance with OMB Circular A–11 (2002), Criteria and Scoring Ramifications for Operating and Capital Leases;

9. The Price Negotiation Memorandum, prepared in accordance with section 570.307 of the GSAM and section 15.406–3 of the FAR;

10. Documentation that the building meets all applicable fire and life safety requirements;

11. The seismic Compliance Certification from Successful Offeror consistent with Executive Order 12699 for new buildings (new lease construction) and Executive Order 12941 for existing buildings;

12. Copy of the Post-Award Synopsis posted in FEDBIZOPPS;

13. The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;

14. Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked;

15. The pre-occupancy final inspection report verifying measurement of the demised space as shown on a CAD floorplan, correction of deficiencies, and punch-list items;

16. A Funds Availability Statement signed prior to lease award by a budget official with the requesting agency; and

17. Documentation that the negotiated rental rate is within the prevailing market rental rate for the class of building leased in the delegated action; the documentation may include information from organizations such as SIOR, Black's Guide, Torto-Wheaton, or Co-Star; if the negotiated rental rate exceeds the market range, provide information as to why the market rate was exceeded.

To determine whether the delegation was in the Government's best interest, GSA shall evaluate whether a delegation was cost effective for the Government in the acquisition and delivery of the space. In evaluating cost-effectiveness, GSA shall consider the negotiated rental rate in comparison to the prevailing market rental rate for a similar class of building, and may consider factors as GSA deems appropriate, including, but not limited to, overhead costs, personnel costs, support contract costs, travel costs, accounting costs, and reporting costs. The agency must provide, upon request by GSA, detailed acquisition costs.

If the awarded lease is for an average annual rental of $100,000 or less, including option periods and excluding the cost of operational services, the agency must submit to the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor, the following documents or evidence of compliance:

1. The fully-executed lease document and all attachments;

2. If a sole source contract, a Justification for Other Than Full and Open Competition in accordance with section 6.303 of the Federal Acquisition Regulation (FAR) and sections 502.101 and 504.803 of the GSAM;

3. The market survey data identifying properties considered in connection with the space need, including historic buildings considered in accordance with Executive Order 13006;

4. The final scoring evaluation in accordance with OMB Circular A–11 (2002), Criteria and Scoring Ramifications for Operating and Capital Leases;

5. The Price Negotiation Memorandum, prepared in accordance with section 570.307 of the GSAM and section 15.406–3 of the FAR;

6. Copy of the Post-Award Synopsis posted in FEDBIZOPPS;

7. The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;

8. Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked; and

9. A Funds Availability Statement signed prior to lease award by a budget official with the requesting agency.

6. Federal Real Property Profile Reporting Requirements for General Purpose, Categorical and Special Purpose Leasing Delegations.

(a) The bi-annual reporting of lease performance information for General Purpose, Categorical, and Special Purpose lease delegations to GSA's Office of Governmentwide Policy, as stated in FMR Bulletin 2005–B1 (Delegations of Lease Acquisition Authority—Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations) is no longer required. In its place, and in accordance with Executive Order 13327, Federal agencies are required to submit data for assets in their real property inventory to the Federal Real Property Profile (FRPP). Agencies are required to provide data on all leased assets acquired under a delegation from GSA.

The FRPP data elements that must be submitted for each leased asset include, but are not limited to:

1. Agency/Bureau Name;
2. Size;
3. Location; and
4. Type of Space.

Agencies will also have to indicate whether the leased asset was acquired through a General Purpose, Categorical, or Special Purpose space delegation. A complete list of the FRPP data elements and definitions can be found in the Federal Real Property Council's Guidance for Real Property Inventory Reporting, a copy of which can be obtained from the agency's Senior Real Property Officer. FRPP data concerning GSA lease delegation actions may be provided to GSA PBS upon prior approval of the Federal Real Property Council.

(b) GSA also reserves the right to request additional information on agencies' delegated lease activities based on the data submitted to the FRPP. Failure of an agency to timely or fully provide this additional information may result in GSA's revocation of the delegation to that agency.

Attachment 1

The listing below of laws, regulations, Executive Orders, and OMB Circulars affecting leasing may have applicability thresholds or other factors that impact applicability, and agency contracting officers must determine the individual applicability of each. These laws, Executive Orders, regulations, and OMB Circulars, each as may have been amended from time to time, include, but are not limited to, the following:

1. Anti-Kickback Act of 1986 (41 U.S.C. 51–58);
2. Assignment of Claims Act of 1940 (31 U.S.C. 3727);
3. Balanced Budget Act of 1997 (2 U.S.C. 900, *et seq.*);
4. Competition in Contracting Act of 1984 (41 U.S.C. 251, *et seq.*);
5. Contract Disputes Act of 1978 (41 U.S.C. 601–613);
6. Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 3701–3708);
7. Copeland Act of 1934 (18 U.S.C. 874; 40 U.S.C. 3145(a));
8. Covenant Against Contingent Fees (41 U.S.C. 254(a));
9. Davis-Bacon Act of 1931 (40 U.S.C. §§ (40 U.S.C. 3141–3148);
10. Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707);
11. Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706);
12. Energy Policy Act of 1992 (42 U.S.C. 8253);
13. Examination of Records (41 U.S.C. 254d);
14. Leasing Authority (40 U.S.C. 585);
15. Fire Administration Authorization Act of 1992 (15 U.S.C. 2227);
16. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 901–905);
17. National Historic Preservation Act of 1966 (16 U.S.C. 470–470w–6);
18. Occupational Safety and Health Act of 1970 (29 U.S.C. 651–678);
19. Officials Not to Benefit (41 U.S.C. 22);
20. Prohibitions on Use of Appropriated Funds to Influence Federal Contracting (31 U.S.C. 1352);

21. Prompt Payment Act (31 U.S.C. 3901–3907);
22. Prospectus Authority (40 U.S.C. 3307);
23. Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*);
24. Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157);
25. National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);
26. Small Business Act (15 U.S.C. 631, *et seq.*);
27. Rural Development Act of 1972 (42 U.S.C. 3122);
28. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651–4655);
29. Resource Conservation and Recovery Act of 1976 (42 U.S.C. 690);
30. Executive Order No. 11375, ''Equal Employment Opportunity'' (Oct. 13, 1967, 32 FR 14303);
31. Executive Order No. 11988, ''Floodplain Management'' (May 24, 1977, 42 FR 26951);
32. Executive Order No. 11990, ''Protection of Wetlands'' (May 24, 1977, 42 FR 26961);
33. Executive Order No. 12072, ''Federal Space Management'' (Aug. 16, 1978, 43 FR 36869);
34. Executive Order No. 12699, ''Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction'' (Jan. 5, 1990, 55 FR 835);
35. Executive Order No. 13006, ''Locating Federal Facilities on Historic Properties in Our Nation's Central Cities'' (May 1, 1996, 61 FR 26071);
36. Executive Order No. 13423, ''Strengthening Federal Environmental, Energy and Transportation Management'' (January 26, 2007, 72 FR 3919);
37. Executive Order No. 13327, ''Federal Real Property Asset Management'' (Feb. 4, 2004, 69 FR 5897);
38. Executive Order No. 12941, ''Seismic Safety of Existing Federally Owned or Leased Buildings'' (Dec. 5, 1994, 59 FR 62545);
39. Comprehensive Procurement Guideline For Products Containing Recovered Materials (40 CFR Chapter I Part 247);
40. OMB Circular A–11 (Capital Lease Scoring);
41. Federal Management Regulation (FMR) [41 C.F.R. Chapter 102]; and
42. General Services Administration Acquisition Manual (GSAM) (including the General Services Administration Acquisition Regulation (GSAR) [48 CFR Chapter 5]).

[FR Doc. E7–22530 Filed 11–16–07; 8:45 am]
BILLING CODE 6820–RH–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated System of Records

AGENCY: General Services Administration.

ACTION: Notice of updated system of records.

SUMMARY: The General Services Administration (GSA) is providing notice of an update to the record system, Acquisition Career Management Information System (ACMIS) (GSA/OAP–2). The system collects information to track, verify, update, and manage the careers of Federal employees in acquisition occupations and to manage funds, size, and strength of the Federal acquisition workforce.

DATES: *Effective Dates:* The system of records will become effective without further notice on December 19, 2007 unless comments received on or before that date result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov/.*

ADDRESSES: Comments may be submitted to the Director, Federal Acquisition Institute (MVI), General Services Administration, 9820 Belvoir Road, Bldg. 205, Fort Belvoir, VA 22060.

SUPPLEMENTARY INFORMATION: GSA reviewed this Privacy Act system of record to ensure that it is relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. Nothing in the updated system notice indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the system of records. It also includes the new requirement from OMB Memorandum M–07–16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: October 29, 2007.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/OAP–2

SYSTEM NAME:

Acquisition Career Management Information System (ACMIS).

SYSTEM LOCATION:

The system is maintained for GSA under contract. Contact the System Manager for additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees in acquisition and contracting jobs, including personnel in the 1100 occupational series, contracting officers, and other employees performing acquisition, contracting, and procurement functions for Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed for managing the careers and training of employees in the Federal acquisition occupational field. Records may include but are not limited to: (1) Biographical data such as name, birth date, and educational level; (2) work related data such as service computation date and retirement information, duty station, occupational series and grade, and Social Security Number; and (3) training records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433).

PURPOSES:

To establish and maintain an electronic system to facilitate the career management of Federal employees in acquisition occupations; to ensure that employees meet mandated training requirements; and to effectively manage training funds and the size and qualifications of the Federal acquisition workforce. The system provides to management and to employees in the system up-to-date information on employee certification levels, qualification standards, academic degrees, mandatory and other pertinent training, and warrant status.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by employees themselves and their supervisors, designated analysts and managers, and training centers, to track, verify, and update system information. Designated program managers will use the information to manage training funds and the size and strength of the Federal acquisition workforce.

Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating,

prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary for a decision.

g. To authorized officials of the agency that provided the information for inclusion in ACMIS.

h. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

i. To the National Archives and Records Administration (NARA) for records management purposes.

j. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

All records are stored electronically in web-based computer format.

RETRIEVABILITY:

Records are retrievable by name and/or Social Security Number. Group records are retrieved by organizational code.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with passwords, and the database is maintained behind a firewall certified by the National Computer Security Association.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Acquisition Institute (MVI), General Services Administration, 9820 Belvoir Road, Bldg. 205, Fort Belvoir, VA 22060.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address.

RECORD ACCESS PROCEDURE:

Individuals wishing to access their own records may do so by password. Requests for access also may be directed to the system manager.

CONTESTING RECORD PROCEDURE:

Individuals in the system may amend their own records online, or, as appropriate, request their manager or supervisor to amend the record.

RECORD SOURCE CATEGORIES:

The sources for information in the system are the individuals for whom the records are maintained, the supervisors of those individuals, existing agency systems, and the Office of the Personnel Management's (OPM) Central Personnel Data File (CPDF).

[FR Doc. E7–22531 Filed 11–16–07; 8:45 am]

BILLING CODE 6820–RH–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at Kellex/Pierpont, Jersey City, NJ, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at Kellex/Pierpont, Jersey City, New Jersey, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Kellex/Pierpont.

Location: Jersey City, New Jersey.

Job Titles and/or Job Duties: All workers.

Period of Employment: January 1, 1943 through December 31, 1953.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: November 8, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–22527 Filed 11–16–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the renewal of the generic information collection project: ''Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 3, 2007 and allowed 60 days for public comment. No comments were received. A 30-day **Federal Register** notice was published on October 11th, 2007 to allow an additional 30 days for public comment. No comments were received. However, changes to the estimated annual respondent burden hours and the methodologies that will be used for the data collection require an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 19, 2007.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer). Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality.''

In response to Executive Order 12862, the Agency for Healthcare Research and Quality (AHRQ) plans to conduct voluntary customer surveys to assess strengths and weaknesses in agency program services. Customer surveys to be conducted by AHRQ may include readership surveys from individuals using AHRQ automated and electronic technology databases to determine satisfaction with the information provided or surveys to assess effect of the grants streamlining efforts. Results of these surveys will be used in future program planning initiatives and to redirect resources and efforts, as needed, to improve AHRQ program services. The current clearance will expire January 31, 2008. This is a request for a generic approval from OMB to conduct customer surveys over the next three years.

Methods of Collection

The data will be collected using a combination of methodologies appropriate to each survey. These methodologies include:

- Mail/e-mail surveys;
- Telephone surveys;
- Web-based surveys;
- Focus groups;
- In-person surveys.

ESTIMATED ANNUAL RESPONDENT BURDEN

Type of information collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail/e-mail *	51,000	1	15/60	12,750
Telephone	200	1	40/60	134
Web-based	52,000	1	10/60	8,667
Focus Groups	200	1	2.0	400
In-person	200	1	50/60	167
Total	103,600	na	na	22,118

* May include telephone non-response follow-up in which case the burden will not change.

This information collection will not impose a cost burden on the respondents beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Annual Costs to the Federal Government

The mail and telephone surveys and focus groups will in some cases be carried out under contract. Assuming the contract cost per survey is $50,000–$100,000, and for each focus group is $20,000, total contract costs could be $720,000 per year.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 8, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–5734 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–08–07AH]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Qualitative Evaluation of HIV Counseling, Testing, and Referral Services in Non-Health Care Settings: Eliciting Consumer Views—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Historically, HIV prevention efforts have targeted people at risk for HIV infection with the goal of keeping those who are HIV negative from becoming infected. However, the epidemic has changed with the introduction of highly active anti-retroviral therapy (HAART). People with HIV are now living longer, and with a steady incidence and increasing prevalence, an estimated 1,039,000 to 1,185,000 people are now living with HIV/AIDS in the United States. It is estimated that 25% of HIV-infected persons are not aware of their infection. Critical components in controlling the spread of HIV infection are early knowledge of HIV infection and access to treatment. Awareness of HIV infection has also been shown to reduce high risk sexual behaviors in some populations. Therefore, access to HIV counseling, testing, and referral (CTR) services can play a significant role in reducing HIV transmission.

This project involves formative research to elicit consumer opinions on HIV CTR in non-health care settings. The study entails conducting 21 focus groups with persons who are either HIV positive or at risk for HIV because of their drug injection or sexual behavior. The purpose of the focus groups is to explore: (1) Facilitators and barriers to use CTR services in non-health care settings; (2) ideal service components to decrease barriers to early diagnosis, decrease risk behaviors, link clients with follow-up care, and ensure client rights; (3) perceived risks and benefits of CTR; and (4) preferences for providing informed consent.

CDC will use study findings to inform the development of new recommendations for HIV CTR in non-health care settings. We expect a total of 630 individuals to be screened for eligibility. Of those who are screened, we expect that 252 individuals will join the study and participate in a focus group. There are no costs to the respondents other than their time. The total estimated annual burden hours are 714.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Prospective Participant	Screener	630	1	20/60
Adult Past Clients (HIV-negative)	Facilitator Guide—Adult Past Clients (HIV-negative).	60	1	2
Adult Past Clients (HIV-positive)	Facilitator Guide—Adult Past Clients (HIV-positive).	60	1	2
Adult Potential Clients	Facilitator Guide—Adult Potential Clients	60	1	2
Adolescents (HIV-positive)	Facilitator Guide—Adolescents (HIV-positive).	24	1	2
Adolescents (HIV-negative)	Facilitator Guide Adolescents (HIV-negative).	48	1	2

Dated: November 8, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–22637 Filed 11–16–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0444]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Records Access Requirements for Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's recordkeeping and records access requirements for food facilities.

DATES: Submit written or electronic comments on the collection of information by January 18, 2008.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recordkeeping and Records Access Requirements for Food Facilities—21 CFR 1.337, 1.345, and 1.352 (OMB Control Number 0910–0560)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 414 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350c), which requires that persons who manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food. Sections 1.326 through 1.363 (21 CFR 1.326 through 1.363) of FDA's regulations set forth the requirements for recordkeeping and records access. The requirement to establish and maintain records improves FDA's ability to respond to, and further contain, threats of serious adverse health consequences or death to humans or animals from accidental or deliberate contamination of food.

Description of Respondents: Persons that manufacture, process, pack, hold, receive, distribute, transport, or import food in the United States are required to establish and maintain records, including persons that engage in both interstate and intrastate commerce.

FDA's regulations require that records for non-transporters include the name and full contact information of sources, recipients, and transporters, an adequate description of the food including the quantity and packaging, and the receipt and shipping dates (§§ 1.337 and 1.345). Required records for transporters include the names of consignor and consignee, points of origin and destination, date of shipment, number of packages, description of freight, route of movement and name of each carrier participating in the transportation, and transfer points through which shipment moved (§ 1.352). Existing records may be used if they contain all of the required information and are retained for the required time period.

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

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1.337, 1.345, and 1.352 (records maintenance)	379,493	1	379,493	13.228	5,020,000
1.337, 1.345, and 1.352 (learning for new firms)	18,975	1	18,975	4.790	90,890
Total					5,110,890

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

This estimate is based on FDA's estimate of the number of facilities affected by the final rule entitled ''Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002,'' published in the **Federal Register** of December 9, 2004 (69 FR 71562 at 71630). With regard to records maintenance, FDA estimates that approximately 379,493 facilities will spend 13.228 hours collecting, recording, and checking for accuracy of the limited amount of additional information required by the regulations, for a total of 5,020,000 hours annually. In addition, FDA estimates that new firms entering the affected businesses will incur a burden from learning the regulatory requirements and understanding the records required for compliance. In this regard, the agency estimates the number of new firms entering the affected businesses to be five percent (5%) of 379,493, or 18,975 firms. Thus, FDA estimates that approximately 18,975 facilities will spend 4.790 hours learning about the recordkeeping and records access requirements, for a total of 90,890 hours annually. Therefore, the total annual recordkeeping burden is estimated to be 5,110,890 hours.

Dated: November 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22480 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–2013]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics—(OMB Control Number 0910–NEW)

The draft guidance document, when finalized, will provide information concerning cooperative manufacturing arrangements applicable to biological products subject to licensure under section 351 of the U.S. Public Health Service Act. The draft guidance addresses several types of manufacturing arrangements (i.e., short supply arrangements, divided manufacturing arrangements, shared manufacturing arrangements, and contract manufacturing arrangements) and describes certain reporting and recordkeeping responsibilities, associated with these arrangements, for the licensed manufacturer(s), contract manufacturer(s), and final product manufacturer(s) including the following: (1) Notification of any proposed change in the product, production process, quality controls or facilities; (2) notification of results of tests and investigations related to or impacting the product; (3) notification of products manufactured in a contract facility; and (4) standard operating procedures.

A. Notification of Any Proposed Change in the Product, Production Process, Quality Controls or Facility

Each licensed manufacturer in a divided manufacturing arrangement or shared manufacturing arrangement must notify the appropriate FDA Center regarding proposed changes in the manufacture, testing, or specifications of its product, in accordance with § 601.12 (21 CFR 601.12). In the draft guidance, we recommend that each licensed manufacturer that proposes such a change should inform other participating licensed manufacturer(s) of the proposed change.

For contract manufacturing arrangements, we recommend that the contract manufacturer should share with the license manufacturer all important proposed changes to production and facilities (including introduction of new products or at inspection). The license holder is responsible for reporting these changes to FDA (§ 601.12).

B. Notification of Results of Tests and Investigations Related to or Impacting the Product

In the draft guidance, we recommend the following for contract manufacturing arrangements:

- The contract manufacturer should fully inform the license manufacturer of the results of all tests and investigations regarding or possibly having an impact on the product; and
- The license manufacturer should obtain assurance from the contractor that any FDA list of inspectional observations will be shared with the license manufacturer to allow evaluation of its impact on the purity, potency, and safety of the license manufacturer's product.

C. Notification of Products Manufactured in a Contract Facility

In the draft guidance, we recommend for contract manufacturing arrangements that a license manufacturer cross reference a contract manufacturing facility's Master Files only in circumstances involving certain proprietary information of the contract manufacturer such as a list of all products manufactured in a contract facility. In this situation the license manufacturer should be kept informed of the types or categories of all products manufactured in the contract facility.

D. Standard Operating Procedures

In the draft guidance, we remind the license manufacture that the license manufacturer assumes responsibility for compliance with the applicable product and establishment standards (§ 600.3(t)) (21 CFR 600.3(t)). Therefore, if the license manufacturer enters into an agreement with a contract manufacturing facility, the license manufacturer must ensure that the facility complies with the applicable standards. An agreement between a license manufacturer and a contract manufacturing facility normally includes procedures to regularly assess the contract manufacturing facility's compliance. These procedures may include, but are not limited to, review of records and manufacturing deviations and defects, and periodic audits.

For shared manufacturing arrangements, each manufacturer must submit a separate biologics license application describing the manufacturing facilities and operations applicable to the preparation of that manufacturer's biological substance or product (§ 601.2(a)) (21 CFR 601.2(a)). In this draft guidance, we expect the manufacturer that prepares (or is responsible for the preparation of) the product in final form for commercial distribution to assume primary responsibility for providing data demonstrating the safety, purity, and potency of the final product. We also expect the licensed finished product manufacturer to be primarily responsible for any postapproval obligations, such as postmarketing clinical trials, additional product stability studies, complaint handling, recalls, postmarket reporting of the dissemination of advertising and promotional labeling materials as required under § 601.12(f)(4) and adverse experience reporting. We recommend that the final product manufacturer establish a procedure with the other participating manufacturer(s) to obtain information in these areas.

Description of Respondents: The recordkeeping and reporting recommendations described in this document affect the participating licensed manufacturer(s), final product manufacturer(s), and contract manufacturer(s) associated with cooperative manufacturing arrangements.

Burden Estimate: We believe that the information collection provisions in the draft guidance do not create a new burden for respondents. We believe the reporting and recordkeeping provisions are part of usual and customary business practice. Licensed manufacturers would have contractual agreements with participating licensed manufacturers, final product manufacturers, and contract manufacturers, as applicable for the type of cooperative manufacturing arrangement, to address all these information collection provisions.

This draft guidance also refers to previously approved collections of information found in FDA regulations at parts 201, 207, 211, 600, 601, 606, 607,

610, 660, 803, and 807 (21 CFR parts 201, 207, 211, 600, 601, 606, 607, 610, 660, 803, and 807). The collections of information in §§ 606.121, 606.122, and 610.40 have been approved under OMB Control No. 0910–0116; § 610.2 has been approved under OMB Control No. 0910–0206; §§ 600.12(e) and 600.80 have been approved under OMB Control No. 0910–0308; §§ 601.2(a), 601.12, 610.60, 610.61, 610.62, 610.67, 660.2(c), 660.28(a) and (b), 660.35(a), (c) through (g), and (i) through (m), 660.45, and 660.55(a) and (b) have been approved under OMB Control No. 0910–0338; §§ 803.20, 803.50, and 803.53 have been approved under OMB Control No. 0910–0437; and §§ 600.14 and 606.171 have been approved under OMB Control No. 0910–0458. The current good manufacturing practice regulations for finished pharmaceuticals (part 211) have been approved under OMB Control No. 0910–0139; the establishment registration regulations (parts 207, 607, and 807) have been approved under OMB Control Nos. 0910–0045, 0910–0052, and 0910–0387; and the labeling regulations (part 201) have been approved under OMB Control Nos. 0910–0340 and 0910–0370.

In the **Federal Register** of July 23, 2007 (72 FR 40157), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received on the information collection.

Dated: November 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22489 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0325]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0553. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use—Section 502 of the Federal Food, Drug, and Cosmetic Act/Section 351 of the Public Health Service Act (OMB Control Number 0910–0553)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (FFD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded. Section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), establishes requirements that manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product for introduction into interstate commerce.

In the **Federal Register** of November 30, 2004, FDA published a notice of availability of the final guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' The guidance document provides guidance for the voluntary use of selected symbols in place of text in labeling. It provides the labeling guidance required for: (1) In vitro diagnostic devices (IVDs), intended for professional use under 21 CFR 809.10, FDA's labeling requirements for IVDs, and (2) FDA's labeling requirements for biologics, including IVDs under 21 CFR parts 610 and 660. Under section 502(c) of the FFD&C Act, a drug or device is misbranded, ''If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' The guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that device's labels and/or labeling. Furthermore, the guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and educational outreach information will help to ensure that IVD users will have enough general familiarity with the symbols used, as well as provide a quick reference for available materials, thereby further ensuring that such labeling satisfies the labeling requirements under section 502(c) of the FFD&C Act and section 351 of the PHS Act.

In the **Federal Register** of August 31, 2007 (72 FR 50373), FDA published a 60-day notice soliciting public comment on the proposed collection of information provisions. No comments were received.

The likely respondents for this collection of information are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

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

ESTIMATED ANNUAL REPORTING BURDEN[1]

Section 502 FFD&C Act/Section 351 PHS Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Glossary	1,742	1	1,742	4	6,968[2]
Educational Outreach	1,742	1	1,742	16	27,872
Total					34,840

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time burden.

The glossary and educational outreach activities are inclusive of both domestic and foreign IVD manufacturers. The Center for Devices and Radiological Health's ''Information Retrieval System's Registration and Listing Information'' database listed the total number of IVD manufacturers as 1,742. From this total, 1,206 of the IVD manufacturers were listed as domestic and 536 were listed as foreign manufacturers. Consequently, FDA has based its burden estimate on the maximum possible number of manufacturers choosing to implement the use of symbols in labeling. The number of hours per response for the glossary and educational outreach activities were derived from consultation with a trade association and FDA personnel. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary for the specific symbols used in labels or labeling for the IVDs manufactured. The 16-hour estimate for educational outreach, is inclusive of activities manufacturers used to educate the various professional users of IVDs regarding the meaning of the IVD symbols. Further, this estimate is based on FDA's expectation that IVD manufacturers will jointly sponsor many more educational outreach activities.

Dated: November 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22492 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0219]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Drug User Fees and Fee Waivers and Reductions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0540. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Animal Drug User Fees and Fee Waivers and Reductions–21 CFR Part 740 (OMB Control Number 0910–0540)—Extension

Enacted on November 18, 2003, the Animal Drug User Fee Act (ADUFA) (Public Law 108–130), amended the Federal Food, Drug, and Cosmetic Act and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from, or a reduction of, those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled ''Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions.'' This document provides guidance on the types of fees FDA is authorized to collect under ADUFA, and how to request waivers and reductions from FDA's animal drug user fees. Further, this guidance also describes the types of fees and fee waivers and reductions, what information FDA recommends be submitted in support of a request for a fee waiver or reduction, how to submit such a request, and FDA's process for reviewing requests. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed—application fees, product fees, establishment fees, or sponsor fees.

In the **Federal Register** of June 14, 2007 (72 FR 32851), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Respondents to this collection of information are new animal drug sponsors.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(d)(1)(A) Significant barrier to innovation	5	1 time for each application	5	2	10
740(d)(1)(B) Fees exceed cost	1	do.	1	2	2
740(d)(1)(C) Free choice feeds	5	do.	5	2	10
740(d)(1)(D) Minor use or minor species	10	do.	10	2	20
740(d)(1)(E) Small business	2	do.	2	2	4
Request for reconsideration of a decision	5	do.	5	2	10
Request for review—(user fee appeal officer)	2	do.	2	2	4
Total					60

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

Based on FDA's database system, there are an estimated 250 sponsors of products subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the number of submission types received by FDA in fiscal year 2003. FDA's Center for Veterinary Medicine estimates 30 waiver requests that include the following: 5 significant barriers to innovation, 1 fee exceed cost, 5 free choice feeds, 10 minor use or minor species, 2 small business waiver requests, 5 requests for reconsideration of a decision, and 2 requests for user fee appeal officer. The estimated hours per response are based on past FDA experience with the various waiver requests in FDA's Center for Drug Evaluation and Research. The hours per response are based on the average of these estimates.

Dated: November 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22495 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No 2007N–0227]

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; Medical Devices Third-Party Review Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0375. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices Third-Party Review Under the Food and Drug Administration Modernization Act; Section 523 of the Federal Food, Drug, and Cosmetic Act (OMB Control Number 0910–0375)—Extension

Section 210 of the Food and Drug Administration Modernization Act (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket applications and notifications. Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years. This information collection will allow FDA to continue to implement the accredited

person review program established by FDAMA and improve the efficiency of 510(k) review for low to moderate risk devices.

In the **Federal Register** of June 21, 2007 (72 FR 34257), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Respondents to this information collection are businesses or other for-profit organizations.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section 523 of the act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Requests for accreditation	1	1	1	24	24
510(k) reviews conducted by accredited third parties	14	24	336	40	13,440
Total					13,464

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

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Section 523 of the act	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
510(k) reviews by third-party reviewers	14	24	336	10	3,600

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

I. Reporting

A. Requests for Accreditation

FDA now has approximately 8 years of experience with third-party reviews under section 523 of the act. Currently there are 11 active accredited third parties. FDA does not expect to receive more than 1 application for accreditation per year for a total of 14 accredited third parties who will be conducting third-party reviews.

B. 510(k) Reviews Conducted by Accredited Third Parties

FDA has received 784 510(k) submissions with a third-party review since 2004. FDA estimates that over the next 3 years, they will accredit 1 third-party reviewer per year for a total of 14 third parties. Each third-party reviewer expects to review a total of 24 510(k) submissions per year for an annual total of 336 applications.

II. Recordkeeping

Third-party reviewers are required to keep records of their review of each submission. At the end of 3 years, the agency expects to have 14 accredited persons for review with each third party reviewing on average 24 510(k) applications per year. The agency anticipates approximately 336 510(k) annual submissions for third-party review.

Dated: November 14, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22586 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0305]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0152. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR Part 225 (OMB Control Number 0910–0152)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example,

contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e. batch and stability testing), labels, and product distribution.

This information is needed so that FDA can: (1) Monitor drug usage and possible misformulation of medicated feeds, (2) investigate violative drug residues in products from treated animals, and (3) investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria under part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the act as to safety and also that they meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs that FDA has determined requires more control because of the need for a withdrawal period before slaughter or because of carcinogenic concerns. Conversely, a license is not required and the recordkeeping requirements are less demanding for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control.

In the **Federal Register** of August 16, 2007 (72 FR 46089), FDA published a 60-day notice soliciting public comment on the proposed collection of information provisions. In response to that notice, no comments were received.

Respondents to this collection of information are commercial feed mills and mixer-feeders.

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

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
225.58(c) and (d)	1,060	45	47,700	.5	23,850
225.80(b)(2)	1,060	1,600	1,696,000	.12	203,520
225.102(b)(1)	1,060	7,800	8,268,000	.08	661,440
225.110(b)(1) and (b)(2)	1,060	7,800	8,268,000	.015	124,020
225.115(b)(1) and (b)(2)	1,060	5	5,300	.12	636
Total					1,289,066

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED MIXER-FEEDERS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	100	260	26,000	.15	3,900
225.58(c) and (d)	100	36	3,600	.5	1,800
225.80(b)(2)	100	48	4,800	.12	576
225.102(b)(1) through (b)(5)	100	260	26,000	.4	10,400
Total					16,676

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

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED COMMERCIAL FEED MILLS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	8,000	4	32,000	1	32,000
225.158	8,000	1	8,000	4	32,000
225.180	8,000	96	768,000	.12	92,160
225.202	8,000	260	2,080,000	.65	1,352,000
Total					1,508,160

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

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED MIXER-FEEDERS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	45,000	4	180,000	1	180,000
225.158	45,000	1	45,000	4	180,000
225.180	45,000	32	1,440,000	.12	172,000
225.202	45,000	260	11,700,000	.33	3,861,000
Total					4,393,000

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

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to finally calculate the total burden hours (i.e., number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: November 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22587 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0278]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Voluntary Registration of Cosmetic Product Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 19, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0027. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Voluntary Registration of Cosmetic Product Establishments—(OMB Control Number 0910–0027)—Extension

The Federal Food, Drug, and Cosmetic Act (the act) provides FDA with the responsibility for assuring consumers that cosmetic products in the United States are safe and properly labeled. Cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) may not be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA has developed the Voluntary Cosmetic Registration Program (VCRP). In 21 CFR part 710, FDA requests that establishments that manufacture or package cosmetic products register with the agency on Form FDA 2511 entitled ''Registration of Cosmetic Product Establishment.'' The term ''Form FDA 2511'' refers to both the paper and electronic versions of the form. The electronic version of Form FDA 2511 is available on FDA's VCRP Web site at *http://www.cfsan.fda.gov/~dms/cos-regn.html*. FDA's online registration system, intended to make it easier to participate in the VCRP, was made available industry-wide on December 1, 2005. The agency strongly encourages electronic registration of Form FDA 2511 because it is faster and more convenient. A registering facility will receive confirmation of electronic registration, including a registration number, by e-mail, usually within 7 business days. The online system also allows for amendments to past submissions. Submission of the paper version of Form FDA 2511 remains an option as described in *http://www.cfsan.fda.gov/~dms/cos-reg2.html*. However, due to the high volume of online participation, the VCRP is allocating its limited resources primarily to electronic registrations.

Because registration of cosmetic product establishments is not mandatory, voluntary registration provides FDA with the best information available about the locations, business trade names, and types of activity (manufacturing or packaging) of cosmetic product establishments. FDA places the registration information in a computer database and uses the information to generate mailing lists for distributing regulatory information and for inviting firms to participate in workshops on topics in which they may be interested. FDA also uses the information for estimating the size of the cosmetic industry and for conducting onsite establishment inspections. Registration is permanent, although FDA requests that respondents submit an amended Form FDA 2511 if any of the originally submitted information changes.

In the **Federal Register** of July 19, 2007 (72 FR 39626), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Part	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
710	FDA 2511	135	1	135	0.2	27

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

FDA bases its estimate on its review of the registrations received over the past 3 fiscal years. The total annual responses (averaged over fiscal years 2004 through 2006) is 9 times the previous total reported in 2004 (for fiscal years 2000 through 2003) due to increased participation by cosmetic companies, because of a renewed industry commitment to the program, and implementation of the online registration system on December 1, 2005. Due to the ease of online registration, FDA estimates that the hours per response have declined from 0.4 hours to 0.2 hours. Thus, the total estimated hour burden for this information collection is 27 hours, which is 4.5 times the previous level reported in 2004.

Dated: November 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–22588 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006F–0058]

ARCH Chemicals, Inc.; Withdrawal of Food Additive Petition FAP 6B4764

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6B4764) proposing that the food additive regulations be amended to provide for the safe use of poly (iminoimidocarbonyliminoimidocarbon yliminohexamethylene) hydrochloride (CAS Reg No. 32289–58–0) as an antimicrobial agent in the manufacture of food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Furukawa, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1216, e-mail: *Elizabeth.Furukawa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 15, 2006 (71 FR 7975), FDA announced that a food additive petition (FAP 6B4764) had been filed by ARCH Chemicals, Inc., 1955 Lake Park Dr., suite 100, Smyrna, GA 30080. The petition proposed to amend the food additive regulations in 21 CFR 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* and 21 CFR 176.180 *Components of paper and paperboard in contact with dry food* to provide for the safe use of poly (iminoimidocarbonyliminoimido carbonyliminohexamethylene) hydrochloride (CAS Reg. No. 32289–58–0) as an antimicrobial agent in the manufacture of food-contact paper and paperboard. ARCH Chemicals, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 9, 2007.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E7–22536 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–07–7001]

Memorandum of Understanding Between the Food and Drug Administration and the Association of American Feed Control Officials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Association of American Feed Control Officials (AAFCO). The purpose of this MOU is to facilitate FDA's collaboration with AAFCO in the AAFCO New and Modified Ingredient Definition Process by clarifying the responsibilities of FDA and AAFCO in defining feed ingredients, in providing mechanisms for resolving disputes that may arise, and in providing mechanisms for modifying the ingredient definition process when required.

DATES: The agreement became effective August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Division of Animal Feeds (HFV–220), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6864.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

BILLING CODE 4160–01–S

April 2007 MOU FDA and AAFCO

FDA Record # 225-07-7001

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. FOOD AND DRUG ADMINISTRATION AND THE ASSOCIATION OF AMERICAN FEED CONTROL OFFICIALS

BACKGROUND

The Food and Drug Administration (FDA) is the primary federal agency responsible for enforcing the Federal Food, Drug, and Cosmetic Act (the Act). Included within the FDA's responsibilities under the Act is the responsibility for regulation of animal foods/feeds. This Act provides the authority for FDA to regulate essentially all ingredients and additives used in animal feed.[1] Depending on its intended purpose/use, an ingredient/additive could be classified as a food additive, a generally recognized as safe substance, a new animal drug, or a color additive.

The Association of American Feed Control Officials (AAFCO) is a voluntary membership organization of the states in the U.S. and Federal government agencies, as well as government agencies from other countries, responsible for the execution of laws and regulations pertaining to the production, labeling, distribution, use, and/or sale of animal feed and feed ingredients The purpose of AAFCO is to provide a mechanism for developing and implementing uniform and equitable laws, regulations, standards, definitions, and enforcement policies for the manufacturing, labeling, and sale of animal feeds and ingredients. AAFCO provides" model laws" and regulations that nearly all states have adopted as the basis for their feed control program. AAFCO membership consists of all fifty states, Puerto Rico, Costa Rica, Canada, FDA, U.S. Department of Agriculture and several universities. It is governed by Officers and a Board of Directors (known collectively as the Board) elected by the membership at the annual meeting of AAFCO. FDA is a member of AAFCO and serves in an advisory role on the AAFCO Board.

AAFCO provides a process (herein called the AAFCO New and Modified Feed Ingredient Definitions Process) to identify the suitability of ingredients used in animal feed. This process helps to ensure ingredients used in animal feed are suitable for that use and also establishes a common or usual name for the ingredients. This common or usual identity is required on feed labels by both federal law and state regulations. The AAFCO New and Modified Feed Ingredient Definitions Process is operated by AAFCO, with FDA providing scientific and technical assistance. The result of this collaboration has been the establishment of an effective program of benefit to feed regulatory officials, the industry and the public.

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[1]Some articles added to animal feed fall under the purview of other Federal agencies. Feed-through pesticides are regulated by the Environmental Protection Agency (EPA) and vaccines added to animal feed are the responsibility of the United States Department of Agriculture (USDA).

April 2007 MOU FDA and AAFCO

FDA Record # 225-07-7001

PURPOSE

The purpose of this memorandum is to facilitate FDA' s collaboration with AAFCO in the AAFCO New and Modified Feed Ingredient Definition Process by clarifying the responsibilities of FDA and AAFCO during the feed ingredient definition and providing mechanisms for resolving disputes that arise and for modifying the process when required.

AGREEMENT

The FDA and AAFCO agree to the following:

A. AAFCO maintains definitions of various feed ingredients, which includes the ingredient name, description, and any appropriate limitations for its use, and publishes the currently accepted feed ingredient definitions annually in the AAFCO Official Publication (OP).

B. Petitions for potential new feed ingredients or petitions to modify an existing feed ingredient definition are reviewed by AAFCO investigators chosen by the AAFCO Board and FDA scientists assigned by the Agency's Division Director/Team Leader in the Division of Animal Feeds.

C. AAFCO will seek advice and a letter of concurrence regarding the suitability of the feed ingredient for its proposed use from FDA prior to adopting new feed ingredient definitions or amending existing ones.

D. AAFCO will provide to FDA upon FDA's request (1) industry-generated petitions and (2) requests from AAFCO for new feed ingredients and for modifications of existing definitions within 30 working days of AAFCO's receipt of the request. AAFCO's Board-assigned AAFCO feed investigator will make the initial contact with FDA.

E FDA will allow the AAFCO Board or Board-assigned AAFCO feed investigator to request consultation from FDA on petitions for new feed ingredient definitions and modifications of existing definitions. AAFCO's initial contact will be the Director of the Division of Animal Feeds, Center for Veterinary Medicine, FDA. FDA will provide within 30 working days its decision whether it will be able to consult with AAFCO.

F. If FDA determines it will publish a food additive regulation under section 409 of the Act and FDA's implementing regulations in 21 CFR 571.1 for a feed ingredient, AAFCO will not include that ingredient in the AAFCO OP until FDA completes the regulation.

G. Disagreements on existing feed ingredient definitions, the establishment of new ingredient definitions, or modifications of existing definitions between FDA and

AAFCO will be referred to an arbitration board comprised of the two individuals appointed by the AAFCO Board of Directors; the Director, FDA/CVM's Office of Surveillance and Compliance; and the Director, FDA/CVM Division of Animal Feeds.

H. AAFCO will accept all requests from FDA to remove an ingredient definition from the AAFCO OP upon FDA presenting convincing information/scientific evidence showing the ingredient is no longer suitable for its stated use. At that year's annual meeting, AAFCO will request a vote of the membership to remove the ingredient from the Feed Ingredient Definitions section in the AAFCO OP. Disagreements between AAFCO and FDA would be handled as stated in section G.

I. AAFCO is allowed, on its own initiative and with FDA concurrence, to request that an AAFCO Feed Ingredient Definition be removed upon AAFCO providing convincing information/scientific evidence showing the ingredient is no longer suitable for its stated use. At that year's annual meeting, AAFCO will request a vote of the membership to remove the ingredient from the Feed Ingredient Definitions section in the AAFCO OP. Disagreements between AAFCO and FDA would be handled as stated in section G.

J. This Memorandum of Understanding will be reviewed annually by the AAFCO Board and FDA and may be modified by mutual consent of both parties. Parties will provide each other with a 30 working day advance written notice regarding the modifications being sought. Any modification will be published in the Federal Register.

LIAISONS

For the FDA.

Sharon Benz, Ph.D.
Supervisory Scientist, Division of Animal Feeds
Center for Veterinary Medicine, FDA
7519 Standish Place
Rockville, MD 20855
240-453-6864
Sharon.benz@fda.hhs.gov

For the AAFCO.

Sharon Krebbs
765-385-1029
Sharon@aafco.org

April 2007 MOU FDA and AAFCO

FDA Record # 225-07-7001

PERIOD OF AGREEMENT

This agreement, when accepted by both parties, will have an effective period of performance from date of signature until 9/1/2012 (if no expiration date, so state), and may be modified by mutual consent by both parties or may be extended or terminated as agreed upon by FDA and AAFCO. Any notice of termination will be published in the Federal Register.

APPROVED AND ACCEPTED FOR THE AAFCO

By Ricky Schroeder

Printed Name Ricky Schroeder

Title President

Date 8/21/2007

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By SFS/M

Printed Name Stephen F. Sundlof

Title Director, FDA/CVM

Date 8/30/07

[FR Doc. 07–5748 Filed 11–16–07; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0449]

Draft Guidance for Food and Drug Administration Advisory Committee Members and Food and Drug Administration Staff: Voting Procedures for Advisory Committee Meetings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document for FDA advisory committee members and FDA staff entitled, ''Voting Procedures for Advisory Committee Meetings.'' This draft document is intended to provide guidance on advisory committee voting procedures that can be used for the voting process when votes are taken during advisory committee meetings. It does not to define when votes should be taken.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comment on the draft guidance by January 18, 2007.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 800–835–4709 or 301–827–1800. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy, Planning, and Preparedness (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for FDA advisory committee members and FDA staff entitled, ''Voting Procedures for Advisory Committee Meetings,'' dated November 2007.

FDA's advisory committees provide independent, expert advice to the agency on a range of complex scientific, technical, and policy issues, including questions related to the development and evaluation of products regulated by FDA. Advisory committees are a valuable resource to FDA, and they make an important contribution to the agency's decision-making processes. Although advisory committees provide recommendations to FDA, FDA makes the final decisions.

Advisory committees typically communicate advice or recommendations to the agency in two ways. First, committee members routinely share their individual thoughts and recommendations during the discussion of a particular matter at an advisory committee meeting. Second, advisory committees often vote on a question or series of questions posed to the committee during a committee meeting.

Votes can be an effective means of communicating with FDA because they provide feedback on discrete questions. These questions are generally scientific in nature and can involve a range of subjects, including evaluation of post-market safety data or pre-market assessment of a product's risk/benefit profile. Since all members vote on the same question, the results help FDA gauge a committee's collective view on complex, multi-faceted issues. This view helps inform the agency's own deliberations on scientific and regulatory matters.

This draft guidance recommends adopting uniform voting procedures to help maximize the integrity and meaning of voting results. In developing these recommendations, FDA is mindful of the legal requirements of the Federal Advisory Committee Act, other relevant statutes (e.g., the Federal Food, Drug, and Cosmetic Act), regulations (e.g., 21 CFR Part 14) , guidance, and policies, and the goals of FDA's of advisory committee program.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on recommended uniform procedures that can be used for the voting process when votes are taken during advisory committee meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: November 14, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. 07–5751 Filed 11–15–07; 9:06 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Proposed Collection; Comment Request; Formative Research and Pilot Studies for the National Children's Study

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 National Institute of Child Health and Human Development (NICHD), 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: Formative Research and Pilot Studies for the National Children's Study. *Type of Information Collection Request:* NEW. *Need and use of information collection:* The NICHD seeks to obtain OMB's generic approval to conduct pilot and formative research to be used in the development of instruments, materials, and procedures for the National Children's Study (NCS). The NCS is a long-term cohort study of environmental influences on child health and development authorized under the Children's Health Act of 2000. The Act specifies a broad definition of environment, including biologic, chemical, physical, and psycho-social factors and authorizes the NICHD to plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of those exposures on child health and human development. Further details pertaining to the NCS background and planning, including the NCS Research Plan, can be found at: *http://nationalchildrensstudy.gov.* The proposed data collection program will include community outreach materials, medical provider and participant materials, questionnaires and measures, use of technology such as Interactive Voice Recognition (IVR), and other aspects related to data collection. Activities will include small focused studies to test data collection items and methods on a specific or targeted population, validation of questionnaires for targeted populations, focus groups within the NCS communities to test forms and procedures, cognitive interviews to test data items, and the use of materials on targeted populations such as medical providers and hospitals, and materials translated into other languages. These activities will be conducted over the life of the study to develop procedures and materials for each stage of data collection. The results of these pilot tests will be used to maximize the efficiency of study procedures, materials, and methods for community outreach, engagement of the medical community, for recruiting and retaining study subjects prospectively across study visits and to ensure that data collection methodologies are efficient and valid for all potential participants. Without this information, NCS will be hampered in its efforts to effectively publicize the NCS, gain public and professional support, and effectively recruit and retain respondents and collect data over the life of the Study. *Affected entities:* Individuals. *Types of respondents:* People potentially affected by this action are pregnant women or women of childbearing age, their husbands or partners, health care professionals, and community leaders. The annual

reporting burden is as follows: *Estimated Number of Respondents:* 3,150. *Frequency of Response:* On occasion (see Burden table). *The Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* Varies with study type. *Estimated Total Annual Burden Hours Requested:* 5,825. The estimated annualized cost to respondents is $114,250 (based on rates listed in the burden table). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents (estimated hourly rate)	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Small focused studies ($10)	1,250	1	1.5	1,875
Focus groups with potential participants ($10)	350	1	3.0	1,050
Focus groups with health care professionals ($50)	350	1	3.0	1,050
Focus groups with community leaders ($10)	350	1	3.0	1,050
Medical provider feedback on materials through informal in-person contacts ($50)	700	1	0.5	350
Cognitive interviews ($10)	150	1	3.0	450
Total	3,150			5,825

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 function of the agency, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including 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 Ruth A. Brenner, MD, MPH, National Institute of Child Health and Human Development, Building 6100, 5C01, 6100 Executive Blvd, Bethesda, Maryland 20892, or call non-toll free number (301) 594–9147, or e-mail your request, including your address to *ncsinfo@mail.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.

Paul Johnson,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–22592 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Division of Extramural Research and Training; Submission for OMB Review; Comment Request; Program Assessment and Evaluations for NIEHS—Asthma Research

Summary: Under the provision of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 9, 2007, page 26399 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Proposed Collection: Title: Program Assessment and Evaluations for NIEHS—Asthma Research. *Type of Information Collection Request:* NEW. *New and Use of Information Collection:* National Institute of Environmental Health Sciences, Division of Extramural Research and Training (DERT). DERT, with contract support from Battelle Centers for Public Health Research and Evaluation, is examining the impact of its research portfolio. Focusing specifically on one portion of the research portfolio—asthma research—DERT proposes to supplement extant data sources with a primary data collection activity. The purpose of the proposed primary data collection is to obtain information from grantees regarding the impact of their funded asthma research in the short-, intermediate-, and long-term. This will be done through a survey of grantees that includes questions about the impact of funding on career development, the field of asthma research, public attitudes, commercial product development, clinical practice, business and industry practices, and long-term human and environmental health. *Frequency of Response:* One time. *Affected Public:* Individuals. *Type of Respondents:* Individuals receiving asthma funding. A 15-minute, close-ended, multi-mode (web and paper) survey will be administered to the universe of NIEHS-funded asthma researchers (N=179) and comparison agency asthma researchers (N=1371). Comparison agencies include other NIH institutes (NICHD, NIAID, NIA, NHLBI), the CDC, AHRQ, and the EPA. The survey development process included formative interviews with a small sample of NIEHS asthma researchers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1550; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response: 15 minutes;* and *Estimated Total Annual Burden Hours Requested:* 387.5. The annualized cost to respondents is estimated at $13,039.38. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ANNUALIZED BURDEN TABLE

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden per response	Estimated total annual burden hours requested
Asthma grantee survey	1550	1	.25	387.5
Total				387.5

Request 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 function of the agency, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: 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: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Jerry Phelps, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–21, 111 T.W. Alexander Drive, RTP, NC 27709. Phone (919) 541–4259. E-mail: *phelps@niehs.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: November 7, 2007.

Marc Hollander,

NIEHS, Associate Director for Management.

[FR Doc. E7–22594 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Proposed Collection; Comment Request; Pilot Study for the National Children's Study

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 National Institute of Child Health and Human Development (NICHD), 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: Pilot Study for the National Children's Study, *Type of Information Collection Request:* NEW, *Affected entities:* Households and individuals. *Types of respondents:* People potentially affected by this action are pregnant women, women age 18–49 years of age, their husbands or partners, and their children who live in selected areas within the seven (7) National Children's Study Vanguard sites enumerated below. A small number of health care professionals, community leaders, and child care personnel are also potential respondents. *Frequency of Response:* On occasion. See burden table for estimated number of annual responses for each respondent. *Need and use of information collection:* The purpose of this Study is to pilot test protocols, policies, and procedures for the National Children's Study (NCS) with the goal of improving the efficiency of study procedures and enhancing the subsequent implementation of the NCS. The NCS is a long-term cohort study of environmental influences on child health and development authorized under the Children's Health Act of 2000. The Act specifies a broad definition of environment, including biologic, chemical, physical, and psycho-social factors and authorizes NICHD to plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of those exposures on child health and human development. This data collection will test procedures for population-based sampling and recruitment of pregnant women and women of child-bearing age, test study logistics, and estimates of subject burden, and evaluate data collection strategies including interviews and acquisition of biologic and environmental samples. In addition, participants will also be asked to provide qualitative and quantitative input on their feelings regarding participation in this Study, to enhance the lessons that can be learned and applied to improve the efficiency of the full NCS. Further details pertaining to the NCS background and planning, including the NCS Research Plan, can be found at: *http://nationalchildrensstudy.gov.* This Pilot Study will be carried out in the seven NCS ''Vanguard'' locations previously selected as the initial study sites. These sites are Orange County, CA; Duplin County, NC; Queens County, NY; Montgomery County, PA; Salt Lake County, UT; Waukesha County, WI; and the aggregate of Lincoln, Pipestone, and Yellow Medicine Counties, MN and Brookings County, SD. This data collection is intended to begin with household enumeration and enrollment of women, proceed through pregnancy and birth, and continue with follow-up of children for up to 21 years. This application is for the first three years of data collection, which includes data collection through the visits at which some of the children will be 24 months old. Details of data collections beyond this period will be addressed at the time of renewal or in future applications. Women who are pregnant will be eligible for participation if, at the time of household enumeration and screening, they are within the first trimester of pregnancy. Women who are not pregnant will be eligible if, at the time of household enumeration and screening, they are 18–49 years of age, are neither surgically nor medically sterile, and can participate in the consent process. A subset of age-eligible women with a high likelihood of pregnancy (*e.g.,* planning to become pregnant) will be enrolled to enable assessment of peri-conceptional

exposures, should they become pregnant. The remainder of the study population will comprise women enrolled early in pregnancy. The seven centers combined will follow approximately 1000 infants born to women enrolled in the first year of this Pilot Study. Infants born to women enrolled in this Pilot Study but born after the eligibility period for the Pilot will be eligible for enrollment in the full NCS. The schedule of participant contacts for this data collection includes home visits, clinic visits, and phone contacts, and is described in the NCS Research Plan: *http://nationalchildrensstudy.gov.* Home visits before and during pregnancy will include collection of interview data, environmental specimens such as air and dust samples, maternal and paternal biospecimens such as blood and hair samples, and a brief physical examination including anthropometric measures and blood pressure. During pregnancy, women will receive up to three fetal ultrasounds to assess fetal growth. At birth, cord blood and placental samples will be collected and the infant will receive a brief developmental assessment. During infancy, home visits will include collection of interview data, environmental specimens, biospecimens from the infant and parents, a brief physical examination of the infant, and assessment of infant development and parental-infant interactions. *Burden statement:* The public burden for this Study will vary depending on the eligibility and pregnancy status of potential participants at the time of household screening. Women who are not pregnant at the time of screening will have varying burden depending on their likelihood of pregnancy and, should they become pregnant, the time to pregnancy. The burden for women enrolled during pregnancy will depend on when during pregnancy they are identified and enrolled in the Study. The table provides an annualized average burden per person for each stage of the Pilot Study over the three year period of the Study.

ESTIMATED AVERAGE ANNUAL BURDEN FOR PILOT STUDY FOR NATIONAL CHILDREN'S STUDY, BASED ON THREE YEAR TOTALS

Types of respondents (estimated hourly rate)	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Household activities ($12/hr):				
Household enumeration	76,911	0.33	0.08	2,051
Eligibility screening	45,316	0.33	0.08	1,208
Preconception activities ($12/hr):				
High probability women	4,117	1.33	1.15	6,285
Moderate prob, women	5,500	1	0.08	458
Low probability women	3,578	0.33	0.08	95
Pregnancy activities—women ($12/hr)	954	7	0.62	4,134
Birth activities—mothers & children ($12/hr)	912	2	0.38	684
Postnatal activities—mothers & children ($12/hr)	893	4	0.81	2,887
Fathers ($12/hr)	954	2	0.72	1,370
Health care providers ($90/hr)	500	0.33	0.05	8
Community leaders ($75/hr)	500	0.33	0.05	8
Child care providers ($25/hr)	364	0.33	1.00	121
Total	*79,229			19,209

*Total number of respondents is less than the sum of the column since the mothers will be identified in the household enumeration and screening.

The estimated annualized cost to respondents is $234,488 based on the differential hourly rate estimates in the above table. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request 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 function of the agency, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including 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 Kenneth C. Schoendorf, MD, MPH, National Institute of Child Health and Human Development, Building 6100, 5C01, 6100 Executive Blvd, Bethesda, Maryland, 20892, or call non-toll free number (301) 594–9147, or e-mail your request, including your address to *ncsinfo@mail.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: November 6, 2007.

Paul Johnson,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–22597 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Emerging Neuroscience and Training Integrated Review Group.

The Emerging Neuroscience and Training Integrated Review Group shall

provide advice and recommendations to the Director, NIH, and the Director, Center for Scientific Review (CSR), on the scientific and technical merit of applications for grants-in-aid for research, research training or research-related grants and cooperative agreements, or contact proposals relating to (1) the crosscutting technologies that serve all of the neurosciences, including neuroinformatics and imaging and molecular neurogenetics; (2) crosscutting emerging science in the small business area for all of the neurosciences; and (3) the training areas for all of the neurosciences.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: November 1, 2007.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 07–5744 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

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 meetings.

The meetings 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Trial Registry.

Date: December 4, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project in Cardiovascular Disease.

Date: December 14, 2007.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington, DC Franklin Square, 815 14th Street, NW., Washington, DC 20055.

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *patton@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 13, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5739 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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: Environmental Health Sciences Review Committee.

Date: November 28–29, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill Hotel, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5736 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; ''Prion Diseases''

Date: December 6, 2007.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5737 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Community Health Program In Rehabilitation

Date: December 12, 2007.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5738 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

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 meetings.

The meetings 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 Mental Health Special Emphasis Panel, RAPID Application Dealing with Stigma.

Date: November 26, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852,(Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, RM 6132, MSC 9608,Bethesda, MD 20852–9609, 301–443–0322, *elight@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, RAPID Application Dealing with Autism.

Date: November 27, 2007.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, RM 6132, MSC 9608,Bethesda, MD 20852–9609, 301–443–0322, *elight@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 13, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5740 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Working Education Training Program.

Date: December 5, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Services, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541-1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 13, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5741 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, NIDCD Clinical Center Review.

Date: December 10, 2007.

Time: 12 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, Mph, Chief, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 9, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5742 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel, MBRS Support of Competitive Research.

Date: November 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: C. Craig Hyde, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN18, Bethesda, MD 20892, 301–435–3825, *ch2v@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 8, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5743 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Anti-TAG72 Monoclonal Antibodies as a Tumor-Specific Imaging Agent and Drug Delivery Therapeutic

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following patents or patent applications U.S. Provisional Patent Application Nos. 60/106,534 and 60/106,757 filed October 31, 1998 and November 2, 1998; U.S. Patent No. 6,818,749 issued November 16, 2004; and U.S. Patent Application 10/927,433 filed August 25, 2004 as well as issued and pending foreign counterparts [HHS Ref. No. E–259–1998/0, /1, and /2]; U.S. Provisional Patent Application No. 60/498,903 filed August 29, 2003 and U.S. Patent Application No. 10/570,220 filed February 28, 2006 as well as issued and pending foreign counterparts [HHS Ref. No. E–323–2003/0]; U.S. Patent Application Nos. 07/510,697 filed July 17, 1990; 07/964,536 filed October 20, 1992; 08/261,354 filed June 16, 1994 and issued as U.S. Patent No. 5,976,531 on November 2, 1999; 08/487,743 filed June 7, 1995; 08/961,309 filed June 30, 1997 and issued as U.S. Patent No. 6,495,137 on December 17, 2002; and 10/255,478 filed September 25, 2002 and issued as U.S. Patent No. 7,179,899 on February 20, 2007 as well as issued and pending foreign counterparts [HHS Ref. E–347–2003/0, /1, /2, and /3]; U.S. Patent Application Nos. 07/259,943 filed October 19, 1988; 07/261,942 filed January 28, 1988; 07/424,362 filed October 19, 1989; 08/017,570 filed February 16 and issued as U.S. Patent No. 5,472,693 on December 5, 1995, 1993; 08/040,687 filed March 31, 1993 and issued as U.S. Patent No. 6,051,225 on April 18, 2000; 08/822,028 filed March 24, 1997 and issued as U.S. Patent No. 5,993,813 on November 30, 1999; 08/479,285 filed June 7, 1997 and issued as U.S. Patent No. 6,207,815 on March 27, 2001; 08/823,105 filed March 24, 1997; and 09/503,653 filed February 14, 2000 and issued as U.S. Patent No. 6,641,999 on November 4, 2003 as well as issued and pending foreign

counterparts [HHS Ref. D–003–1992/0, /1, /2, /3, and /4]; U.S. Patent Application Nos. 07/259,943 filed December 11, 1992; 08/263,911 filed June 21, 1994 and issued as U.S. Patent No. 5,877,291 on March 2, 1999; 08/263,911 filed June 21, 1994; 08/481,006 filed June 6, 1995 and issued as U.S. Patent No. 5,892,020 on April 6, 1999 as well as issued and pending foreign counterparts [HHS Ref. D–004–1992/0 and /1]; U.S. Provisional Patent Application No. 60/030,173; U.S. Patent Application Nos. 09/025,203 filed February 18, 1998 and issued as U.S. Patent No. 6,348,581 on February 19, 2002; 09/998,817 filed October 31, 2001 and issued as U.S. Patent No. 6,753,420 on June 22, 2004; 09/999,021 October 31, 2001 and issued as U.S. Patent No. 6,737,060 on May 18, 2004; 09/999,025 filed October 31, 2001 and issued as U.S. Patent No. 6,737,061 on May 18, 2004; 09/999,040 filed October 31, 2001 and issued as U.S. Patent No. 6,753,152 issued June 22, 2004; 10/040,997 filed October 31, 2001 and issued as U.S. Patent No. 6,752,990 on June 22, 2004 as well as issued and pending foreign counterparts [HHS Ref. D–001–1996/0 and /1] to Enlyton, Ltd., which is located in Columbus, Ohio. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Anti-TAG72 monoclonal antibodies with (i) Licensee's proprietary fluorescence-based, tumor-specific imaging agent for use in tumor localization and visualization; (ii) Licensee's proprietary tumor-specific imaging agent for use in positron emission tomography (''PET'') for tumor localization and visualization; and (iii) Licensee's proprietary tumor-specific agent coupled with a proprietary compound for therapeutic use in targeted drug therapy. For the avoidance of doubt, gamma emitting isotopes are specially excluded from the field of use.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 18, 2008 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Michelle A. Booden, PhD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; E-mail: *boodenm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology describes the humanization of a murine anti-carcinoma antibody CC49 which has been shown to react with Tumor Associated Glycoprotein 72 (TAG–72), an antigen which is expressed on human breast, ovarian, colorectal, and other carcinomas.

The invention includes a new method of humanization of a rodent antibody which is based on grafting all the Complementarity Determining Residues (CDRs) of a rodent antibody onto a human antibody framework. Additionally, the method identifies Specificity Determining Residues (SDRs), the amino acid residues in the hypervariable regions of an antibody that are most critical for antigen binding activity and of rendering any antibody minimally immunogenic in humans by transferring the SDRs of the antibody to a human antibody framework. The resulting humanized antibodies, including CDR variants thereof (including a CH2 deleted version), are also embodied in the invention, as are methods of using the antibodies for therapeutic and diagnostic purposes.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 7, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–22595 Filed 11–16–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Date for the Port of Lake Charles, LA

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Port of Lake Charles, LA.

DATES: TWIC enrollment in Lake Charles, LA will begin on November 21, 2007.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov*.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final

rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Port of Lake Charles, LA. Enrollment in this port begins on November 21, 2007. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Port Arthur, including those in the Port of Lake Charles, LA must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic*.

Issued in Arlington, Virginia, on November 14, 2007.

Stephen Sadler,

Director, Maritime and Surface Credentialing, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E7–22584 Filed 11–16–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5118–N–07]

Notice of Proposed Information Collection: Comment Request, Continuum of Care Homeless Assistance Grant Application

AGENCY: Office of the Assistant Secretary for Community Planning and Development, 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:* January 18, 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: Pam Williams, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ann Oliva, Director for Special Needs Assistance Programs, (202) 708–4300 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (55 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 of information is necessary for the proper performance of the functions of the affected agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Grant Application.

OMB Control Number, if applicable: 2506–0112.

Description of the need for the information and proposed use: Information is to be used in the rating, ranking, and selection of proposals submitted to HUD by state and local governments, public housing authorities, and nonprofit organizations for awarded funds under the Continuum of Care Homeless Assistance programs.

Agency form numbers: HUD–40090–1, HUD–40090–2, HUD–40090–4, SF–424, HUD–SF–424 SUPP, HUD–2880, HUD–96010, HUD–27300, HUD–2991, HUD–2993, HUD–2994.

Members of affected public: Eligible applicants interested in applying for the Continuum of Care Homeless Assistance funds.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 10,510.

Frequency of Response: 1.

Hours of response: 184,812.

Total combined burden hours: 184,812 hours.

Status of the proposed information collection: Reinstatement of previously approved collection number will expire March 31, 2010.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–22525 Filed 11–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5118–N–06]

Notice of Extension of Information Collection for Public Comment; Consolidated Plan and Annual Performance Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Extension of Information Collection for Public Comment Period.

SUMMARY: The proposed extension of information collection requirements for Consolidated Planning for Community Planning and Development (CPD) programs 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:* January 18, 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: Reports Liaison Officer, Pamela Williams, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Salvatore Sclafani, Office of Policy Development and Coordination, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20420; telephone number (202) 402–4364 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended). As required under 5 CFR 1320.8(d)(1), HUD

and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information submission of responses.

Title of Proposal: Consolidated Plan & Annual Performance Report.

Description of the Need for the Information and Proposed Uses: The information is needed to provide HUD with preliminary assessment of compliance with statutory and regulatory requirements. A secondary need is informing citizens of the intended uses of formula grant funds and an evaluation of programmatic accomplishments.

Agency Form Numbers (if applicable): The Department's collection of this information is in compliance with statutory provisions of the Cranston-Gonzalez National Affordable Housing Act of 1990 that requires the participating jurisdictions submit a Comprehensive Housing Affordability Strategy (Section 105), the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104 (b)(4) and Section 104 (b)(m) and statutory provisions of these Acts that require states and localities to submit annual plans and reports for these formula grant programs.

Members of the Affected Public: State and local governments participating in the Community Development Block Grant Program (CDBG), the HOME Investment Partnerships (HOME) program, the Emergency Shelter Grants (ESG) program, or the Housing Opportunities for Persons with AIDS/HIV (HOPWA) program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response and hours of response: Under a previous submission, OMB Control Number 2506–0117, the burden of meeting the regulatory requirements of Title I of the National Affordable Housing Act (NAHA) and the Housing and Community Development Act (HCDA) were assessed. That submission was approved until March 31, 2008. In 2002, the President's Management Agenda directed HUD to work with local stakeholders to streamline the consolidated plan, making it more results-oriented and useful to communities in assessing their own progress toward addressing the problems of low-income areas. The Department carefully considered ideas generated by several working groups that were established to explore alternative planning requirements and suggestions for improving the consolidated plan.

A number of suggested alternative formats allowed jurisdictions to cross-reference other existing local documents and experiment with different visual formatting tools such as tables, graphs, bullet points, and appendices. The outcome was a streamlined, user-friendly document. In addition, the revision established some new requirements involving the development and implementation of an outcome measurement framework to meet local needs as well as outcomes that can be aggregated on a national basis. The net result did not result in a net change in burden hours.

The paperwork estimates are as follows:

Task	Number of respondents	Frequency of response	Total U.S. burden hours
Consolidated Plan			
Localities:			
• Strategic Plan Development	1,000	1	220,000
• Action Plan Development	1,000	1	112,00
States:			
• Strategic Plan Development	50	1	30,200
• Action Plan Development	50	1	18,700
Performance Report:			
Localities	1,000	1	162,000
States	50	1	12,600
*Abbreviated Strategy	100		8,200
Total			563,700

Status of the proposed information collection: Extension of previously approved collection for which approval is near expiration and the request for OMB's approval for three years. The current OMB approval expires March 31, 2008.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 9, 2007.

Nelson Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–22610 Filed 11–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Proposed Safe Harbor Agreement for the California Red-Legged Frog for Landowners Restoring Aquatic and Riparian Habitat in the Pine Gulch Creek Watershed in Marin County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that the Marin County Agriculture Commission (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service for the threatened California red-legged frog (*Rana aurora draytonii*). The Agreement and permit application are available for public comment.

DATES: Written comments should be received on or before December 19, 2007.

ADDRESSES: Comments should be addressed to Rick Kuyper, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6712.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Kuyper, Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by contacting the individual named above. You may also make an appointment to view the documents at the above address during normal business hours.

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.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.),* encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased land use restrictions as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked the Applicant to develop this proposed Programmatic Agreement for the conservation of the California red-legged frog in the 7.5 square-mile Pine Gulch Creek Watershed in Marin County, California. The properties subject to this Agreement consist of approximately 4,800 acres of non-Federal properties within the Pine Gulch Creek Watershed, on which habitat for the California red-legged frog will be created, enhanced, and managed pursuant to a written agreement between the Service, Marin County Agriculture Commission, and property owners in the Pine Gulch Creek Watershed.

This Agreement provides for the creation of a Program in which private landowners (Cooperators) enter into written cooperative agreements with the Applicant pursuant to the terms of the Agreement, to restore, enhance, and maintain aquatic and riparian habitat in ways beneficial to the California red-legged frog. Such cooperative agreements will be for a term of at least 10 years. The proposed duration of the Agreement is 30 years, and the proposed term of the enhancement of survival permit is 30 years. The Agreement fully describes the proposed management activities to be undertaken by Cooperators and the conservation benefits expected to be gained for the California red-legged frog.

Upon approval of this Agreement, and consistent with the Service's Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the Marin County Agriculture Commission authorizing take of the California red-legged frog by Cooperators incidental to the implementation of the management activities specified in the cooperative agreements, incidental to other lawful uses of the properties, including normal routine land management activities, and/or to return to pre-Agreement conditions (baseline).

To benefit the California red-legged frog, Cooperators will agree to undertake site-specific management activities, which will be specified in their written cooperative agreements. Management activities that could be included in the Cooperative Agreements will provide for the enhancement, restoration, and/or maintenance of aquatic and riparian habitat. These activities have been designed to enhance California red-legged frog populations by creating and improving breeding habitat, managing vegetation and grazing as appropriate, controlling non-native predators, and managing agriculture and recreation as appropriate to benefit populations of California red-legged frog. Take of California red-legged frog incidental to the aforementioned activities is unlikely; however, it is possible that in the course of such activities or other lawful activities on the enrolled property, a Cooperator could incidentally take a California red-legged frog, thereby necessitating take authority under the permit.

The California red-legged frog relies on a variety of habitats for various stages of its life cycle, including pond and riparian habitat, upland habitat and moist refuges. Baseline conditions, consisting of a description and survey to determine the quantity and location of suitable California red-legged frog habitat, shall be determined for each enrolled property as provided in the Agreement. In order to receive the above assurances regarding incidental take of the California red-legged frog, a Cooperator must maintain baseline on the enrolled property. The Agreement and requested enhancement of survival permit will allow each Cooperator to return to baseline conditions after the end to the term of the 10-year cooperative agreement and prior to the expiration of the 30-year permit, if so desired by the Applicant and Cooperator.

Consistent with the Service's Safe Harbor Policy (64 FR 32717), the proposed Agreement and requested permit also extend certain assurances to those lands that are immediately adjacent to lands on which restoration activities occur. To receive such assurances, a neighboring landowner must enter into a written agreement with the Service that specifics the baseline conditions on the property. This written agreement remains in effect until the expiration of the 30-year Agreement between the Applicant and the Service and requires the neighboring landowner to maintain the baseline conditions established at the start of the agreement.

Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in the

Environmental Action Statement, which is also available for public review.

Individuals wishing copies of the permit application, copies of our preliminary Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application or the Agreement, you may submit your comment to the address listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addressed of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations at 40 CFR 1506.6. If we determine that the requirements are met, we will sign the proposed Agreement and issue and enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicants for take of the California red-legged frog incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: November 8, 2007.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 07–5703 Filed 11–16–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for the Attwater's Prairie-Chicken (Tympanuchus cupido attwateri)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft revised recovery plan for the Attwater's prairie-chicken (*Tympanuchus cupido attwateri*). This is the second revision of the recovery plan for this species; the original was completed in 1983. We are soliciting review and comment from the public on this draft revised recovery plan.

DATES: To ensure consideration, we must receive comments by January 18, 2008.

ADDRESSES: You may obtain copies of the recovery plan on CD from the Refuge Manager, U.S. Fish and Wildlife Service, Attwater Prairie Chicken National Wildlife Refuge, P.O. Box 519, Eagle Lake, Texas 77434, or download it from the Internet at *http://www.fws.gov/endangered* (type ''Attwater's'' in the species search field).

FOR FURTHER INFORMATION CONTACT: Terry Rossignol, Refuge Manager, Attwater Prairie Chicken National Wildlife Refuge, P.O. Box 519, Eagle Lake, Texas 77434; telephone 979–234–3021, ext. 13, facsimile 979–234–3278, e-mail: *terry_rossignol@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information provided during a public comment period prior to approval of each new or revised recovery plan. The Service and others take these comments into account in the course of implementing recovery plans.

The Attwater's prairie-chicken was listed as Endangered with Extinction in 1967. This listing was ''grandfathered'' into the Endangered Species Act of 1973. Critical habitat has not been designated for this species. Attwater's prairie-chickens occur only in coastal prairie habitats of Texas in the United States. Fewer than 50 individuals exist in the wild at 2 locations, and approximately 150 Attwater's are in captivity at 7 sites. With so few individuals surviving, the population remains in imminent danger of extinction. Habitat destruction and degradation, and to a lesser extent over harvesting, are the primary factors contributing to historic population declines. Current threats include extremely small populations, habitat and population fragmentation resulting in genetic isolation, diseases and parasites in both the wild and captive setting, inability of captive breeding facilities to produce large numbers of captively-reared birds that are capable of survival and reproduction in wild habitats, and poor brood survival in wild populations.

The revised recovery plan includes scientific information about the species and provides objectives and actions needed to recover the Attwater's prairie-chicken and ultimately remove it from the list of threatened and endangered species. Recovery actions designed to achieve these objectives include restoration of a network of large, high quality grasslands within a large (greater than 100 linear miles) geographic area to minimize threats from catastrophic weather and allow for gene flow among populations, maintenance of 90 percent of original gene diversity in a captive flock of 200 for 20 years, increasing production of the captive flock to allow for release at multiple sites, establishment of multiple greater than 500-bird populations within the grassland network, and broadening public support and partner efforts to conserve the Attwater's and its coastal prairie ecosystem.

The current recovery goal is to protect and ensure the survival of the Attwater's prairie-chicken and its habitat, allowing the population to reach a measurable level of ecological and genetic stability so that it can be reclassified to threatened status (downlisted) and ultimately removed from the endangered species list (delist). Downlisting can be considered when the population maintains a minimum of 3,000 breeding adults annually over a 5-year period. These birds should be distributed along a linear distance of no less then 50 miles to mitigate for environmental stochasticity (e.g.,

hurricanes, drought) while maintaining gene flow. Delisting can be considered when the population reaches a minimum of 6,000 breeding adults over a 10-year period, and occupies habitats along a linear distance of no less than 100 miles. We estimate approximately 50 years will be required to achieve the delisting criteria.

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 we will try to honor your written request to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 23, 2007.

Christopher T. Jones,

Acting Regional Director, Regions 2.

[FR Doc. 07–5705 Filed 11–16–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310–DB–NSSI–241A]

Notice of Correction to the Notice of Minor Amendments to the Charter of the Science Technical Advisory Panel for the North Slope Science Initiative and Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction.

SUMMARY: The Bureau of Land Management published a Notice of Minor Amendments to the Charter of the Science Technology Advisory Panel for the North Slope Science Initiative in the **Federal Register** on November 5, 2007 [72 FR 62487]. This notice corrects the e-mail address of John Payne and the statement in the **SUPPLEMENTARY INFORMATION** section which stated that appointees would serve with monetary compensation. This sentence is corrected to read: ''Appointees will serve without monetary compensation, but may be reimbursed for travel and per diem expenses at current rates for Federal government employees.''

FOR FURTHER INFORMATION CONTACT: John Payne, Executive Director, North Slope Science Initiative, Bureau of Land Management, Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513; phone (907) 271–3431, or e-mail: *john_f_payne@blm.gov*.

Dated: November 8, 2007.

Thomas P. Lonnie,

State Director.

[FR Doc. E7–22568 Filed 11–16–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 3, 2007. 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 December 4, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Kiowa County

American Legion Hall, (New Deal Resources on Colorado's Eastern Plains MPS) CO 287, N of Eads, Eads, 07001248

Kit Carson County

Burlington Gymnasium, (New Deal Resources on Colorado's Eastern Plains MPS) 450 11th St., Burlington, 07001249

CONNECTICUT

Fairfield County

Vought—Sikorsky Aircraft Plant, 550 Main St., Stratford, 07001245

Middlesex County

Camp Bethel, 124 Camp Bethel Rd., Haddam, 07001246

Windham County

Union Society of Phoenixville House, 4 Hartford Turnpike, Eastford, 07001247

KANSAS

Douglas County

East Lawrence Industrial Historic District, 619 E. 8th St., 804–846 Pennsylvania St., and 716 E 9th St., Lawrence, 07001250

KENTUCKY

Campbell County

Walter House, (German Settlement, Four Mile Creek Area TR) Gunkel Rd.,Melbourne, 07001254

Clark County

South Park Neighborhood, Roughly bounded E. Hickman St., Chaplin Ave., French Ave., and S. Main St., Winchester, 07001253

Jefferson County

Von Allmen Dairy Farm House, 5050 Norton Healthcare Blvd., Louisville, 07001251

Kenton County

Park Hills Historic District, Roughly part of Park Hills, NW of Dixie Hwy, except those facing Dixie Hwy., Park Hills, 07001252

NEW HAMPSHIRE

Cheshire County

Derbt Shop—Goodnow Pail Factory—Holman & Merriman Machine Shop—L. A. Carpenter Machine Shop—Streeter Shop, 63 Canal St., Hinsdale, 07001260

NEW YORK

Erie County

Miller, C.W., Livery Stable, 75 W. Huron St., Buffalo, 07001259

Livingston County

Caledonia Library, 3108 W. Main St., Caledonia, 07001256

Rockland County

Poor, Henry Varnum, House, S. Mountain Rd., New City, 07001258

Seneca County

Webster, James Russell, House, 115 E. Main St., Waterloo, 07001255

Wayne County

Dipper Dredge No. 3, 1665 Drydock Rd., Lyons, 07001257

OKLAHOMA

Caddo County

First Baptist Church (Colored), Jct. of E. Washington Ave. and NE Fifth St., Anadarko, 07001263

Carter County

Choctaw, Oklahoma and Gulf Railroad Viaduct, Jct. of G St. NE and abandoned roadbed of the St. Louis-San Francisco Railroad, Ardmore, 07001266

Garfield County

Enid Downtown Historic District, Roughly bounded by Maple Ave., 2nd St., Cherokee Ave., and Adams St., Enid, 07001265

Harmon County

Gould Community Building, Kennedy St., Gould, 07001264

Hollis City Hall and Jail, 101 W. Jones St., Hollis, 07001267

Payne County

Berry, Luke D., House, 621 E. Broadway St., Cushing, 07001262

Tulsa County

Ranch Acres Historic District, Roughly bounded by E. 31 St., S. Harvard Ave, E. 41st St., and S Delaware and S Florence Aves., Tulsa, 07001268

OREGON

Multnomah County

Pearson Mortuary, 301 NE Knott St., Portland, 07001261

RHODE ISLAND

Newport County

Murphy, Dennis J., House at Ogden Farm, 641 Mitchell's Ln., Middletown, 07001269

TENNESSEE

Putnam County

West End Church of Christ Silver Point, 14360 Center Hill Dam Rd., Silver Point, 07001270

Shelby County

Southern Railway Industrial Historic District (Boundary Increase) 711 Linden Ave., Memphis, 07001273

WISCONSIN

Dane County

Steinle Turret Machine Company, 149 Waubesa St., Madison, 07001272

Dodge County

Zirbel—Hildebrandt Farmstead, W1328–1330 WI 33, Herman, 07001271

[FR Doc. E7–22528 Filed 11–16–07; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1111 (Final)]

Glycine From India, Japan, and Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: *Effective Date:* November 9, 2007.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 28, 2007, the Commission established a schedule for the conduct of the final phase of the subject investigations (72 FR 55247). Although the Department of Commerce (''Commerce'') had not yet made its preliminary less than fair value determination (''LTFV'') regarding India, the Commission, for administrative purposes, included India in the investigation schedule, pending Commerce's preliminary LTFV determination. On November 7, 2007, Commerce issued its preliminary determination in the investigation of glycine from India (72 FR 62827; as amended 72 FR 62826). The Commission, therefore, is revising its schedule with respect to the investigation concerning India.

The Commission's revised schedule with respect to India is as follows: A supplemental brief addressing only Commerce's final antidumping duty determination is due on February 11, 2008. The brief may not exceed five (5) pages in length.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 13, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission,

[FR Doc. E7–22538 Filed 11–16–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. AT&T Inc. and Dobson Communications Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *AT&T Inc. and Dobson Communications Corporation*, Civil Action No. 1:07–cv–01952. On October 30, 2001, the United States filed a Complaint alleging that the proposed acquisition by AT&T Inc. (''AT&T'') of Dobson Communications Corporation (''Dobson'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of mobile wireless telecommunications services in seven (7) markets. The proposed Final Judgment, filed at the same time as the Complaint, requires the divestiture of: (1) Dobson's mobile wireless telecommunications services businesses in certain markets in Kentucky and Oklahoma; (2) AT&T's minority interests in entities operating mobile wireless telecommunications services businesses in certain markets in Texas and Missouri; and (3) all of Dobson's right, title and interest in Cellular One Properties, LLC, in order for AT&T to proceed with its $2.8 billion aquisition of Dobson. The Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (*telephone:* 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nancy Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000,

Washington, DC 20530 (*telephone:* 202–514–5621).

J. Robert Kramer II,
Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. AT&T Inc., 175 East Houston, San Antonio, Texas 78205; and Dobson Communications Corporation, 14201 Wireless Way, Oklahoma City, Oklahoma 73134, Defendants.

Civil No. 1:07–CV–01952, Assigned: Rosemary M. Collyer, *Filed:* October 30, 2007

Complaint

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil action to enjoin the merger of two mobile wireless telecommunications service providers, AT&T Inc. (''AT&T'') and Dobson Communications Corporation (''Dobson''), and to obtain other relief as appropriate. Plaintiff United States alleges as follows:

1. AT&T entered into an agreement to acquire Dobson, dated June 29, 2007, under which the two companies would combine their mobile wireless telecommunications services businesses (''Transaction Agreement'') and AT&T would acquire the Cellular One brand name and associated rights. The United States seeks to enjoin this transaction because it likely will substantially lessen competition to provide mobile wireless telecommunications services in several geographic markets where AT&T and Dobson are each other's most significant competitor or where AT&T competes against mobile wireless telecommunications services providers that sell services under the Cellular One brand name.

2. AT&T provides mobile wireless telecommunications services in 50 states and serves in excess of 63 million subscribers. Dobson provides mobile wireless telecommunications services in seventeen states and serves approximately 1.6 million subscribers. The combination of AT&T and Dobson likely will substantially lessen competition for mobile wireless telecommunications services in five geographic areas in Kentucky, Missouri, Oklahoma and Texas where businesses owned in whole or part by AT&T and Dobson currently operate. As a result of the proposed acquisition, residents of these mostly rural areas will likely face increased prices, diminished quality or quantity of services, and less investment in network improvements for these services. Additionally, in two relevant geographic areas in Pennsylvania and Texas, competition likely will be substantially lessened to the detriment of consumers because AT&T will have the incentive and ability to limit, or eliminate, a primary competitor's right to use the Cellular One brand name effectively.

I. Jurisdiction and Venue

3. This Complaint is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

4. AT&T and Dobson are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26, and 28 U.S.C. 1331, 1337.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants and the Transaction

6. AT&T, with headquarters in San Antonio, Texas, is a corporation organized and existing under the laws of the state of Delaware. AT&T is the largest communications holding company in the United States and worldwide, measured by revenue. AT&T is the largest mobile wireless telecommunications services provider in the United States, measured by subscribers, provides mobile wireless telecommunications services in 50 states, and serves in excess of 63 million subscribers. In 2006, AT&T earned mobile wireless telecommunications services revenues of approximately $37.53 billion.

7. Dobson, with headquarters in Oklahoma City, Oklahoma, is a corporation organized and existing under the laws of the state of Oklahoma. Dobson is the ninth largest mobile wireless telecommunications services provider in the United States, measured by subscribers and provides mobile wireless telecommunications services in 17 states. It has approximately 1.7 million subscribers. Dobson also owns Cellular One Properties, LLC, an Oklahoma limited liability company, engaged in the business of licensing the Cellular One brand and promoting the Cellular One service mark and certain related trademarks, service marks and designs. In 2006, Dobson earned approximately $1.3 billion in revenues.

8. Pursuant to an Agreement and Plan of Merger dated June 29, 2007, AT&T will acquire Dobson for approximately $2.8 billion. If this transaction is consummated, AT&T and Dobson combined would have approximately 65 million subscribers in the United States, with $37.54 billion in moble wireless telecommunications services revenues.

III. Trade and Commerce

A. Nature of Trade and Commerce

9. Mobile wireless telecommunications services allow customers to make and receive telephone calls and obtain data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly valued by customers, as demonstrated by the more than 233 million people in the United States who own mobile wireless telephones. In 2006, revenues from the sale of mobile wireless telecommunications services in the United States were over $125 billion. To meet this desire for mobility, mobile wireless telecommunications services providers must deploy extensive networks of switches and radio transmitters and receivers and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers.

10. The first mobile wireless voice systems were based on analog technology, now referred to as first-generation or ''1G'' technology. These analog systems were launched after the Federal Communications Commission (''FCC'') issued the first spectrum licenses for mobile wireless telecommunications services. In the early to mid-1980s, the FCC issued two cellular licenses (A-block and B-block) in each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA '') (collectively, ''Cellular Marketing Areas'' or CMAs''), with a total of 734 CMAs covering the entire United States. Each license consists of 25 MHz of spectrum in the 800 MHz band.

11. In 1995, the FCC licensed additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1900 MHz and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-

block 30 MHz licenses are issued by Major Trading Areas (''MTAs''). C, D, E, and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs.

12. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing network capacity, shrinking handsets, and extending battery life. In addition, in 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or ''push-to-talk,'' service. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum have found it less attractive to build out in rural areas.

13. Today, more than 98 percent of the total U.S. population lives in counties where three or more mobile wireless telecommunications services operators offer digital service. Nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies, GSM (global standard for mobility, a standard used by all carriers in Europe), and CDMA (code division multiple access). Even more advanced technologies (''2.5G'' and ''3G''), based on the earlier 2G technologies, have been deployed for mobile wireless data services.

B. Relevant Product Market

14. Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires, such as when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Because fixed wireless services are not mobile, they are not regarded by consumers of mobile wireless telecommunications services to be a reasonable substitute for those services. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services accordingly is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Relevant Geographic Markets

15. A large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they live, work, and travel on a regular basis. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, as does the quality of services and breadth of geographic coverage offered by providers. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plan, and equipment subsidies in different geographic areas, varying the price for customers by geographic area.

16. The United States comprises numerous local geographic markets for mobile wireless telecommunications services. The geographic areas in which the FCC has licensed mobile wireless telecommunications services providers often represent the core geographic areas in which an individual consumer would use mobile wireless telecommunications services, those being the areas in which an individual customer resides, works and plays. The relevant geographic markets in which this transaction will substantially lessen competition in mobile wireless telecommunications services are effectively represented, but not defined, by FCC spectrum licensing ares.

17. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas: Kentucky RSA–6 (CMA 448); Kentucky RSA–8 (CMA 450); Missouri RSA–1 (CMA 504); Oklahoma RSA–5 (CMA 600); Pennsylvania RSA–5 (CMA 616); Texas RSA–9 (CMA 660); and Texas RSA–11 (CMA 662). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers in a different geographic market to make a small but significant price increase in the relevant geographic markets unprofitable.

D. Anticompetitive Effects

1. Overlap Areas

a. AT&T/Dobson Overlap Markets

17. Currently, AT&T and Dobson each own a business that offers mobile wireless telecommunications services in three relevant geographic areas: Kentucky RSA–6 (CMA 448); Kentucky RSA–8 (CMA 450); and Oklahoma RSA–5 (CMA 600).

18. In each of these three relevant geographic areas, either AT&T or Dobson has the largest share of subscribers and the other defendant is a particularly strong and important competitor: the companies controlled by AT&T and Dobson collectively account for between 63 percent and 97 percent of subscribers in these areas. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these markets ranges from over 3100 to more than 7900, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After AT&T's proposed acquisition of Dobson is consummated, the HHIs in the relevant geographic markets will range from over 5200 to over 9400, with increases in the HHI as a result of the merger ranging from over 1400 to over 2300, significantly beyond the thresholds at which the Department considers a transaction likely to cause competitive harm.

b. AT&T Minority Interest Markets

20. In two relevant geographic areas, Missouri RSA–1 (CMA 504) and Texas RSA–9 (CMA 660), Dobson owns a business that offers mobile wireless telecommunications services and AT&T has a minority interest in a competing business. In Missouri RSA–1, AT&T's minority equity interest is in Northwest Missouri Cellular Limited Partnership's business and in Texas RSA–9, AT&T's minority equity interest is in Mid-Tex Cellular, Ltd.

21. In these two relevant geographic areas, either Dobson or the business in which AT&T has a minority interest has the largest share and the other defendant is a particularly strong and important competitor in all, or a large part, of the RSA. In each area, the businesses in which AT&T and Dobson have an interest collectively account for in excess of 70 percent of subscribers.

22. Although the minority equity interest in each situation is small, AT&T has significant rights under the relevant partnership agreements to control core business decisions, obtain critical

confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share upon a sale of the partnership. Post-merger, the merged finn would likely have the ability and incentive to coordinate the activities of the wholly-owned Dobson wireless business and the business in which it has a minority stake, and/or undermine the ability of the latter to compete against the former. Such activity would likely result in a significant lessening of competition.

c. AT&T/Cellular One Overlap Markets

23. In two relevant geographic areas, Pennsylvania RSA–5 (CMA 616) and Texas RSA–11 (CMA 662), AT&T owns a business that offers mobile wireless telecommunications services, and a competing mobile wireless telecommunications business operates under the Cellular One brand name that AT&T would acquire from Dobson pursuant to the proposed transaction.

24. In these two relevant geographic areas, AT&T has the largest share of subscribers and the mobile wireless telecommunications business operating under the Cellular One brand name is a particularly strong and important competitor. In each area, AT&T and the Cellular One licensee collectively account for in excess of 65 percent of subscribers.

25. The Cellular One brand name was first used in 1984. In 1989, the Cellular One Group partnership was formed to maintain and promote the Cellular One brand, a licensed trade name. In 1995, the partnership offered to license the brand to all A block cellular providers. Presently, approximately nine mobile wireless telecommunications services providers in addition to Dobson license the Cellular One brand and offer services to their customers under that brand. Through its planned purchase of Dobson, AT&T will acquire the rights to the Cellular One trademarks, trade names, service marks, service names, and designs for the Cellular One brand name, as well as the agreements to license the Cellular One brand to other mobile wireless telecommunications services providers.

26. The providers that continue to license and use the Cellular One brand have invested considerable resources in developing and building the brand. The Cellular One brand is thus an important input to these firms' provision of mobile wireless telecommunications services. If their ability to use the brand were to be impaired or eliminated, they would suffer considerable costs and effective competition in these markets would be harmed.

27. Because AT&T offers and markets wireless services under its own AT&T brand, it has little or no incentive to use or maintain the Cellular One brand. In the two relevant geographic areas where a Cellular One licensee is a primary competitor to AT&T in the mobile wireless telecommunications services market, AT&T would have the incentive and ability to impair the effectiveness of the Cellular One brand, or even deny a license to the current licensee entirely, since by doing so, it could reduce competition by significantly increasing costs to a primary competitor at little or no cost to itself.

2. Competitive Impact

28. In all seven relevant geographic markets, the mobile wireless telecommunications businesses wholly or partially owned by AT&T and Dobson, and/or the Cellular One licensee, own all or most of thel800 MHz band cellular spectrum licenses, which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, the networks wholly or partly owned by AT&T, Dobson, or the Cellular One licensee provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in these relevant geographic markets, and thus are more attractive to consumers. A mobile wireless telecommunications services provider with limited coverage in a geographic area typically does not aggressively market its services in that area because it can service customers only through a roaming arrangement with a more built-out competitor under which it must pay roaming charges to, and rely on, its competitor to maintain the quality of the network. The mobile wireless businesses wholly or partly owned by AT&T or Dobson in five of the relevant areas, and by AT &T and the Cellular One licensee in the other two relevant areas, accordingly, are, for a large set of customers, likely closer substitutes for each other than the other mobile wireless telecommunications services in these markets provided by firms who own only PCS spectrum.

29. Competition between the businesses wholly or partly owned by AT&T and Dobson, or between AT&T and the Cellular One licensee, in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services, than would otherwise have existed in these geographic markets. In these areas, many consumers consider businesses wholly or partly owned by AT&T, Dobson, or the Cellular One licensee to be the most attractive competitors because other providers' networks lack coverage or provide lower-quality service.

30. If AT&T's proposed acquisition of Dobson is consummated, (a) the relevant market for mobile wireless telecommunications services will become substantially more concentrated in the three AT&T/Dobson overlap geographic markets, and competition between AT &T and Dobson in mobile wireless telecommunications services will be eliminated in these markets; (b) competition in mobile wireless telecommunications services between Dobson and the businesses partly owned by AT&T will be substantially curtailed in the two AT&T minority ownership geographic markets, and (c) AT&T's acquisition of the rights to the Cellular One brand is likely to diminish the Cellular One licensees' ability to competitively constrain AT&T in the two AT&T/Cellular One overlap geographic markets thereby lessening competition substantially to the detriment of consumers. In all seven relevant geographic areas, the merged firm will have the incentive and ability to increase prices, diminish the quality or quantity of services provided, and refrain ITom or delay making investments in network improvements.

3. Entry

31. Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Although a number of other firms own 1900 MHz PCS spectrum in the relevant geographic markets, the propagation characteristics of 1900 MHz PCS spectrum are such that signals using those frequencies extend to a significantly smaller area than 800 MHz cellular signals. The relatively higher cost of building out 1900 MHz spectrum, combined with the relatively low population density of the areas in question, suggest that competitors with 1900 MHz spectrum are unlikely to build out their networks to reach the entire area served by AT&T and Dobson. Although additional spectrum has been and will be made available through FCC auctions, it is unlikely that additional mobile wireless telecommunications services based on this spectrum will be deployed in the near future in the relevant geographic areas. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services

by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from AT&T's proposed acquisition of Dobson, if it were to be consummated.

IV. Violation Alleged

32. The effect of AT&T's proposed acquisition of Dobson, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile wireless telecommunications services, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services in the relevant geographic markets, among others:

a. Actual and potential competition between AT&T and Dobson will be eliminated;

b. Actual and potential competition between Dobson and businesses in which AT &T holds a minority interest will be lessened;

c. Actual and potential competition between AT&T and Cellular One brand licensees will be lessened;

d. Competition in general will be lessened substantially;

e. Prices are likely to increase;

f. The quality and quantity of services are likely to decrease; and

g. Incentives to improve wireless networks will be reduced.

V. Requested Relief

The United States requests:

34. That AT&T's proposed acquisition of Dobson be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

35. That defendants be permanently enjoined from and restrained from carrying out the Agreement and Plan of Merger dated June 29, 2007, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless services businesses of AT&T and Dobson under common ownership or control;

36. That the United States be awarded its costs of this action; and

37. That the United States have such other relief as the Court may deem just and proper.

Dated: October 30, 2007.

Respectfully Submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

__/s/ _____

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Assistant Attorney General, Antitrust Division.

__/s/ _____

Deborah A. Garza,

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__/s/ _____

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__/s/ _____

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Appendix A

Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (**Note:** Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. AT&T Inc. and Dobson Communications Corporation, Defendants.

Case No._____

Filed:_____

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on October 30,2007, United States and defendants, AT&T Inc. (''AT&T'') and Dobson Communications Corporation (''Dobson''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, .and upon consent of the parties, it is *ordered, adjudged and decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''AT&T'' means defendant AT&T Inc., a Delaware corporation with its headquarters in San Antonio, Texas, its

successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Cellular One'' means Cellular One Properties, LLC, an Oklahoma limited liability company, with its headquarters in Oklahoma City, Oklahoma, engaged in the business of licensing the Cellular One brand and promoting the Cellular One service mark and certain related trademarks, service marks and designs.

D. ''Cellular One Assets'' means all legal and economic interests Dobson holds in Cellular One. Cellular One Assets shall include all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One mark, technical information, computer software and related documentation, and all records relating to the divestiture assets. If the acquirer of the Cellular One Assets is not the acquirer(s) of the Wireless Business Divestiture Assets, defendants will grant the acquirer(s) of the Wireless Business Divestiture Assets a license to use the Cellular One service marks on terms generally available at the time the merger agreement was entered and make the transfer of the Cellular One Assets subject to continuation of these licenses.

E. ''CMA'' means cellular market area which is used by the Federal Communications Commission (''FCC'') to define cellular license areas and which consists of Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs'').

F. ''Divestiture Assets'' means the Wireless Business Divestiture Assets, Minority Interests and the Cellular One Assets, including any direct or indirect financial ownership or leasehold interests and any direct or indirect role in management or participation in control therein.

G. ''Dobson'' means defendant Dobson Communications Corporation, an Oklahoma corporation, with its headquarters in Oklahoma City, Oklahoma, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''Minority Interests'' means the equity interests and any management or control interests owned by AT&T in the following entities that are the licensees or operators of the mobile wireless telecommunications services businesses in the specified RSAs:

(1) Mid-Tex Cellular, Ltd., covering Texas RSA–9 (CMA 660); and

(2) Northwest Missouri Cellular Limited Partnership, covering Missouri RSA–1 (CMA 504).

As an alternative to the divestiture of the Minority Interests as required by Section IV of this Final Judgment, upon approval of the United States, defendants may withdraw, from the Minority Interest partnerships pursuant to the applicable provisions in the governing partnership agreement.

I. ''Multi-line Business Customer'' means a corporate or business customer that contracts with Dobson for mobile wireless telecommunications services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with the corporate or business customer.

J. ''Transaction'' means the Agreement and Plan of Merger among Dobson, AT&T and Alpine Merger Sub, Inc., dated June 29, 2007.

K. ''Wireless Business Divestiture Assets'' means each mobile wireless telecommunications services business to be divested under this Final Judgment, including all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless telecommunications services businesses to be divested. ''Wireless Business Divestiture Assets'' shall be construed broadly to accomplish the complete divestiture of the entire business of Dobson in each of the following RSA license areas as required by this Final Judgment and to ensure that the divested mobile wireless telecommunications services businesses remain viable, ongoing businesses:

(1) Kentucky RSA–6 (CMA 448);

(2) Kentucky RSA–8 (CMA 450); and

(3) Oklahoma RSA–5 (CMA 600)

provided that Dobson may retain all of the PCS spectrum it currently holds in each of these RSAs and equipment that is used only for wireless transmissions over this PCS spectrum.

The Wireless Business Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless businesses being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendant Dobson supplies to its own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (a) below, or through a license obtained through or from Dobson, for assets described in (b) below; provided that defendants shall only be required to divest Multi-line Business Customer contracts if the primary business address for that customer is located within any of the three license areas described herein, and further, any subscriber who obtains mobile wireless telecommunications services through any such contract retained by defendants and who are located within the three geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, at any time within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within 45 days after the closing of the Transaction of the option to terminate.

The divestiture of the Wireless Business Divestiture Assets shall be accomplished by:

(a) Transferring to the Acquirers the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of Dobson's overall wireless telecommunications services business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested wireless telecommunications services businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to the approval of the United States, shall not be divided); and

(b) Granting to the Acquirer(s) an option to obtain a nonexclusive, transferable license from defendants for a reasonable period, subject to the approval of the United States and at the election of an Acquirer, to use any of Dobson's retained assets under paragraph (a) above used in operating the mobile wireless telecommunications services businesses being divested, so as to enable the Acquirer to continue to operate the divested mobile wireless telecommunications services businesses without impairment. Defendants shall identify in a schedule submitted to the United States and filed with the Court as

expeditiously as possible following the filing of the Complaint, and in any event prior to any divestiture and before the approval by the Court of this Final Judgment, any and all intellectual property rights under third-party licenses that are used by the mobile wireless telecommunications services businesses being divested that defendants could not transfer to an Acquirer entirely or by license without third-party consent, the specific reasons why such consent is necessary, and how such consent would be obtained for each asset.

III. Applicability

A. This Final Judgment applies to defendants AT&T and Dobson, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 120 days after consummation of the Transaction, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion, or, if applicable, to a Divestiture Trustee designated pursuant to Section V of this Final Judgment. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Wireless Business Divestiture Assets by defendants or the Divestiture Trustee, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Wireless Business Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Wireless Business Divestiture Assets for which FCC approval has not been issued until five (5) days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants shall promptly make known, if they have not already done so, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person. Notwithstanding the provisions of this paragraph, with the consent of the United States in its sole discretion, the defendants may enter into exclusive negotiations to sell the divestiture assets and may limit their obligations under this paragraph to the provision of information to a single potential buyer for the duration of those negotiations.

C. Defendants shall provide the Acquirers and the United States information relating to the personnel involved in the operation, development, and sale or license of the Wireless Business Divestiture Assets and Cellular One Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the operation, development, or sale or license of the Wireless Business Divestiture Assets or the Cellular One Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer(s) that (1) the Wireless Business Divestiture Assets will be operational on the date of sale, (2) every wireless spectrum license is in full force and effect on the date of sale, and (3) the Cellular One Assets will be unencumbered and not judged invalid or unenforceable by any court or similar authority on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, licensing, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no material defects in the environmental, zoning, licensing or other permits pertaining to the operation of each asset and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, licensing or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and with respect to the Wireless Business Divestiture Assets shall be accomplished in such a way as to satisfy the United States in its sole discretion that these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment,

(a) With respect to the Wireless Business Divestiture Assets, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services; and

(b) With respect to the Cellular One Assets, has the intent and capability

(including the necessary managerial, operational, technical, and financial capability) of maintaining and promoting the intellectual property, including trademarks and service marks.

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer(s) and defendants shall give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the ability of the Acquirer to compete effectively.

I. At the option of the Acquirer(s) of the Wireless Business Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer for a period of up to one year. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

J. To the extent that the Divestiture Assets use intellectual property, as required to be identified by Section II.K, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

K. Defendants shall not obtain any additional equity interest in any Minority Interest entity.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV.A, defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets. The Divestiture Trustee will have all the rights and responsibilities of the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and will be responsible for:

(1) Accomplishing divestiture of all Divestiture Assets transferred to the Divestiture Trustee from defendants, in accordance with the terms of this Final Judgment, to an Acquirer(s) approved by the United States, under Section IV.A of this Final Judgment;

(2) Exercising the responsibilities of the licensee of any transferred Wireless Business Divestiture Assets and controlling and operating any transferred Wireless Business Divestiture Assets, to ensure that the businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the three license areas specified in Section II.K, until they are divested to an Acquirer(s), and the Divestiture Trustee shall agree to be bound by this Final Judgment; and

(3) Exercising the responsibilities of the licensee of any transferred Cellular One Assets and controlling and operating any transferred Cellular One Assets, to ensure that the business remains ongoing and that the obligations of Cellular One under the Cellular One license agreements are fulfilled, until they are divested to an Acquirer(s), and the Divestiture Trustee shall agree to be bound by this Final Judgment.

B. Defendants shall submit a proposed trust agreement (''Trust Agreement'') to the United States, which must be consistent with the terms of this Final Judgment and which must receive approval by the United States in its sole discretion, who shall communicate to defendants within 10 business days its approval or disapproval of the proposed Trust Agreement, and which must be executed by the defendants and the Divestiture Trustee within five business days after approval by the United States.

C. After obtaining any necessary approvals from the FCC for the assignment of the licenses of the Divestiture Assets to the Divestiture Trustee, defendants shall irrevocably divest the remaining Divestiture Assets to the Divestiture Trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to Acquirer(s)) and control such assets, subject to the terms of the approved Trust Agreement.

D. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States, in its sole judgment, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order and any investment bankers, attorneys or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

E. In addition, notwithstanding any provision to the contrary, the United States, in its sole discretion, may require defendants to include additional assets, or with the written approval of the United States, allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the Divestiture Trustee to facilitate prompt divestiture to an acceptable Acquirer.

F. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within 10 calendar days after the Divestiture Trustee has provided the notice required under Section VI.

G. The Divestiture Trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for an monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, an remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants shall develop financial and other information relevant to the assets to be divested as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no

action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

I. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

J. If the Divestiture Trustee has not accomplished the divestitures ordered under the Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

K. After defendants transfer the Divestiture Assets to the Divestiture Trustee, and until those Divestiture Assets have been divested to an Acquirer or Acquirers approved by the United States pursuant to Sections IV.A and IV.H, the Divestiture Trustee shall have sole and complete authority to manage and operate the Divestiture Assets and to exercise the responsibilities of the licensee and shall not be subject to any control or direction by defendants. Defendants shall not use, or retain any economic interest in, the Divestiture Assets transferred to the Divestiture Trustee, apart from the right to receive the proceeds of the sale or other disposition of the Divestiture Assets.

L. The Divestiture Trustee shall operate the Divestiture Assets consistent with the Preservation of Assets Stipulation and Order and this Final Judgment, with control over operations, marketing, sales and Cellular One licensing. Defendants shall not attempt to influence the business decisions of the Divestiture Trustee concerning the operation and management of the Divestiture Assets, and shall not communicate with the Divestiture Trustee concerning divestiture of the Divestiture Assets or take any action to influence, interfere with, or impede the Divestiture Trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the Divestiture Trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the Divestiture Trustee, if requested to do so, with whatever resources or cooperation may be required to complete divestiture of the Divestiture Assets and to carry out the requirements of the Preservation of Assets Stipulation and Order and this Final Judgment. Except as provided in this Final Judgment and the Preservation of Assets Stipulation and Order, in no event shall defendants provide to, or receive from, the Divestiture Trustee, the mobile wireless telecommunications services businesses, Minority Interests or the Cellular One business under the Divestiture Trustee's control, any non-public or competitively sensitive marketing, sales, pricing or other information relating to their respective mobile wireless telecommunications services businesses.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States in writing of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.F of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.F, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court and cease use of the Divestiture Assets during the period that the Divestiture Assets are managed by the Management Trustee. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures

have been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice (including consultants and other persons retained by the United States) shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the United States' option, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States or, pursuant to a customary protective order or waiver of confidentiality by defendants, the FCC, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire or lease any part of the Divestiture Assets during the term of this Final Judgment, provided however that defendants shall not be precluded from entering into agreements with the Acquirer of the Cellular One Assets to license those assets for use for a period not to exceed one (1) year from the date of the closing of the Transaction.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgement

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

In the United States District Court for The District of Columbia

United States of America, Plaintiff, v. AT&T Inc. and Dobson Communications Corporation, Defendants.

Case Number 1:07–CV–01952, Assigned to: Rosemary M. Collyer, *FILED:* October 30, 2007.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. l6(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated June 29, 2007, pursuant to which AT&T Inc. (''AT&T'') will acquire Dobson Communications Corporation (''Dobson'').

Plaintiff filed a civil antitrust Complaint on October 30, 2007 seeking

to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in seven (7) geographic areas in the states of Kentucky, Missouri, Oklahoma, Pennsylvania and Texas, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in consumers facing higher prices, lower quality service and fewer choices of mobile wireless telecommunications services.

At the same time the Complaint was filed, plaintiff also filed a Preservation of Assets Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anti-competitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest (a) Dobson's mobile wireless telecommunications services businesses and related assets in three (3) markets (''Wireless Business Divestiture Assets''); (b) AT&T minority interests in other mobile wireless telecommunications services providers in two (2) markets (''Minority Interests''), and (c) Dobson's Cellular One Assets, which include the Cellular One service mark and related assets, (''Cellular One Assets'') (collectively the ''Divestiture Assets''). Under the terms of the Preservation of Assets Stipulation and Order, competition will be maintained, and defendants will take certain steps to ensure that, while the ordered divestiture is pending the Wireless Business Divestiture Assets and Cellular One Assets are preserved as competitively independent, economically viable and ongoing businesses. In addition, AT&T will not exercise any rights associated with its Minority Interests to control or influence the operations of the competing mobile wireless telecommunications services provider.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the Preservation of Assets Stipulation and Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation and Order, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Preservation of Assets Stipulation and Order until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

AT&T, with headquarters in San Antonio, Texas, is a corporation organized and existing under the laws of the state of Delaware. AT&T is the largest communications holding company in the United States and worldwide, measured by revenue. It also is the largest mobile wireless telecommunications services provider in the United States, measured by subscribers, providing mobile wireless telecommunications services in 50 states and serving in excess of 63 million subscribers. In 2006, AT&T earned approximately $37.53 billion in mobile wireless telecommunications services revenues.

Dobson, with headquarters in Oklahoma City, Oklahoma, is a corporation organized and existing under the laws of the state of Oklahoma. Dobson is the ninth largest mobile wireless telecommunications services provider in the United States, measured by subscribers, and provides mobile wireless telecommunications services in 17 states. It has approximately 1.7 million subscribers. Dobson also owns Cellular One Properties, LLC, an Oklahoma limited liability company, engaged in the business of licensing the Cellular One brand and promoting the Cellular One service mark and certain related trademarks, service marks and designs. In 2006, Dobson earned approximately $1.3 billion in revenues.

Pursuant to an Agreement and Plan of Merger dated June 29, 2007, AT&T will acquire Dobson for approximately $2.8 billion. If this transaction is consummated, AT&T and Dobson combined would have approximately 65 million subscribers in the United States, with $37.54 billion in mobile wireless telecommunications services revenues. The proposed transaction, as initially agreed to by defendants, would lessen competition substantially for mobile wireless telecommunications services in seven (7) relevant geographic markets. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiff.

B. Mobile Wireless Telecommunications Services Industry

Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session and without the need for unobstructed line-of-sight to the radio tower. More than 233 million people in the United States own mobile wireless telephones and annual revenues from the sale of mobile wireless telecommunications services in the United States were over $125 billion in 2006. To meet this strong demand for mobility, mobile wireless telecommunications services providers must deploy extensive networks of switches and radio transmitters and receivers and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers.

First-generation mobile wireless voice systems based on analog technology, now referred to as ''1 G'' technology, were initially launched after the Federal Communications Commission (''FCC'') issued the first spectrum licenses for mobile wireless telecommunications services in the early to mid-1980s. The FCC issued two cellular licenses (A-block and B-block) in each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire United States. Each license consists of 25 MHz of spectrum in the 800 MHz band.

In 1995, the FCC licensed additional spectrum for the provision of Personal Communications Services (''PCS ''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1900 MHz band and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C, D, E, and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs.

With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services. The use of digital technology enabled providers to increase network capacity, develop smaller handsets, and extend handset battery life. In addition, in 1996, one provider, a specialized mobile radio

(''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or ''push-to-talk,'' service. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum have found it less attractive to build out in rural areas.

The vast majority of U.S. consumers have multiple choices for mobile wireless telecommunications service, with more than 98 percent of the total population residing in counties where three or more mobile wireless telecommunications services operators offer digital service. Nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies, GSM (global standard for mobility, a standard used by all carriers in Europe), and CDMA (code division multiple access). Even more advanced technologies (''2.5G'' and ''3G''), based on the earlier 2G technologies, have been deployed for mobile wireless data services.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services

Mobile wireless telecommunications services allow customers to maintain their telephone calls or data sessions without wires when they are moving from place to place and include both voice and data services provided over a radio network. There are no cost-effective alternatives to mobile wireless telecommunications services. Because fixed wireless services do not allow customers to maintain their calls or data sessions while moving and do not permit the placement and receipt of calls from different locations, they are not regarded by consumers as a reasonable substitute for mobile wireless telecommunications services. It is unlikely that a sufficient number of customers would switch from mobile wireless telecommunications services so as to make a small but significant increase in the price of those services unprofitable.

A large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they live, work, and travel on a regular basis. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, as does the quality of services and breadth of geographic coverage offered by providers. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, thereby varying the price charged by geographic area.

The United States comprises numerous local geographic markets for mobile wireless telecommunications services. The geographic areas in which the FCC has licensed mobile wireless telecommunications services providers often represent the core areas in which an individual consumer would use mobile wireless telecommunications services, those being the areas in which an individual customer resides, works, and travels. The relevant geographic markets in which this transaction will substantially lessen competition in mobile wireless telecommunications services are effectively represented, but not defined, by the following FCC spectrum licensing areas: Kentucky RSA–6 (CMA 448); Kentucky RSA–8 (CMA 450); Missouri RSA–1 (CMA 504); Oklahoma RSA–5 (CMA 600); Pennsylvania RSA–5 (CMA 616); Texas RSA–9 (CMA 660); and Texas RSA–11 (CMA 662). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers in a different geographic market to make a small but significant price increase in the relevant geographic markets unprofitable.

The seven (7) geographic markets of concern for mobile wireless telecommunications services were identified by plaintiff via a fact-specific, market-by-market analysis that included consideration of, but was not limited to, the following factors: the number of mobile wireless telecommunications services providers and their competitive strengths and weaknesses; AT&T's and Dobson's market shares, along with those of the other providers; whether additional spectrum is, or is likely soon to be, available; whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers; the concentration of the market, and the breadth and depth of coverage by different providers in each market; the likelihood that any provider would expand its existing coverage or that new providers would enter; whether AT&T or Dobson own rights to control or influence the competitive operations of another provider in the market; and the particular rights associated with any such minority interests.

1. Overlap Areas

a. AT&T/Dobson Overlap Markets

AT&T and Dobson each own a business that offers mobile wireless telecommunications services in three relevant geographic areas: Kentucky RSA–6 (CMA 448); Kentucky RSA–8 (CMA 450); and Oklahoma RSA–5 (CMA 600). In each of these areas, either AT&T or Dobson has the largest share of subscribers and the other defendant is a particularly strong and important competitor. The companies controlled by AT&T and Dobson collectively account for between 63 percent and 97 percent of subscribers in these areas. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to the Complaint, concentration in these markets ranges from over 3100 to more than 7900, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After AT&T's proposed acquisition of Dobson is consummated, the HHls in the relevant geographic markets will range from over 5200 to over 9400, with increases in the HHI as a result of the merger ranging from over 1400 to over 2300, significantly beyond the thresholds at which the Department considers a transaction likely to cause competitive harm.

b. AT&T Minority Interest Markets

In two relevant geographic areas, Missouri RSA–1 (CMA 504) and Texas RSA–9 (CMA 660), Dobson owns a business that offers mobile wireless telecommunications services and AT&T has a minority interest in a competing business. In Missouri RSA–1 , AT&T's minority equity interest is in Northwest Missouri Cellular Limited Partnership's business. In Texas RSA–9, AT&T's minority equity interest is in Mid-Tex Cellular, Ltd. In these areas, either Dobson or the business in which AT&T has a minority interest has the largest share and the other firm is a particularly strong and important competitor in all, or a large part, of the RSA. In both areas, the businesses in which AT&T and Dobson have an interest collectively account for in excess of 70 percent of mobile wireless subscribers.

Although AT&T's minority equity interests in Northwest Missouri Cellular LP and Mid-Tex Cellular, Ltd. are small,

AT&T has significant rights under each relevant partnership agreement to control core business decisions, obtain critical confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share upon a sale of the partnership. Post-merger, AT&T would likely have the ability and incentive to coordinate the activities of the wholly-owned Dobson wireless business and the business in which it has a minority stake, and/or undermine the ability of the latter to compete against the former. Such activity would likely result in a significant lessening of competition.

c. AT&T/Cellular One Overlap Markets

In two relevant geographic areas, Pennsylvania RSA–5 (CMA 616) and Texas RSA–11 (CMA 662), AT&T owns a business that offers mobile wireless telecommunications services, and a competing mobile wireless telecommunications business operates under the Cellular One brand name that AT&T would acquire from Dobson pursuant to the proposed transaction. In these areas, AT&T has the largest share of subscribers and the mobile wireless telecommunications business operating under the Cellular One brand name is a particularly strong and important competitor. In each area, AT&T and the Cellular One licensee collectively account for in excess of 65 percent subscribers.

The Cellular One brand name was first used in 1984. In 1989, the Cellular One Group partnership was formed to maintain and promote the Cellular One brand, a licensed trade name. In 1995, the partnership offered to license the brand to all A block cellular providers. Presently, approximately nine mobile wireless telecommunications services providers in addition to Dobson license the Cellular One brand and offer services to their customers under that brand. Under the terms of the Cellular One licensing agreements it has entered into with other mobile wireless telecommunications services providers, it is required to promote and maintain the value of the mark. Through its planned purchase of Dobson, AT&T will acquire the rights to the Cellular One trademarks, trade names, service marks, service names, and designs for the Cellular One brand name, as well as the agreements to license the Cellular One brand to other mobile wireless telecommunications services providers.

The providers that continue to license and use the Cellular One brand have invested considerable resources in developing and building the brand. The Cellular One brand is thus an important input to these firms' provision of mobile wireless telecommunications services. If their ability to use the brand were to be impaired or eliminated, they would suffer considerable costs and effective competition in these markets would be harmed. Because AT&T offers and markets wireless services under its own AT&T brand, it has little or no incentive to use or maintain the Cellular One brand. In the two relevant geographic areas where a Cellular One licensee is a primary competitor to AT&T in the mobile wireless telecommunications services market, AT&T would have the incentive and ability to impair the effectiveness of the Cellular One brand, or even deny a license to the current licensee entirely, since by doing so, it could reduce competition by significantly increasing costs to a primary competitor at little or no cost to itself. Although current Cellular One licensees could, in theory, re-brand their mobile wireless service in response to such conduct, not only would such a process be difficult, expensive, and disruptive, but it is unlikely that another brand could be obtained that would be as widely-recognized or as effective in promoting mobile wireless telecommunications services as the Cellular One brand.

2. Competitive Impact

In all seven relevant geographic markets, the mobile wireless telecommunications businesses wholly or partially owned by AT&T and Dobson, and/or the Cellular One licensee, own all or most of the 800 MHz band cellular spectrum licenses, which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, the networks wholly or partly owned by AT&T, Dobson, or the Cellular One licensee provide greater depth and breadth of coverage than their PCS-based competitors. A mobile wireless telecommunications services provider with limited coverage in a geographic area typically does not aggressively market its services in that area because it can service customers only through a roaming arrangement with a more built-out competitor under which it must pay roaming charges to, and rely on, its competitor to maintain the quality of the network and to support new features. The mobile wireless businesses wholly or partly owned by AT&T or Dobson in five of the relevant areas, and by AT&T and the Cellular One licensee in the other two relevant areas, accordingly, are, for a large set of customers, likely closer substitutes for each other than the other mobile wireless telecommunications services in these markets provided by firms who own only PCS spectrum.

Competition between the businesses wholly or partly owned by AT&T and Dobson, or between AT&T and the Cellular One licensee, in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services, than would otherwise have existed in these geographic markets. In these areas, many consumers consider businesses wholly or partly owned by AT&T, Dobson, or the Cellular One licensee to be the most attractive competitors because other providers' networks lack coverage or provide lower-quality service.

Competition will be substantially lessened to the detriment of consumers if AT&T's proposed acquisition of Dobson is consummated without the required divestitures: (a) Competition between AT&T and Dobson in mobile wireless telecommunications services will be eliminated in the three AT&T/Dobson overlap geographic markets and the relevant markets for mobile wireless telecommunications services will become substantially more concentrated; (b) AT &T would have the incentive and ability to diminish competition in mobile wireless telecommunications services between Dobson and the businesses partly owned by AT&T in the two AT&T minority ownership geographic markets; and (c) AT&T's acquisition of the rights to the Cellular One brand would give AT&T the incentive and ability to diminish the Cellular One licensee's ability to compete effectively in the two AT&T/Cellular One overlap geographic markets. In all seven relevant geographic areas, the merged firm will have the incentive and ability to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

3. Entry

Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would require the acquisition of spectrum licenses and the build-out of a network, and thus would be difficult, time-consuming, and expensive. Although a number of other firms in the relevant geographic areas own 1900 MHz PCS spectrum, the propagation characteristics of that spectrum are such that signals extend to a significantly smaller area than do 800 MHz cellular signals. The relatively higher cost of building out 1900 MHz spectrum, combined with the relatively low

population density of the areas in question, make it unlikely that competitors with 1900 MHz spectrum will build out their networks to reach the entire area served by AT&T and Dobson. Although additional spectrum has been and will be made available through FCC auctions, it is unlikely that additional mobile wireless telecommunications services based on this spectrum will be deployed in the near future in the relevant geographic areas. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from AT&T's proposed acquisition of Dobson, if it were to be consummated.

For these reasons, the United States concluded that AT&T's proposed acquisition of Dobson will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the seven relevant geographic markets alleged in the Complaint.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in mobile wireless telecommunications services in the seven (7) geographic markets of concern. The proposed Final Judgment requires defendants, within one hundred twenty (120) days after the consummation of the Transaction, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Wireless Business Divestiture Assets, the Minority Interests and the Cellular One Assets. The Wireless Business Divestiture Assets are essentially Dobson's entire mobile wireless telecommunications services businesses in the three (3) markets where AT&T and Dobson are each other's closest competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff in its sole discretion that they will be operated by the purchaser as a viable, ongoing business that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In requiring the divestitures, plaintiff seeks to make certain that the potential buyer acquires all the assets it may need to be a viable competitor and replace the competition lost by the merger. The 25 MHz of cellular spectrum that must be divested is sufficient to support the operation and expansion of the mobile wireless telecommunications services businesses being divested, enabling the buyer to be a viable competitor to the merged entity. Plaintiff is not requiring the divestiture of the 10 MHz of PCS spectrum held by Dobson in the three (3) divestiture markets because that spectrum is not essential to the viability of the business to be divested. Moreover, in none of the three markets does Dobson's PCS spectrum holdings cover all counties in the RSA.

In the two relevant geographic markets where AT&T owns a minority interest in another mobile wireless services provider, the proposed Final Judgment requires defendants to divest or withdraw from these Minority Interests. The informational and control rights associated with the minority interests created concerns that allowing the merged firm to continue to hold its existing interest and rights would diminish competition in markets where Dobson and the firm in which AT&T holds an interest were particularly strong, close competitors. Requiring AT&T to relinquish its ownership and control rights in these entities, through divestiture or withdrawal, would eliminate the combined company's ability and incentive to limit competition between itself and the entities in which it owns minority interests.

The Cellular One Assets consist of all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One mark, technical information, computer software and related documentation, and all records relating to the Cellular One Assets. The proposed acquisition raised concerns that in two (2) markets, AT&T would have the incentive and ability to substantially impair the ability of its primary competitor, a Cellular One licensee, to compete effectively. Under the proposed Final Judgment, the defendants are required to divest the Cellular One Assets to a buyer with the intent and capability to maintain and promote the Cellular One brand such that the current Cellular One licensees can continue to effectively use the brand to compete.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which the United States seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. Section IV.A.g of the proposed Final Judgment in this case requires divestiture of the Divestiture Assets, within one hundred twenty (120) days after the consummation of the Transaction, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff in its sole discretion may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispositively before the end of the required divestiture period, the period for divestiture of those assets shall be extended until five (5) days after the FCC has acted. This extension is to be applied only to the individual Wireless Business Divestiture Assets affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Divestiture Assets for which license transfer approval is not required or has been granted.

The divestiture timing provisions of the proposed Final Judgment win ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Preservation of Assets Stipulation and Order.

B. Use of a Management Trustee

The Preservation of Assets Stipulation and Order, filed simultaneously with this Competitive Impact Statement, ensures that, prior to divestiture, the Divestiture Assets are maintained, the Wireless Business Divestiture Assets remain an ongoing business concern, the Cellular One Assets remain economically viable, and defendants will not exercise any legal or equitable rights it may have in the Minority Interest entities. The Preservation of Assets Stipulation and Order is designed to ensure that the Divestiture Assets will be preserved and remain independent of defendants, so that competition is maintained during the pendency of the ordered divestiture.

The Preservation of Assets Stipulation and Order appoints a management

trustee selected by plaintiff to oversee the Wireless Business Divestiture Assets and the Cellular One Assets in the relevant geographic markets. The appointment of a management trustee in this situation is required because the Wireless Business Divestiture Assets are not independent facilities that can be held separate and operated as stand-alone units by the merged firm. Rather, the Wireless Business Divestiture Assets are an integral part of a larger network and, to maintain their competitive viability and economic value, they should remain part of that network during the divestiture period. A management trustee is necessary to oversee the continuing relationship between defendants and these assets, to ensure that these assets are preserved and supported by defendants during this period, yet run independently. The management trustee will also preserve and ensure the viability of the Cellular One Assets. The management trustee will have the power to operate the Wireless Business Divestiture Assets and the Cellular One Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants, and so that the Wireless Business Divestiture Assets remain an ongoing and economically viable competitor to defendants and to other mobile wireless telecommunications services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; ensure defendants' compliance with the Preservation of Assets Stipulation and Order and the proposed Final Judgment; and maximize the value of the Wireless Business Divestiture Assets and the Cellular One Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment. Because defendants have agreed in the Preservation of Assets Stipulation and Order to forego exercising any rights they may have with respect to the Minority Interests pending disposal of those interests, and defendants do not have an active day-to-day role in managing the businesses of the Minority Interest Entities, it is unnecessary for the Minority Interests to be operated by the Management Trustee.

The Preservation of Assets Stipulation and Order provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his or her appointment becomes effective, the management trustee will file monthly reports with plaintiffs setting forth efforts taken to accomplish the goals of the Preservation of Assets Stipulation and Order and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the management trustee may become the divestiture trustee, pursuant to the provisions of Section Y of the proposed Final Judgment.

c. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff to effect the divestitures. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will own and control the Divestiture Assets until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and ''at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee.'' In addition, to ensure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, plaintiff, in its sole discretion, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the Divestiture Assets, but will also be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation, or management of the Divestiture Assets other than the right to receive the proceeds of the sale. Defendants will also retain certain obligations to support to the Divestiture Assets and cooperate with the divestiture trustee in order to complete the divestiture.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.G of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiff setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after the assets are transferred to the divestiture trustee. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and plaintiff will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services. The divestitures of the Wireless Business Divestiture Assets and Minority Interests will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic markets. The divestiture of the Cellular One Assets will ensure that the Cellular One brand will be preserved and maintained so that the current Cellular One licensees can continue to compete effectively.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor

assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

v. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against AT&T's acquisition of Dobson. Plaintiff is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services in the relevant markets identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(l). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally United States* v. *SBC Commuc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments ''effected minimal changes'' to scope of review under Tunney Act, leaving review ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In making its public interest determination, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1,6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982)

[1] The 2204 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e)(2004), with 15 U.S.C. 16(e)(1) (2006).

[2] *Cf BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA) is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

(citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713,716 (D. Mass. 1975)), *affd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619,622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

DATED: October 30, 2007.

Respectfully submitted,

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[3] *See United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before December 19, 2007.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic mail: Standards-Petitions@dol.gov*.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Edward Sexauer, Chief, Regulatory Development Division at 202–693–9444 (Voice), *sexauer.edward@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2007–061–C.

Petitioner: D & R Coal Company, P.O. Box 728, Barbourville, Kentucky 40906.

Mine: Mine # 3, MSHA I.D. No. 15–19018, located in Knox County, Kentucky.

Regulation Affected: 30 CFR 75.342 (Methane monitors).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of hand-held continuous-duty methane and oxygen indicators in lieu of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner states that: (1) All persons will be qualified to use the hand-held detectors; (2) a gas test will be taken to determine if any methane concentration is present in the atmosphere prior to allowing the coal-loading tractor in the face area and air quality will be monitored by the hand-held detector during each trip; (3) if one percent (1%) of methane is detected, the operator will manually de-energize his/her battery operated tractor immediately, production will immediately cease, work will be performed to eliminate the elevated methane levels, and production will resume when the methane has been lowered to less than one percent; (4) a spare continuous-duty hand-held methane and oxygen detector will be available to ensure that all coal hauling tractors are equipped with a working detector; and (5) the monitors will be inspected daily and fully charged, calibrated at least every 30 days, and will not be changed from manufacturer's specifications unless by a person qualified to do so. The petitioner asserts that application of the existing standard reduces protection and the proposed alternative method would greatly increase the safety and well being of miners.

Docket Number: M–2007–062-C.

Petitioner: D & R Coal Company, Inc., P.O. Box 728, Barbourville, Kentucky 40906.

Mine: Mine # 3, MSHA I.D. No. 15–19018, located in Knox County, Kentucky.

Regulation Affected: 30 CFR 75.380(f)(4) (Escapeways; bituminous and lignite mines).

Modification Request: The petitioner requests a modification of the existing to permit an alternative method for the use of mobile equipment traveling in the primary escapeway. The petitioner asserts that technology has not developed a fire suppression system that will fit on the type of equipment used in this mine, which is operated in the Blue Gem Seam of coal and has seam averaging 24 to 25 inches. The petitioner proposes to use portable fire suppression equipment on three-wheel tractors in lieu of installing fire suppression systems. The petitioner proposes to use one twenty or two ten pound portable chemical fire extinguishers on each Mescher tractor used at the mine. If two extinguishers are used, a ten pound extinguisher will be mounted in the operators' deck with the other mounted on the tractor accessible to the operator. If one extinguisher is used, it will be mounted in the operators' deck. In either case, the petitioner proposes to use a total of twenty pounds of fire extinguisher capability on each Mescher tractor, which will be readily available to the operator. The petitioner states that: (1) The fire hazard potential on a Mescher tractor is extremely low because no hydraulics are used on these machines; (2) all other components of the tractor are permissible and are not susceptible to fire hazard; (3) the equipment operator will inspect each fire extinguisher daily before entering the primary escapeway; (4) a record of the inspections will be maintained; and (5) defective fire extinguishers will be replaced prior to entering the mine. The petitioner further states that: (1) The main travelway of the mine is also the primary escapeway; (2) the amount of time each Mescher tractor is in the primary escapeway is limited to the travel time to the face at the start of the shift, at mid-shift, to change batteries, and to travel out at the end of the shift during which time the drag bucket is empty and the tractor is not transporting coal; (3) portable fire suppression equipment can be used to direct the chemical fire suppressant by the operator in a more effective manner in case there is a fire; and (4) in this low coal mine the small fire extinguishers would be more effective to extinguish a fire than the machine-mounted systems. The petitioner also states that application of the existing standard will reduce the safety of the affected miners, since fire suppression equipment is not presently available for this type of equipment and currently, technology does not provide fire suppression equipment for the type of machinery used at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–063-C.

Petitioner: Alden Resources, LLC, 332 W. Cumberland Gap Parkway, Suite 100, Corbin, Kentucky 40701.

Mine: Bain Branch Refuse Piles (I.D. No. 1211-KY7–07157–01), MSHA I.D. No. 15–17691, located in Whitley County, Kentucky.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

Modification Request: The petitioner requests a modification of the existing standard because: (1) The proposed refuse pile is constructed over abandoned underground mine openings in the Blue Gem coal bed; (2) the abandoned openings have been sealed and backfilled with dirt; and (3) the abandoned pit is a ''box-cut'' and the refuse will be placed in 2-foot lifts and used to reclaim the pit to approximately the original contour. The petitioner states that: (1) The proposed modification will not reduce or diminish the safety of the proposed refuse pile since the pit being reclaimed is a box-cut and the dip of the coal seam is away from the portal area; (2) there is no danger of water from the abandoned workings saturating the fill and causing a failure; and (3) modification of the standard will allow for safe disposal of coal refuse at this site and will allow mining to continue in the area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–064-C.

Petitioner: P & A Engineers and Consultants, Inc., for Stirrat Coal Company, P.O. Box 279, Louisa, Kentucky 41230.

Preparation Plant, MSHA I.D. No. 46–02515, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

Modification Request: The petitioner requests a modification of the existing standard to permit a dry refuse structure to be added to the existing plant and rescue facility located near Stirrat in Logan County, West Virginia. The petitioner states that: (1) The mine (Williamson Seam) was faced up using the conventional method of creating two mine benches and two high-walls for the mine entries; (2) it is estimated that mining was completed in Mid-1988; (3) the mine seals were certified by Registered Professional Engineer on September 20, 1988; and (4) upon completion of mining the portals were sealed and the high-walls were returned to an approximate 2:1 slope; and (5) a 6-inch Interior Diameter (ID) steel drain was installed eliminating any potential head of water on the mine seals. The petitioner has provided with this petition a photo of the installed drain pipe and the backfilled portals. The petitioner further states that: (1) The existing drain pipe will be routed to the outside and beyond the limits of the

coarse refuse fill; and (2) a rock filter will be placed around the extended pipe and wrapped in filter fabric (Mirafi 140N or equivalent) and extended through the refuse pile. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–065-C.

Petitioner: R S & W Coal Company, 207 Creek Road, Klingerstown, Pennsylvania 17941.

Mine: R S & W Drift Mine, MSHA I.D. No. 36–01818, located Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.311(a) (Main mine fan operation).

Modification Request: The petitioner requests a modification of the existing standard to allow the main mine fan to be idle during non-working hours. The petitioner states that historically, the main mine fan operation has been shut down during non-working shifts, because of icing during the winter months. The petitioner proposes to use the following stipulations in the fan stoppage plan: (1) Shut the main mine fan down during idle periods; (2) no mechanized equipment will be used underground; (3) no electric power circuits enter the underground mine; (4) the main mine fan will be operated for a minimum of one-half hour after the pressure recorder indicates that the normal mine ventilating pressure has been reached prior to any one entering the mine; (5) the mine battery locomotive may be used to make the required pre-shift examination; (6) the communication circuit 9-volts will be energized prior to the pre-shift being made;

(7) a certified person will conduct an examination of the entire mine according to the requirements in 30 CFR 75.360; (8) persons will be allowed to enter the mine after it is determined to be safe and the pre-shift examination results have been recorded. The petitioner further states that the gangway, chutes, and headings are developed in rock and tests have shown that measurements taken every three seconds at the main mine fan found no detectable methane concentrations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Dated: November 13, 2007.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–22561 Filed 11–16–07; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2008

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2008 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2008.

DATES: All comments and recommendations must be received on or before the close of business on December 19, 2007.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 2007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 13, 2007 (72 FR 18690), and Grant Renewal applications due on June 14, 2007, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Grant amount
Alabama:		
AL–4	Legal Services Alabama, Inc	$6,194,159
MAL	Texas RioGrande Legal Aid, Inc	31,723
Alaska:		
AK–1	Alaska Legal Services Corporation	717,081
NAK–1	Alaska Legal Services Corporation	522,566
Arizona:		
AZ–2	DNA-Peoples Legal Services, Inc	520,360
AZ–3	Community Legal Services, Inc	3,755,950
AZ–5	Southern Arizona Legal Aid, Inc	1,811,524
MAZ	Community Legal Services, Inc	143,149
NAZ–5	DNA-Peoples Legal Services, Inc	2,521,402
NAZ–6	Southern Arizona Legal Aid, Inc	615,905
Arkansas:		
AR–6	Legal Aid of Arkansas, Inc	1,442,661
AR–7	Center for Arkansas Legal Services	2,153,508
MAR	Texas RioGrande Legal Aid, Inc	76,207
California:		
CA–1	California Indian Legal Services, Inc	32,757
CA–2	Greater Bakersfield Legal Assistance, Inc	910,038
CA–12	Inland Counties Legal Services, Inc	4,043,496
CA–14	Legal Aid Society of San Diego, Inc	2,827,558
CA–19	Legal Aid Society of Orange County, Inc	3,949,336
CA–26	Central California Legal Services	2,847,151
CA–27	Legal Services of Northern California, Inc	3,518,106
CA–28	Bay Area Legal Aid	4,147,448
CA–29	Legal Aid Foundation of Los Angeles	7,863,346
CA–30	Neighborhood Legal Services of Los Angeles County	4,644,807
CA–31	California Rural Legal Assistance, Inc	4,641,722
MCA	California Rural Legal Assistance, Inc	2,545,202

Service area	Applicant name	Grant amount
NCA–1	California Indian Legal Services, Inc	853,675
Colorado:		
CO–6	Colorado Legal Services	3,325,621
MCO	Colorado Legal Services	143,193
NCO–1	Colorado Legal Services	92,795
Connecticut:		
CT–1	Statewide Legal Services of Connecticut, Inc	2,298,378
NCT–1	Pine Tree Legal Assistance, Inc	15,127
Delaware:		
DE–1	Legal Services Corporation of Delaware, Inc	599,465
MDE	Legal Aid Bureau, Inc	23,937
District of Columbia:		
DC–1	Neighborhood Lgl. Svcs. Program of the Dist. of Col.	976,561
Florida:		
FL–5	Legal Services of Greater Miami, Inc	3,423,045
FL–13	Legal Services of North Florida, Inc	1,405,569
FL–14	Three Rivers Legal Services, Inc	1,731,241
FL–15	Community Legal Services of Mid-Florida, Inc	2,988,418
FL–16	Bay Area Legal Services, Inc	2,535,686
FL–17	Florida Rural Legal Services, Inc	2,669,506
FL–18	Coast to Coast Legal Aid of South Florida, Inc	1,794,874
MFL	Florida Rural Legal Services, Inc	865,911
Georgia:		
GA–1	Atlanta Legal Aid Society, Inc	2,496,865
GA–2	Georgia Legal Services Program	6,344,861
MGA	Georgia Legal Services Program	378,014
Guam:		
GU–1	Guam Legal Services Corporation	310,288
Hawaii:		
HI–1	Legal Aid Society of Hawaii	1,275,228
MHI	Legal Aid Society of Hawaii	66,442
NHI–1	Native Hawaiian Legal Corporation	221,338
Idaho:		
ID–1	Idaho Legal Aid Services, Inc	1,146,232
MID	Idaho Legal Aid Services, Inc	180,213
NID–1	Idaho Legal Aid Services, Inc	62,776
Illinois:		
IL–3	Land of Lincoln Legal Assistance Foundation, Inc	2,386,562
IL–6	Legal Assistance Foundation of Metro. Chicago	6,229,752
IL–7	Prairie State Legal Services, Inc	2,665,154
MIL	Legal Assistance Foundation of Metro. Chicago	240,680
Indiana:		
IN–5	Indiana Legal Services, Inc	4,880,056
MIN	Indiana Legal Services, Inc	109,625
Iowa:		
IA–3	Iowa Legal Aid	2,264,631
MIA	Iowa Legal Aid	36,378
Kansas:		
KS–1	Kansas Legal Services, Inc	2,287,952
MKS	Kansas Legal Services, Inc	11,460
Kentucky:		
KY–2	Legal Aid Society	1,136,065
KY–5	Appalachian Res. and Defense Fund of Kentucky	1,960,479
KY–9	Kentucky Legal Aid	1,177,670
KY–10	Legal Aid of the Bluegrass	1,223,911
MKY	Texas RioGrande Legal Aid, Inc	41,033
Louisiana:		
LA–1	Capital Area Legal Services Corporation	1,366,338
LA–10	Acadiana Legal Service Corporation	1,935,365
LA–11	Legal Services of North Louisiana, Inc	1,815,850
LA–12	Southeast Louisiana Legal Services Corporation	2,446,431
MLA	Texas RioGrande Legal Aid, Inc	26,550
Maine:		
ME–1	Pine Tree Legal Assistance, Inc	1,139,240
MMX–1	Pine Tree Legal Assistance, Inc	120,416
NME–1	Pine Tree Legal Assistance, Inc	62,279
Maryland:		
MD–1	Legal Aid Bureau, Inc	3,824,613
MMD	Legal Aid Bureau, Inc	87,659
Massachusetts:		
MA–4	Merrimack Valley Legal Services, Inc	800,191
MA–10	Massachusetts Justice Project, Inc	1,454,397
MA–11	Volunteer Lawyers Project of the Boston Bar Assoc	1,963,315
MA–12	New Center for Legal Advocacy, Inc	880,028

Service area	Applicant name	Grant amount
Michigan:		
MI–9	Legal Services of Northern Michigan, Inc	680,801
MI–12	Legal Services of South Central Michigan	1,231,866
MI–13	Legal Aid and Defender Association, Inc	3,689,294
MI–14	Legal Services of Eastern Michigan	1,321,121
MI–15	Legal Aid of Western Michigan	1,607,597
MMI	Legal Services of South Central Michigan	580,362
NMI–1	Michigan Indian Legal Services, Inc	159,061
Micronesia:		
MP–1	Micronesian Legal Services, Inc	1,590,295
Minnesota:		
MN–1	Legal Aid Service of Northeastern Minnesota	402,923
MN–4	Legal Services of Northwest Minnesota Corporation	361,122
MN–5	Southern Minnesota Regional Legal Services, Inc	1,173,577
MN–6	Central Minnesota Legal Services, Inc	1,262,697
MMN	Southern Minnesota Regional Legal Services, Inc	192,904
NMN–1	Anishinabe Legal Services, Inc	230,916
Mississippi:		
MS–9	North Mississippi Rural Legal Services, Inc	1,934,821
MS–10	Mississippi Center for Legal Services	2,898,120
MMS	Texas RioGrande Legal Aid, Inc	55,026
NMS–1	Mississippi Center for Legal Services	80,322
Missouri:		
MO–3	Legal Aid of Western Missouri	1,712,138
MO–4	Legal Services of Eastern Missouri, Inc	1,890,273
MO–5	Mid-Missouri Legal Services Corporation	376,819
MO–7	Legal Services of Southern Missouri	1,631,168
MMO	Legal Aid of Western Missouri	78,544
Montana:		
MT–1	Montana Legal Services Association	1,092,089
MMT	Montana Legal Services Association	52,627
NMT–1	Montana Legal Services Association	153,854
Nebraska:		
NE–4	Legal Aid of Nebraska	1,397,489
MNE	Legal Aid of Nebraska	40,766
NNE–1	Legal Aid of Nebraska	31,940
Nevada:		
NV–1	Nevada Legal Services, Inc	1,831,947
MNV	Nevada Legal Services, Inc	2,426
NNV–1	Nevada Legal Services, Inc	128,487
New Hampshire:		
NH–1	Legal Advice & Referral Center, Inc	690,772
New Jersey:		
NJ–8	Essex-Newark Legal Services Project, Inc	1,048,148
NJ–12	Ocean-Monmouth Legal Services, Inc	641,988
NJ–15	Legal Services of Northwest Jersey	378,763
NJ–16	South Jersey Legal Services, Inc	1,289,417
NJ–17	Central Jersey Legal Services, Inc	1,052,474
NJ–18	Northeast New Jersey Legal Services Corporation	1,712,762
MNJ	South Jersey Legal Services, Inc	116,340
New Mexico:		
NM–1	DNA-Peoples Legal Services, Inc	209,287
NM–5	New Mexico Legal Aid	2,640,049
MNM	New Mexico Legal Aid	84,207
NNM–2	DNA-Peoples Legal Services, Inc	21,952
NNM–4	New Mexico Legal Aid	448,960
New York:		
NY–7	Nassau/Suffolk Law Services Committee, Inc	1,341,108
NY–9	Legal Services for New York City	14,721,878
NY–20	Legal Services of the Hudson Valley	1,725,088
NY–21	Legal Aid Society of Northeastern New York, Inc	1,295,651
NY–22	Legal Aid Society of Mid-New York, Inc	1,698,288
NY–23	Legal Assistance of Western New York, Inc	1,664,791
NY–24	Neighborhood Legal Services, Inc	1,296,346
MNY	Legal Aid Society of Mid-New York, Inc	266,882
North Carolina:		
NC–5	Legal Aid of North Carolina, Inc	8,032,991
MNC	Legal Aid of North Carolina, Inc	516,748
NNC–1	Legal Aid of North Carolina, Inc	210,882
North Dakota:		
ND–3	Legal Services of North Dakota	543,360
MND	Southern Minnesota Regional Legal Services, Inc	111,756
NND–3	Legal Services of North Dakota	260,282
Ohio:		
OH–5	The Legal Aid Society of Columbus	1,229,387

Service area	Applicant name	Grant amount
OH–17	Ohio State Legal Services	1,646,749
OH–18	Legal Aid Society of Greater Cincinnati	1,388,723
OH–20	Community Legal Aid Services, Inc	1,606,732
OH–21	The Legal Aid Society of Cleveland	2,044,258
OH–23	Legal Aid of Western Ohio, Inc	2,403,409
MOH	Legal Aid of Western Ohio, Inc	121,450
Oklahoma:		
OK–3	Legal Aid Services of Oklahoma, Inc	4,320,679
MOK	Legal Aid Services of Oklahoma, Inc	60,333
NOK–1	Oklahoma Indian Legal Services, Inc	791,159
Oregon:		
OR–6	Legal Aid Services of Oregon	2,929,860
MOR	Legal Aid Services of Oregon	537,064
NOR–1	Legal Aid Services of Oregon	178,371
Pennsylvania:		
PA–1	Philadelphia Legal Assistance Center	2,959,139
PA–5	Laurel Legal Services, Inc	735,176
PA–8	Neighborhood Legal Services Association	1,602,505
PA–11	Southwestern Pennsylvania Legal Services, Inc	534,121
PA–23	Legal Aid of Southeastern Pennsylvania	1,086,577
PA–24	North Penn Legal Services, Inc	1,733,337
PA–25	MidPenn Legal Services, Inc	2,120,537
PA–26	Northwestern Legal Services	699,396
MPA	Philadelphia Legal Assistance Center	159,799
Puerto Rico:		
PR–1	Puerto Rico Legal Services, Inc	15,608,934
PR–2	Community Law Office, Inc	330,452
MPR	Puerto Rico Legal Services, Inc	280,322
Rhode Island:		
RI–1	Rhode Island Legal Services, Inc	1,073,387
South Carolina:		
SC–8	South Carolina Legal Services, Inc	4,695,383
MSC	South Carolina Legal Services, Inc	190,710
South Dakota:		
SD–2	East River Legal Services	389,661
SD–4	Dakota Plains Legal Services, Inc	461,784
MSD	Dakota Plains Legal Services, Inc	3,826
NSD–1	Dakota Plains Legal Services, Inc	902,194
Tennessee:		
TN–4	Memphis Area Legal Services, Inc	1,370,636
TN–7	West Tennessee Legal Services, Inc	639,447
TN–9	Legal Aid of East Tennessee	2,093,683
TN–10	Lgl. Aid Soc. of Middle Tenn. and the Cumberlands	2,495,215
MTN	Texas RioGrande Legal Aid, Inc	61,153
Texas:		
TX–13	Lone Star Legal Aid	9,247,199
TX–14	Legal Aid of NorthWest Texas	7,295,862
TX–15	Texas RioGrande Legal Aid, Inc	9,921,650
MTX	Texas RioGrande Legal Aid, Inc	1,339,253
NTX–1	Texas RioGrande Legal Aid, Inc	30,241
Utah:		
UT–1	Utah Legal Services, Inc	1,774,709
MUT	Utah Legal Services, Inc	65,398
NUT–1	Utah Legal Services, Inc	79,494
Vermont:		
VT–1	Legal Services Law Line of Vermont, Inc	487,210
Virgin Islands:		
VI–1	Legal Services of the Virgin Islands, Inc	311,527
Virginia:		
VA–15	Southwest Virginia Legal Aid Society, Inc	791,148
VA–16	Legal Aid Society of Eastern Virginia	1,366,739
VA–17	Virginia Legal Aid Society, Inc	823,566
VA–18	Central Virginia Legal Aid Society, Inc	970,897
VA–19	Blue Ridge Legal Services, Inc	685,028
MVA	Central Virginia Legal Aid Society, Inc	152,067
Washington:		
WA–1	Northwest Justice Project	4,757,580
MWA	Northwest Justice Project	703,757
NWA–1	Northwest Justice Project	275,255
West Virginia:		
WV–5	Legal Aid of West Virginia, Inc	2,781,120
MWV	Legal Aid of West Virginia, Inc	35,245
Wisconsin:		
WI–2	Wisconsin Judicare, Inc	849,376

Service area	Applicant name	Grant amount
WI–5	Legal Action of Wisconsin, Inc	3,089,820
MWI	Legal Action of Wisconsin, Inc	87,783
NWI–1	Wisconsin Judicare, Inc	149,888
Wyoming:		
WY–4	Wyoming Legal Services, Inc	476,526
MWY	Wyoming Legal Services, Inc	11,995
NWY–1	Wyoming Legal Services, Inc	166,972

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2008.

Dated: November 13, 2007.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. E7–22539 Filed 11–16–07; 8:45 am]

BILLING CODE 7050–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: December 3, 2007.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs, at the October 1, 2007 deadline.

2. Date: December 6, 2007.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs, at the October 1, 2007 deadline.

3. Date: December 6, 2007.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Digital Humanities Initiative, at the October 16, 2007 deadline.

4. Date: December 10, 2007.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Digital Humanities Initiative, at the October 16, 2007 deadline.

5. Date: December 10, 2007.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs, at the October 1, 2007 deadline.

6. Date: December 11, 2007.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Digital Humanities Initiative, at the October 16, 2007 deadline.

7. Date: December 11, 2007.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs, at the October 1, 2007 deadline.

8. Date: December 13, 2007.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions in Fellowships at Independent Research Institutions, submitted to the Division of Research Programs, at the September 1, 2007 deadline.

Heather C. Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E7–22569 Filed 11–16–07; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the

Federal Register at 72 FR 50410, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, *Attention:* Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Recurring Study of National Science Foundation-sponsored Graduate Education Impacts or Legacy (GEIL). (Formerly called the Evaluation of the Initial Impacts of the Integrative Graduate Education Research and Traineeship (IGERT) Program.)

OMB Control No.: 3145–0182.

Abstract

The National Science Foundation (NSF) requests reinstatement of this data collection (e.g., interviews, surveys, focus groups, site visits) measuring NSF's contribution to the Nation's graduate education enterprise and overall science and engineering workforce. This continuation expands the data collection formerly called ''The Evaluation of the Initial Impacts of the IGERT Program'' most recently approved through July 2005 (OMB 3145–0182).

IGERT began data collection in the late 1990s for use in program research, management, and evaluation. Data collection was concurrent with NSF-funding in order to document IGERT's initial impact within individual departments or institutions (often called projects), and on student, faculty, and other participants as compared to the educational and training experiences of individuals who were external to IGERT. This request expands data collection to the portfolio of NSF-funded graduate education programs and projects, typically on a program-by-program sub-study basis in order to address long-term impact.

For over fifty years NSF has funded directly and indirectly (e.g., via institutions), tens of thousands of individuals who pursue post-undergraduate education or research training. NSF's graduate education portfolio includes:

The Integrative Graduate Education Research and Traineeship (IGERT) program. IGERT provides grants to institutions to recruit and support doctoral students in interdisciplinary Science, Technology, Engineering, and Mathematics programs (STEM).

The Graduate Teaching Fellows in K–12 Education (GK–12) program. GK–12 provides grants to institutions to support STEM graduate students' acquisition of skills that will prepare them for careers in the 21st century.

The Graduate Research Fellowship (GRF) program. GRF provides three years of funding to eligible individuals for graduate study leading to research-based masters or doctoral degrees at an IHE of their choice.

A longer list of NSF's graduate education opportunities and eligibility information is on the NSF Web site under the link: ''Specialized information for Graduate Students'' at: *http://www.nsf.gov/funding/education/jsp?org=NSF@fund--type-2.*

Through longitudinal study NSF aims to learn about the long-term impact or legacy of its program strategies in graduate education. A primary goal is to identify and follow-up with individuals who participate in NSF-funded programs or projects, especially students who graduated with masters or doctoral degrees. The primary means of data collection will be surveys. Site visits, focus groups and interviews are used to improve survey instruments, clarify responses or address questions of institutional impact. Typical respondents are former NSF-funded fellows, trainees or to her participants in NSF-funded projects or are professional scientists, engineers, IHE faculty, K-graduate educators, education administrators and K–IHE policymakers. NSF uses the analysis of responses to prepare and publish reports and to respond to requests from Committees of Visitors, Congress and the Office of management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART).

The study's broad questions include but are not limited to: What do individuals following post-participation in IGERT or other NSF-funded graduate opportunities do? Do IGERT or other NSF-funded opportunities provide graduates with the professional and/or research skills needed to work in science and engineering? Are IGERT or other NSF-sponsored graduates satisfied that their NSF-funded graduate education advanced their careers in science or engineering? To what extent do IGERT or other former-NSF-sponsored graduates engage in the science and engineering workforce conduct inter- or multi-disciplinary science? Is there evidence of a legacy from NSF-funding that changed a degree-granting department beyond number of students supported and degrees awarded? To what extent have projects achieved or contributed to individual project goals or the NSF program goals? To what extent have NSF-funded projects or programs broadened participation by diverse individuals, particularly individuals traditionally underemployed in science or engineering, including but not limited to women, minorities, and persons-with-disabilities?

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, Local, or Tribal Government.

Number of Respondents: 3,345.

Burden on the Public: 1,552 hours. This estimate covers three graduate education programs, their participants,

and comparison group respondents over a three year period.

Dated: November 13, 2007.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 07–5707 Filed 11–16–07; 8:45 am]

BILLING CODE 7555–01–M

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 deployment of approximately 30 Argo floats in the Weddell Sea and southern Indian Ocean, along cruise tracks of the German vessel POLARSTERN and the Norwegian vessel G.O. SARS during their voyages leaving from Cape Town early in 2008. The floats will drift freely at a depth of 1,000 or 2,000 meters for ten days, then ascent to the surface collecting temperature, salinity and pressure readings at 500–1000 depth. The profile data will be transmitted via Iridium satellite system. The floats are designed to last for about 200 cycles, or over 5 years. 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 by December 19, 2007. 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 pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for deployment of approximately 30 Argo floats. Conditions of the permit would include requirements to report on the actual deployment of the Argo floats, in accordance with Antarctic waste regulations.

Application for the permit is made by: Stephen C. Riser, School of Oceanography, University of Washington, Box 355350, Seattle, Washington 98195.

Location: Wedell Sea and southern Indian Ocean.

Dates: December 1, 2007 to February 28, 2008.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–22504 Filed 11–16–07; 8:45 am]

BILLING CODE 7555–01–P

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 a two-person kayaking team to establish camp sites while in the Antarctica Peninsula. 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 by December 19, 2007. 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 pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for some camping ashore will occur and any and all trash generated will be returned to the AUSTRALIS for disposal in accordance with the vessel's permitted procedures. Fuel for cook stoves will be transferred to appropriate fuel bottles prior to leaving South America. Any batteries taken ashore will be removed and non-rechargeable batteries will be returned to South America for disposal. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Timothy J. Osse and Lisa A. Osse, 12415 68th Avenue, NE., Kirkland, Washington 98034.

Location: Antarctic Peninsula.

Dates: January 20, 2008 to February 8, 2008.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–22514 Filed 11–16–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Millstone Power Station, Unit No. 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Dominion Nuclear Connecticut (the licensee) for operation of the Millstone Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise Technical Specification (TS) 3/4.4.3, ''Reactor Coolant System, Relief Valves'' to modify the method of testing the pressurizer Power Operated Relief Valves (PORVs). Specifically, the requirement for bench testing the valves is changed to accommodate testing of the PORVs while installed in the plant. The change is requested due to the installation of new PORVs that are welded to the piping rather than bolted into the system.

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), § 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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not modify any plant equipment and does not impact any failure modes that could lead to an accident. Additionally, the proposed change has no effect on the consequence of any analyzed accident since the change does not affect the function of any equipment credited for accident mitigation. In-situ testing versus bench testing does not decrease the reliability of the PORVs. Based on this discussion, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not modify any plant equipment and there is no impact on the capability of existing equipment to perform its intended functions. No system setpoints are being modified and no changes are being made to the method in which plant operations are conducted. No new failure modes are introduced by the proposed change. The proposed amendment does not introduce accident initiators or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The TS change does not involve a significant reduction in a margin of safety because the acceptance criterion (i.e., demonstration of function by operation of the PORV through one complete cycle of full travel at conditions representative of MODES 3 or 4) for the valve testing is the same. The proposed change does not affect any of the assumptions used in the accident analysis, nor does it affect any operability requirements for equipment important to plant safety. Therefore, the margin of safety is not impacted by the proposed amendment.

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 O1 F21, 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 requestors/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 basis 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i) through (c)(1)(viii).

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 five (5) 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) through (c)(1)(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://www.nrc.gov/about-nrc/regulatory/adjudicatory.html*, 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 February 16, 2007, 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 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@nrc.gov*.

For The Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch 1–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–22428 Filed11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20; EA–06–298]

In the Matter of Department of Energy—Idaho Operations Office; Three Mile Island Unit 2 Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001. Telephone: (301) 492–3316; *fax number:* (301) 492–3348; *e-mail: lrw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order. Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Three Mile Island Unit 2 (TMI–2) Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to the Department of Energy, Idaho Operations Office (DOE–ID), authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any person,[3] from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information—Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

access to SGI, DOE–ID shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, parts 72 and 73, *it is hereby ordered, effective immediately, that your specific license is modified as follows:*

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to DOE–ID's NRC-approved reviewing official.

2. No person may have access to any SGI, if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C.1. DOE–ID shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. DOE–ID shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, whom continues to need access to SGI, and whom DOE–ID nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as DOE–ID's reviewing official.[4] DOE–ID may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

3. DOE–ID may allow any individual who currently has access to SGI in accordance with the previously issued NRC Orders, to continue to have access to previously-designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. DOE–ID shall make determinations on continued access to SGI by May 25, 2007, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. DOE–ID shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide DOE–ID's justification for seeking relief from, or variation of, any specific requirement.

DOE–ID responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, responses shall be marked as ''Security-Related Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by DOE–ID.

IV

In accordance with 10 CFR 2.202, DOE–ID must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, DOE–ID and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which DOE–ID relies and the reasons as to why the Order should not have been issued. If a person other than DOE–ID requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also available on NRC's

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may 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 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.

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 works.

If a hearing is requested by DOE–ID or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), DOE–ID may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 7th day of November 2007.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer that granted the federal security clearance or reviewed the criminal history check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) an arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by: (1) writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) calling (301) 415–5877; or (3) e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards from illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission, if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–22573 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9; EA–06–298]

In the Matter of Department of Energy—Idaho Operations Office Fort Saint Vrain Power Station Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001. Telephone: (301) 492–3316; *fax number:* (301) 492–3348; *e-mail: lrw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity

to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order.

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Fort Saint Vrain Power Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to the Department of Energy, Idaho Operations Office (DOE–ID), authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any person,[3] from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, DOE–ID shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, *it is hereby ordered, effective immediately, that your specific license is modified as follows:*

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to DOE–ID's NRC-approved reviewing official.

2. No person may have access to any SGI, if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. 1. DOE–ID shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. DOE–ID shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, whom continues to need access to SGI, and whom DOE–ID nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as DOE–ID's reviewing official.[4] DOE–ID may, at the

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information-Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of

Continued

same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

3. DOE–ID may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. DOE–ID shall make determinations on continued access to SGI by May 25, 2007, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. DOE–ID shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide DOE–ID's justification for seeking relief from, or variation of, any specific requirement.

DOE–ID responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, responses shall be marked as ''Security-Related Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by DOE–ID.

IV

In accordance with 10 CFR 2.202, DOE–ID must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, DOE–ID and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which DOE–ID relies and the reasons as to why the Order should not have been issued. If a person other than DOE–ID requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may 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 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.

this Order, is an administrative determination that is outside the scope of this Order.

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 works.

If a hearing is requested by DOE–ID or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), DOE–ID may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 7th day of November 2007.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer that granted the federal security clearance or reviewed the criminal history check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) an arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by: (1) Writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) calling (301) 415–5877; or (3) e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards from illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission, if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete

information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–22575 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25; EA–06–298]

In the Matter of Foster Wheeler Environmental Corporation, Idaho Spent Fuel Facility; Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *lrw@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order.

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Foster Wheeler Environmental Corporation's (FWENC) Idaho Spent Fuel Facility Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

The NRC has issued a specific license, to the FWENC, authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI). [1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any person,[3] from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, FWENC shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, it is hereby ordered, effective immediately, that your specific license is modified as follows:

1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to FWENC's NRC-approved reviewing official.

No person may have access to any SGI, if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. 1. FWENC shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

FWENC shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, whom continues to need access to SGI, and whom FWENC nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as FWENC's reviewing official.[4] FWENC may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

FWENC may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. FWENC shall make determinations on continued access to SGI by May 25, 2007, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. FWENC shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide FWENC's justification for seeking relief from, or variation of, any specific requirement.

FWENC responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, responses shall be marked as ''Security-Related Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by FWENC.

IV

In accordance with 10 CFR 2.202, FWENC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, FWENC and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR Part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information–Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

affirmation, specifically set forth the matters of fact and law on which FWENC relies and the reasons as to why the Order should not have been issued. If a person other than FWENC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may 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 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.

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 works.

If a hearing is requested by FWENC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), FWENC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 7th day of November 2007.

For the Nuclear Regulatory Commission.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer that granted the federal security clearance or reviewed the criminal history check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) An arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by: (1) Writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) calling (301) 415–5877; or (3) e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards from illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission, if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate

confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–22572 Filed 11–16–07; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72–01, EA–06–298]

In the Matter of General Electric Company: GE Morris Operation, Independent Spent Fuel Storage Installation; Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *lrw@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order.

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of General Electric Company's (GE) GE Morris Operation Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to GE, authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information-Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

person,[3] from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI.

In addition, no person may have access to SGI unless the person satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, GE shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, parts 72 and 73, *it is hereby ordered, effective immediately, that your specific license is modified as follows:*

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to GE's NRC-approved reviewing official.

2. No person may have access to any SGI, if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C.1. GE shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. GE shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, whom continues to need access to SGI, and whom GE nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as GE's reviewing official.[4] GE may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

3. GE may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. GE shall make determinations on continued access to SGI by May 25, 2007, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. GE shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide GE's justification for seeking relief from, or variation of, any specific requirement.

GE responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, responses shall be marked as ''Security-Related Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by GE.

IV

In accordance with 10 CFR 2.202, GE must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, GE and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which GE relies and the reasons as to why the Order should not have been issued. If a person other than GE requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR part 2, subpart B. The E-Filing

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may 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 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.

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 works.

If a hearing is requested by GE or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), GE may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 7th day of November 2007.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer that granted the federal security clearance or reviewed the criminal history check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer

requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) An arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by: (1) Writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) calling (301) 415–5877; or (3) e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards from illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission, if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–22578 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17; EA–06–298]

In the Matter of Portland General Electric Company, Trojan Independent Spent Fuel Storage Installation; Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *lrw@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order.

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Portland General Electric Company's (PGE) Trojan Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to PGE, authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1]

The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any person,[3] from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, PGE shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, it is hereby ordered, effective immediately, that your specific license is modified as follows:

1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the either two cases, that the appropriate documentation is made available to PGE's NRC-approved reviewing official.

No person may have access to any SGI, if the NRC has determined, based on fingerprinting and an FBI identification and criminal history

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information—Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

records check, that the person may not have access to SGI.

No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C.1. PGE shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

PGE shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, whom continues to need access to SGI, and whom PGE nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as PGE's reviewing official.[4] PGE may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

PGE may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. PGE shall make determinations on continued access to SGI by May 25, 2007, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. PGE shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide PGE's justification for seeking relief from, or variation of, any specific requirement.

PGE responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, responses shall be marked as ''Security-Related Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by PGE.

IV

In accordance with 10 CFR 2.202, PGE must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, PGE and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which PGE relies and the reasons as to why the Order should not have been issued. If a person other than PGE requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may 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.

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have 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.

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 works.

If a hearing is requested by PGE or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PGE may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 7th day of November 2007.

For the Nuclear Regulatory Commission.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer that granted the federal security clearance or reviewed the criminal history check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) An arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by: (1) Writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) calling (301) 415–5877; or (3) e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards from illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission, if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–22577 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22; EA–06–298]

In The Matter of Private Fuel Storage LLC Private Fuel Storage Facility Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001. Telephone: (301) 492–3316; *fax number:* (301) 492–3348; *e-mail: lrw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the **Federal Register** to ensure that adequate notice has been given of an opportunity to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order.

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Private Fuel Storage LLC's (PSFLLC) Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to PFSLLC, authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any person,[3] from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI.

In addition, no person may have access to SGI unless the person satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, PFSLLC shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, parts 72 and 73, *it is hereby ordered, effective immediately, that your specific license is modified as follows:*

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to PFSLLC's NRC-approved reviewing official.

2. No person may have access to any SGI, if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C.1. PFSLLC shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. PFSLLC shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, whom continues to need access to SGI, and whom PFSLLC nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as PFSLLC's reviewing official.[4] PFSLLC may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

3. PFSLLC may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. PFSLLC shall make determinations on continued access to SGI by May 25, 2007, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. PFSLLC shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide PFSLLC's justification for seeking relief from, or variation of, any specific requirement.

PFSLLC responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, responses shall be marked as ''Security-Related

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information—Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by PFSLLC.

IV

In accordance with 10 CFR 2.202, PFSLLC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, PFSLLC and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which PFSLLC relies and the reasons as to why the Order should not have been issued. If a person other than PFSLLC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR part 2, subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may 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 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.

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 works.

If a hearing is requested by PFSLLC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PFSLLC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III shall be final when the extension

expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 7th day of November 2007.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer that granted the federal security clearance or reviewed the criminal history check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) An arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records, for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by: (1) Writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) calling (301) 415–5877; or (3) e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards from illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission, if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739.] Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject

individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–22574 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 5, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 5, 2007, 8:30 a.m. until 10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 8, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch.

[FR Doc. E7–22537 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ABWR Subcommittee; Notice of Meeting

The ACRS Subcommittee on ABWR will hold a meeting on December 5, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss General Electric Company proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, December 5, 2007—12:30 p.m. until 5 p.m.

The Subcommittee will meet with representatives of the General Electric Company and the NRC staff to discuss the ABWR certified design, proposed amendment to the certified design, issues to be addressed through topical reports, issues to be addressed through Combined License Submittals (design centered working group), and the staff's review schedule. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Ms. Maitri Banerjee (telephone 301/415–6973) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7 a.m. and 4:45 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 8, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch.

[FR Doc. E7–22540 Filed 11–16–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (''section 1377''), the Office of the United States Trade Representative (''USTR'') is reviewing and requests comments on: The operation, effectiveness, and implementation of and compliance with the following agreements regarding telecommunications products and services of the United States: the World Trade Organization (''WTO'') Agreement; the North American Free Trade Agreement (''NAFTA''); U.S. free trade agreements (''FTAs'') with Australia, Bahrain, Chile, Morocco, and Singapore; the Dominican Republic—Central America—United States Free Trade Agreement (''CAFTA–DR''); and any other FTA or telecommunications trade agreement coming into force on or before January 1, 2008. The USTR will conclude the review by March 31, 2008.

DATES: Comments are due by noon on December 21, 2007 and Reply Comments by noon on January 25, 2008.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Attn: Section 1377 Comments, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Catherine Hinckley, Office of Industry, Market Access, and Telecommunications (202) 395–9539; or Amy Karpel, Office of the General Counsel (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operations and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into an FTA or other telecommunications trade agreement with the United States is inconsistent with the terms of such agreement or otherwise denies U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its obligations under WTO agreements affecting market opportunities for telecommunications products or services, e.g., the WTO General Agreement on Trade in Services (''GATS''), including the Annex on Telecommunications and any scheduled commitments including the Reference Paper on Pro-Competitive Regulatory Principles;

(2) Whether Canada or Mexico has failed to comply with its telecommunications obligations under the NAFTA;

(3) Whether El Salvador, the Dominican Republic, Guatemala, Honduras or Nicaragua has failed to comply with its telecommunications obligations under the CAFTA–DR;

(4) Whether Australia, Bahrain, Chile, Morocco, Singapore, or any other country for which an FTA with the United States will be in force before January 1, 2008, has failed to comply with its telecommunications obligations under the respective FTA between the United States and that country (see *http://www.ustr.gov/Trade_Agreements/Section_Index.html* for U.S. FTAs);

(5) Whether any country has failed to comply with its obligations under telecommunications trade agreements with the United States other than FTAs, e.g., Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment (see *http://www.tcc.mac.doc.gov* for a collection of trade agreements related *inter alia* to telecommunications);

(6) Whether any country has permitted or encouraged extensive reliance on or abuse of its judicial system to systematically or unreasonably delay or prevent regulatory action to ensure its compliance with obligations under telecommunications trade agreements

(7) Whether any act, policy, or practice of a country cited in a previous section 1377 review remains unresolved (see *http://www.ustr.gov/Trade_Sectors/Telecom-E-commerce/Section_1377/Section_Index.html* for the 2007 review); and

(8) Whether any measures or practices impede access to telecommunications markets or otherwise deny telecommunications products and services of the United States market opportunities with respect to any country that is a WTO member or for which an FTA or telecommunications trade agreement has entered into force between such country and the United States. Measures or practices of interest include, for example, prohibitions on voice over the Internet (VOIP) services; requirements for access or use of networks that limit the products or services U.S. suppliers can offer in specific markets; and the imposition of unnecessary or discriminatory technical regulations or standards in the telecom product or services sectors.

Public Comment and Reply Comment: Requirements for Submission

All comments must be in English, must identify (on the first page of the comments) the telecommunications trade agreement(s) discussed therein, and must be submitted by noon on December 21, 2007. Reply comments must also be in English and must be submitted by noon on January 25, 2008. Reply comments should only address issues raised by the comments.

In order to ensure the most timely and expeditious receipt and consideration of comments and reply comments, USTR has arranged to accept submissions in electronic format (e-mail). Comments should be submitted electronically to *FR0502@ustr.eop.gov.* An automatic reply confirming receipt of an e-mail submission will be sent. E-mail submissions in, Adobe Acrobat, Microsoft Word, or Corel WordPerfect are preferred. If a word processing application other than those three is used, please identify in your submission the specific application used. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the character ''P'', followed by the name of the person or entity submitting the comments or reply comments. Electronic submissions should not contain separate cover letters; rather, information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to a submission should be included in the same file as the submission itself and not as separate files. All non-confidential comments and reply comments will be placed on the USTR Web site, *http://www.USTR.gov,* and in the USTR Reading Room for inspection shortly after the filing deadline, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6.

We strongly urge submitters to avail themselves of the electronic filing, if at all possible. If an e-mail submission is impossible, the submitter must deliver 15 copies of both the business confidential and the public versions via private commercial courier along with a diskette containing a copy of the business confidential and public version of the submission. Arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue should be contacted at (202) 395–3475.

An appointment to review any comments and reply comments filed may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through

Friday, and is located in Room 3 of 1724 F Street, NW.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. E7–22583 Filed 11–16–07; 8:45 am]

BILLING CODE 3190–W8–P

OVERSEAS PRIVATE INVESTMENT COPORATION

Submission of OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OPIC–241, (Enterprise Development Network (EDN) Loan/Insurance Originator Application Questionnaire) is summarized below.

DATES: This 30 calendar-day notice is to notify the public that this collection will be forwarded to OMB for approval in 30 days. No comments were received during the 60 calendar-days publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should now be submitted to: *Office of Management and Budget, Docket Library, Room–10102, 725 17th Street, NW., Washington, DC 20408.*

FOR FURTHER INFORMATION CONTACT: *Agency Submitting Officer:* Essie Bryant, Records Manager & Agency Clearance Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary of Form Under Review:

Type of Request: New Form.

Title: Enterprise Development Network (EDN) Loan/Insurance Originator Questionnaire.

Form Number: OPIC–241.

Frequency of Use: One per originator.

Type of Respondents: Business or other institutions; individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per originator.

Number of Responses: 100 per year.

Federal Cost: $22,000.

Authority for Information Collection: Section 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 241 form is the principal document used by OPIC to determine the originator's eligibility for participation in OPIC's Enterprise Development Network, their involvement with the U.S. Government, and other information relevant to project origination.

Dated: November 14, 2007.

John Crowley, III,

Senior Administrative Counsel, Department of Legal Affairs.

[FR Doc. 07–5728 Filed 11–16–07; 8:45 am]

BILLING CODE 3210–07–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to a currently approved collection of information: 3220–0151, Representative Payee Monitoring consisting of Form(s) G–99a, Representative Payee Report and G–99c, Representative Payee Evaluation Report. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 12 of the Railroad Retirement Act (RRA), the RRB may pay annuity benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7.

The RRB utilizes the following forms to conduct its representative payee monitoring program. Form G–99a, *Representative Payee Report*, is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. RRB Form G–99c, *Representative Payee Evaluation Report*, is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a, or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 48696 on August 24, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Representative Payee Monitoring.

OMB Control Number: 3220–0151.

Form(s) submitted: G–99a, G–99c.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as representative payee. The

collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

Changes Proposed: The RRB proposes no changes to Form G–99a. Minor, non-burden impacting editorial changes are proposed to Form G–99c.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Completion time for G–99a is estimated at 18 minutes. Completion time for Form G–99c is estimated at 24 to 31 minutes.

Estimated annual number of respondents: 6,000.

Total annual responses: 6,535 (6,000 G–99a's and 535 G–99c's).

Total annual reporting hours: 2,032.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be sent to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@RRB.GOV*, and to the Office of Management Budget at *Attn:* Desk Officer for RRB, Fax: (202) 395–6974 or via e-mail to *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–22582 Filed 11–16–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submissions for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extensions:

Form 3, OMB Control No. 3235–0104, SEC File No. 270–125.

Form 4 , OMB Control No. 3235–0287, SEC File No. 270–126.

Form 5 , OMB Control No. 3235–0362, SEC File No. 270–323.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) Forms 3, 4, and 5 (17 CFR 249.103, 249.104 and 249.105) are filed by insiders of public companies that have a class of securities registered under Section 12 of the Exchange Act (15 U.S.C. 78*l*). Form 3 is an initial statement of beneficial ownership of securities, Form 4 is a statement of changes in beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 29,000 insiders file Form 3 annually and it takes approximately .5 hours to prepare for a total of 14,500 annual burden hours. Approximately 225,000 insiders file Form 4 annually and it takes approximately .5 hours to prepare for a total of 112,500 annual burden hours. Approximately 9,000 insiders file Form 5 annually and it takes approximately one hour to prepare for a total of 9,000 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Alexander_T._Hunt@omb.eop.gov* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6423 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22510 Filed 11–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; 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 8c–1, SEC File No. 270–455 , OMB Control No. 3235–0514.

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 has submitted to the Office of Management and Budget requests for approval of the following rule: Rule 8c–1.

Rule 8c–1 (17 CFR 240.8c–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer.[1] Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 142 respondents per year (i.e., broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 3,195 hours to comply with the rule. Each of these approximately 142 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 6,390 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,195 burden hours. The approximate cost per hour is $56, resulting in a total cost of compliance for the respondents of approximately $178,920 (3,195 hours @ $56 per hour).

The retention period for the recordkeeping requirement under Rule 8c–1 is three years. The recordkeeping requirement under this rule is mandatory to ensure that broker-dealers

[1] *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971).

do not commingle their securities or use them to finance the broker-dealers' proprietary business. This rule does not involve the collection of confidential information. Persons should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: November 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22511 Filed 11–16–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56780; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 23 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage To Permit the Use of Linkage Prior to the Opening of Trading

November 13, 2007.

I. Introduction

On September 14, 2007, September 19, 2007, August 29, 2007, August 30, 2007, August 29, 2007, and September 26, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), the NYSE Arca, Inc. (''NYSE Arca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder [2] an amendment (''Joint Amendment No. 23'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] In Joint Amendment No. 23, the Participants propose to modify section 7(a)(i) of the Linkage Plan to permit trading on Linkage prior to the opening of trading. The proposed Joint Amendment No. 23 was published in the **Federal Register** on October 12, 2007.[4] The Commission received no comments on Joint Amendment No. 23. This order approves Joint Amendment No. 23.

II. Description of the Proposed Amendment

The Linkage Plan currently does not permit use of Linkage before an exchange opens for trading and disseminates a quotation in an option series. In Joint Amendment No. 23, the Participants proposed to amend section 7(a)(i) of the Linkage Plan to permit the use of Linkage prior to the opening of trading. Specifically, Joint Amendment No. 23 would allow Participants to send Linkage P/A Orders [5] to the Linkage prior to the exchange's opening.

III. Discussion and Commission Findings

After careful consideration of Joint Amendment No. 23, the Commission finds that approving Joint Amendment No. 23 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 23 is consistent with section 11A of the Act [6] and Rule 608 thereunder [7] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission believes that allowing Participants to send Linkage P/A Orders to the Linkage prior to the exchange's opening should facilitate investors' intermarket access to superior prices disseminated by Participants other than the one to which the order was initially sent.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [8] and Rule 608 thereunder,[9] that Joint Amendment No. 23 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22533 Filed 11–16–07; 8:45 am]

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Securities Exchange Act Release No. 56605 (October 3, 2007), 72 FR 58134.

[5] *See* Section 2(16)(a) of the Linkage Plan.

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56778; File No. SR–Amex–2007–100]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Options on Shares of the iShares MSCI Mexico Index Fund

November 9, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2007, the American Stock Exchange LLC (the ''Amex'' or the ''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 and order to solicit comments on the proposal from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on shares of the iShares MSCI Mexico Index Fund (the ''Fund Options'').

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to obtain approval to list for trading on the Exchange, options on the shares of the iShares MSCI Mexico Index Fund (the ''Fund'') (symbol: EWW). The shares of the Fund, an exchange-traded fund, are currently listed and traded on the Exchange. Commentary .06 to Amex Rule 915 and Commentary .07 to Amex Rule 916, respectively, establish the Exchange's initial listing and maintenance standards for equity options (the ''Listing Standards''). The Listing Standards permit the Exchange to list options on the shares of open-end investment companies, such as the Fund, without having to file for approval with the Commission.[3] The Exchange submits that the shares of the Fund substantially meet all of the initial listing requirements. In particular, all of the requirements set forth in Commentary .06 to Rule 915 are met except for the requirement concerning the existence of a comprehensive surveillance sharing agreement (''CSSA''). However, the Exchange submits that sufficient mechanisms exist in order to provide adequate surveillance and regulatory information with respect to the portfolio securities of the Fund.

The Fund is registered pursuant to the Investment Company Act of 1940 as a management investment company designed to hold a portfolio of securities which track the MSCI Mexico Index (''Index'').[4] The Index consists of stocks traded primarily on the Bolsa Mexicana de Valores (the ''Bolsa''). The Fund employs a ''representative sampling'' methodology to track the Index by investing in a representative sample of Index securities having a similar investment profile as the Index.[5] Barclays Global Fund Advisors (''BGFA'' or the ''Adviser'') expects the Fund to closely track the Index so that, over time, a tracking error of 5%, or less, is exhibited. Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Index. The Fund will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except, to the extent practicable, to reflect the concentration in the Index. The Fund will invest at least eighty percent (80%) of its assets in the securities comprising the Index and/or related American Depositary Receipts (''ADRs''). In addition, at least ninety percent (90%) of the Fund's assets will be invested in the securities comprising the Index or in other related Mexican securities or ADRs. The Fund may also invest its other assets in futures contracts, options on futures contracts, listed options, over-the-counter (''OTC'') options and swaps related to the Index, as well as cash and cash equivalents. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund (''Fund Shares'') are issued and redeemed, on a continuous basis, at net asset value (''NAV'') in aggregation size of 100,000 shares, or multiples thereof (a ''Creation Unit''). Following issuance, Fund Shares are traded on an exchange like other equity securities. The Fund Shares trade in the secondary markets in amounts less than a Creation Unit and the price per Fund Share may differ from its NAV which is calculated once daily as of the regularly scheduled close of business of the New York Stock Exchange (''NYSE'').[6]

State Street Bank and Trust Company, the administrator, custodian, and transfer agent for the Fund, calculates the Fund's NAV. Detailed information on the Fund can be found at *http://www.ishares.com*.

The Exchange has reviewed the Fund and determined that the Fund Shares satisfy the initial listing standards, except for the requirement set forth in Commentary .06(b)(i) to Amex Rule 915 which requires the Fund to meet the following condition: ''any non-U.S. component stocks in the index or portfolio on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.'' The Exchange currently does not have in place a surveillance agreement with Bolsa.

The Exchange submits that the Commission, in the past, has been willing to allow a national securities exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a CSSA.

The Exchange previously attempted to enter into a CSSA with Bolsa as part of seeking approval to list and trade options on the Mexico Index.[7] Additionally, the Chicago Board Options Exchange, Incorporated (the ''CBOE'') also previously attempted to enter into a CSSA with Bolsa at or about the time when the CBOE sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised of stocks trading on Bolsa.[8] Since Bolsa was unable to provide a surveillance agreement, the Commission allowed the CBOE to rely on the memorandum of understanding executed by the Commission and the CNBV,[9] dated as of October 18, 1990 (''MOU'').[10] The Commission noted that in cases where it would be impossible to secure a CSSA, the Commission relied in the past on surveillance sharing agreements between the relevant regulators.[11] The Commission further noted that, pursuant to the terms of the

[3] Commentary .06 to Amex Rule 915 sets forth the initial listing criteria for shares or other securities (''Exchange-Traded Fund Shares'') that are principally traded on, or through the facilities of, a national securities exchange and reported as a national market security, and that represent an interest in an open-end registered investment company, a unit investment trust or other similar entity.

[4] Morgan Stanley Capital International Inc. (''MSCI'') created and maintains the Index.

[5] As of July 31, 2007, the Fund was comprised of 27 securities. America Movil SA de CV-Series L had the greatest individual weight at 25.57%. The aggregate percentage weighting of the top 5 and 10 securities in the Fund were 58.51% and 78.39%, respectively.

[6] The regularly scheduled close of trading in the NYSE is normally 4 p.m. Eastern Time (''ET'').

[7] *See* Securities Exchange Act Release No. 34500 (August 8, 1994) 59 FR 41534 (August 12, 1994) (SR–Amex–94–20).

[8] *See infra* New Product Release at note 10.

[9] The National Commission for Banking and Securities, or ''CNBV,'' is Mexico's regulatory body for financial markets and banking.

[10] *See* Securities Exchange Act Release No. 36415, at n. 23 (October 25, 1995), 60 FR 55620 (November 1, 1995) (SR–CBOE–95–45).

[11] *Id.*

MOU, it was the Commission's understanding that both the Commission and the CNBV could acquire information from, and provide information to, the other similar to that which would be required in a CSSA between exchanges and, therefore, should the Exchange or the CBOE need information on Mexican trading in the component securities of the Mexico Index or the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.[12]

The practice of relying on surveillance agreements or MOUs between regulators when a foreign exchange was unable, or unwilling, to provide an information sharing agreement was affirmed by the Commission in the Commission's New Product Release (''New Product Release'').[13] The Commission noted in the New Product Release that if securing a CSSA is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. The Commission also noted that the Commission may determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator.

The Exchange requests that the Commission allow the listing and trading of the Fund Shares without a CSSA, upon reliance of the MOU entered into between the Commission and the CNBV, until the Exchange is able to secure a CSSA with Bolsa. The Exchange believes this request is reasonable and notes that the Commission has provided similar relief in the past. For example, the Commission approved, on a pilot basis, an Amex proposal to list and trade options on the iShares MSCI Emerging Markets Fund.[14]

The Exchange notes that the underlying Fund Shares may be listed and traded without a CSSA as long as last sale reporting of the component securities is available pursuant to Amex Rule 1000A–AEMI. Accordingly, the Exchange believes that options on such Fund Shares should be permissible.

The Commission's approval of this request to list and trade the Fund Options would otherwise render the Fund compliant with all of the applicable Listing Standards.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5)[16] of the Act, in particular, in that it will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and, in general, 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 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–Amex–2007–100 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Amex–2007–100. 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 the filing also will be available for inspection and copying at the principal office of Amex. 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–Amex–2007–100 and should be submitted on or before December 10, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.[17] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[18] which requires that an exchange have rules designed, among other things, 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.

The listing of the Fund Options does not satisfy Commentary .06(b)(i) to Amex Rule 915 which requires the Fund to meet the following condition: ''any non-U.S. component stocks in the index or portfolio on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.''

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), at note 101.

[14] *See* Securities Exchange Act Release Nos. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR–Amex–2006–43); 54081 (June 30, 2006), 71 FR 38911 (July 10, 2006) (SR–Amex–2006–60); 54553 (September 29, 2006), 71 FR 59561 (October 10, 2006) (SR–Amex–2006–91); 55040 (January 3, 2007), 72 FR 1348 (January 11, 2007) (SR–Amex–2007–01); and 55955 (June 25, 2007), 72 FR 36079 (July 2, 2007) (SR–Amex–2007–57).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 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).

[18] 15 U.S.C. 78f(b)(5).

The Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information sharing agreement.[19] In this case, Amex has attempted unsuccessfully to reach such an agreement with Bolsa.

Consequently, the Commission has determined to approve Amex's listing and trading of the Fund Options and to allow Amex to rely on the MOU[20] with respect to the underlying Fund components trading on Bolsa. The Commission believes that, regardless of the Commission's willingness to permit reliance on the MOU, Amex should continue to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (1) Express language addressing market trading activity, clearing activity, and customer identity; (2) the Bolsa's reasonable ability to obtain access to and produce requested information; and (3) based on the CSSA and other information provided by the Bolsa, the absence of existing rules, law or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with section 19(b)(2) of the Act,[21] for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register** because it will enable the Exchange to immediately consider listing and trading the Fund Options, similar to products already traded on the Exchange,[22] and because it does not raise any new regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Amex–2007–100) be, and it hereby is approved on an accelerated basis.

[19] *See supra* note 10; *See also* New Product Release, *supra* note 13.

[20] *See supra* note 10.

[21] 15 U.S.C. 78s(b)(2).

[22] *See supra* note 14.

[23] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22482 Filed 11–16–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56781; File No. SR–ISE–2007–93]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Send P/A Orders Through Linkage Prior to the Opening of Trading

November 13, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rule 701 to permit the sending of Principal Acting as Agent Orders (''P/A Orders'')[3] through the Intermarket Options Linkage (''Linkage'') prior to the opening of trading. This proposal would conform ISE Rule 701 to Joint Amendment No. 23[4] of the Linkage Plan.[5] The text of the proposed rule change is available at the ISE, at the Commission's Public Reference Room, and at *http://www.ise.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, its 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 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

The Exchange is proposing to amend ISE Rule 701 to conform it to a proposed amendment to section 7(a)(i) of the Linkage Plan. The proposed rule change will permit the use of Linkage prior to the opening of trading. Prior to the Commission's approval of Joint Amendment No. 23 to the Linkage Plan, the Linkage Plan did not permit use of Linkage before an exchange opens for trading and disseminates a quotation in an options series. In addition, there was no trade-through protection for opening trades. As a result, if there was a better market away at the time a Participant opens its market, the ISE Primary Market Maker (''PMM''), responsible both for the opening and for protecting customer orders, could not access that market for a customer. The customer thus could receive a price inferior to the national best bid and offer. This amendment to ISE Rule 701 will allow the sending of Linkage P/A Orders prior to the opening, allowing the PMM to access better markets on behalf of customers prior to the ISE's opening.

In implementing this proposed rule change, the Exchange will ensure that customers always receive the best price for their orders. Under the Linkage Plan, a receiving market has five seconds to respond to a P/A Order,[6] and the receiving market can reject a response it receives more than five seconds after sending the order.[7] In the unlikely event that the ISE opens its market during this five-second period, it is possible that the

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] *See* Section 2(16)(a) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').

[4] *See* Securities Exchange Act Release No. 56780 (November 13, 2007) (File No. 4–429).

[5] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] *See* Linkage Plan Section 7(a)(ii)(B)(1)(*a*).

[7] *See* Linkage Plan Section 7(a)(iii).

opening price could differ from the price of an executed P/A Order (either higher or lower). In that case, the ISE represents that it will ensure that the PMM provides the customer with the most advantageous price. Thus, the proposed rule change only can benefit customers by providing them with possible price improvement at the opening.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, the Exchanges believe the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[9] that the rules of an exchange be designed to prevent fraudulent and manipulative acts, 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 believes that the proposed rule change would impose no 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 comments on this proposal.

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–ISE–2007–93 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2007–93. 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 submissions, 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 the filings also will be available for inspection and copying at the principal offices 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 No. SR–ISE–2007–93 and should be submitted on or before December 10, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to national securities exchanges.[10] In particular, the Commission finds that the proposal is consistent with the provisions of section 6(b)(5) of the Act[11] 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. The Commission believes that allowing the Exchange to send P/A Orders to the Linkage prior to the opening should facilitate investors' intermarket access to superior prices.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Granting accelerated approval would facilitate the implementation of the proposed rule change in conjunction with the Join Amendment No. 23 to the Linkage Plan.[12] In addition, the Commission notes that the Exchange has committed to ensuring that, for Linkage P/A Orders sent prior to the opening, PMMs will provide customers with the most advantageous price in the event that the ISE opens its market while the Exchange is awaiting a response to such a P/A Order. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[13] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[14], that the proposed rule change (SR–ISE–2007–93) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22552 Filed 11–16–07; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 4.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[15] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56777; File No. SR–NYSE–2007–87]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Incorporate Certain Definitions of Exchange Act Rules 13d–1 and 13d–3 Into NYSE Rule 460

November 9, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule, as amended, change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 460 to reference Rules 13d–1(i) and (j), and 13d–3, under the Act for the purpose of determining whether a specialist is a beneficial owner of an equity security in which the specialist is registered, and to make non-substantive clarifying amendments to the rule. The text of the proposed rule change is available at NYSE, 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 NYSE 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 NYSE 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 NYSE is proposing to add NYSE Rule 460.40 to incorporate the definitions of Rules 13d–1(i) and (j), and 13d–3, under the Act[3] for the purpose of determining whether a specialist is a beneficial owner of more than ten percent of any security in which the specialist is registered under NYSE Rules 460.10 and 460.20.

NYSE Rule 460.10 precludes specialists from being the beneficial owner, either directly or indirectly, of more than ten percent of the outstanding shares of any equity security in which the specialist is registered. For purposes of determining whether this ten percent threshold has been met, the specialist's position is aggregated with those of the specialist's member organization, as well as other members, allied members, approved persons, officers, and employees of the specialist's member organizations.

The rule contains a number of exceptions, including that the ten percent ownership threshold does not apply to specialists if the security is a convertible or derivative security, American Depository Receipt, Global Depository Receipt, or similar instrument so long as the conversion of such instrument would not result in a position in the common stock of such security that exceeds that ten percent threshold.

Similarly, specialists in Exchange Traded Funds and other investment company units or Trust Issued Receipts can own such securities so long as the redemption of such securities would not result in a position in any equity security in which such specialist is also registered that exceeds the ten percent threshold.

To ensure consistency with federal laws and regulations, the Exchange proposes adding NYSE Rule 460.40 to incorporate the definition under the Act for determining beneficial ownership of securities. Rule 13d–3 under the Act defines a beneficial owner as any person who directly or indirectly has either voting power over a security or investment power, including the power to dispose, or to direct the disposition of a security. The rule further provides that all securities in the same class, regardless of the form that such beneficial ownership takes, shall be aggregated for purposes of calculating the number of shares beneficially owned by such person. Rule 13d–3 also defines how various financial instruments, including options, warrants, convertible securities, and trusts should be treated for purposes of determining beneficial ownership.

Rule 13d–1(i) under the Act provides that for purposes of section 13(d) of the Act,[4] including Rule 13d–3 thereunder, the term ''equity security'' refers to those securities that are registered pursuant to section 12 of the Act.[5] In addition, Rule 13d–1(j) under the Act provides that for purposes of determining the number of outstanding shares for any security, firms can rely on an issuer's most recent quarterly or annual report, or any more current report, that has been filed with the Commission.

NYSE Regulation staff also proposes making technical amendments to both NYSE Rule 460.10 and 460.20 to clarify the text of those rules. These proposed revisions would not effect any substantive changes to the rule and are intended to make the rule easier to implement and enforce.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[6] of the Act that an exchange have rules that are 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.

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

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

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 NYSE 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

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4

[3] 17 CFR 240.13d–1(i) and (j); and 17 CFR 240.13d–3.

[4] 15 U.S.C. 78m.

[5] 15 U.S.C. 78l.

[6] 15 U.S.C. 78f(b)(5).

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–2007–87 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2007–87. 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 NYSE. 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–2007–87 and should be submitted on or before December 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22509 Filed 11–16–07; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56775; File No. SR–Phlx–2007–83]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amending By-Law Article X, Section 10–11

November 9, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 29, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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

Phlx proposes to expand the type of business that certain members of the Exchange's Business Conduct Committee (''Committee'') must conduct in order to qualify as a Committee member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.Phlx.com/exchange/phlx-rule-fil.html.*

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 states that the purpose of the proposed rule change is to allow a greater pool of Phlx members with varying backgrounds and industry experience to serve on the Committee. Exchange By-Law X, section 10–11(h) currently requires nine members to comprise the Committee; one member of the Committee must principally carry out its business on XLE, and one member must principally carry out its business on the equity options floor. Phlx believes that expanding the qualifications for these two Committee members, as set forth in this proposed rule change, should allow a greater pool of Exchange members to be eligible to serve on the Committee.

The Committee has exclusive jurisdiction to monitor compliance with the Act, the rules and regulations thereunder and the by-laws and rules of the Exchange as well as to authorize the initiation of any disciplinary actions or proceedings, among other things. Phlx believes that qualifying additional members for service on the Committee should permit a greater pool of members to serve and thereby bring their experience to the Committee process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[3] in general, and furthers the objectives of section 6(b)(5) of the Act[4] in particular, in that it is 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. In addition, the Exchange believes that the proposed rule change also furthers the objectives of section 6(b)(3) under the Act[5] in that the Committee's composition continues to reflect a ''fair representation'' of the Exchange's members in the administration of its affairs.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(3).

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–Phlx–2007–83 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2007–83. 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–Phlx–2007–83 and should be submitted on or before December 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22481 Filed 11–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56776; File No. SR–Phlx–2007–81]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Automated Opening System

November 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act 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 Exchange Rule 1017 ''Openings in Options'' to establish additional criteria to determine the single opening price in a particular option series when the Exchange's system could open trading in such series at two or more prices.[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.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. Phlx has substantially 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 states that the purpose of the proposed rule change is to ensure that the Exchange's opening price in a particular option series is established at a single price when two or more opening prices would satisfy the requirement in Exchange Rule 1017(c) that such price be the price at which the maximum quantity of contracts will trade. The Exchange believes that this proposal should facilitate fair and orderly markets on the opening of a particular option series on the Exchange at a single price.

Rule 1017(c) sets forth the methodology by which the Exchange's system establishes the opening price of a series. Generally, the opening price of a series is the price at which the maximum quantity of contracts will be traded. The Exchange notes that frequently, however, there will be more than one price that will satisfy the ''maximum quantity'' test in determining the opening price of a series. Accordingly, Rule 1017(c) lists a number of ''tie-breakers'' used by the

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[6] 17 CFR 200.30–3(a)(12).

[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).

[5] The Exchange has advised that it anticipates implementing the proposed rule change on December 1, 2007. The Exchange states that, if this date is delayed, it will inform its members through a circular. Telephone conversation among Richard Rudolph, Vice President and Counsel, Exchange, and Hong-Anh Tran and Michou H.M. Nguyen, Special Counsels, Division of Market Regulation, Commission on November 6, 2007.

system to determine the actual opening price of a series.

Currently, Rule 1017(c)(i) defines the opening price as the price at which the maximum quantity of contracts would be traded. The rule establishes a series of ''tie-breakers,'' which are additional criteria that the system follows in establishing the opening price when two or more prices would satisfy the maximum quantity criteria. Specifically, when the maximum quantity of contracts could be traded at two or more prices, the system establishes the opening price based on the following criteria, in the following order: (1) The price at which the greatest number of customer orders would be traded; (2) the price at which the maximum number of Phlx XL participants would trade; and (3) the price that is closest to the closing price from the previous trading session.[6]

The Exchange has observed that the existing ''tie-breakers'' in Rule 1017(c) can still result in the situation where two or more prices could satisfy the maximum quantity criteria. Accordingly, the Exchange proposes to add another ''tie-breaker'' to be used in determining the opening price when two or more prices satisfy the maximum quantity criteria.

Specifically, the Exchange proposes to amend Rule 1017(c) to provide that, after all existing ''tie-breakers'' have been exhausted, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the mid-point of the highest possible price and lowest possible price that satisfy the maximum quantity criteria (rounded as needed to the side of the market with the greatest number of Phlx XL participants).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, because it is 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, by clarifying the single opening price in a particular series on the Exchange when two or more prices would result in the maximum number of contracts traded at the opening in such series.

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[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

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-Phlx-2007–81 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR–Phlx–2007–81. 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–Phlx–2007–81 and should be submitted on or before December 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22484 Filed 11–16–07; 8:45 am]

BILLING CODE 8011–01–P

[6] For a complete description of the Exchange's automated opening system, *see* Securities Exchange Act Release No. 52667 (October 25, 2005), 70 FR 65953 (November 1, 2005) (SR–Phlx–2005–25).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5993]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated pursuant to sections 36(c) and 36(d) and in compliance with

section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 27 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Davis, Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2738.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

July 31, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and articles related to the Laser-based Directional Infrared Countermeasures System to the United Kingdom in support of Operation Iraqi Freedom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 068–07.

August 10, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more and for the manufacture abroad of Significant Military Equipment (SME).

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to Canada, the United Kingdom, Switzerland and Kuwait for the manufacture of 25MM Turrets for end use by the Kuwait Ministry of Defense for the Desert Piranha III Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 006–07.

August 10, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to support repair and modification of Singapore's AH–64D helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 008–07.

August 10, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles relating to the technical management and administrative services in the operation and maintenance of the Royal Saudi Air Force (RSAF) C–130 fleet.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 026–07.

August 17, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of hardware, technical data, and defense services to Canada for the design, manufacture and delivery of the NIMIQ 5/6/5R Satellites Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification, which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 048–07.

September 25, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of firearms sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of firearms to Malaysia for ultimate use by the Malaysian Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 004–07.

September 27, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, technical data, and defense services to Japan in support of the MK 41 Vertical Launching System, including manufacture of selected subassemblies.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 051–07.

September 27, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense services and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to South Korea to support the manufacture of the Korean Commander's Panoramic Sight (KCPS) for the K1 Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 081–07.

September 28, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns future commercial activities with Russia, Ukraine and Norway related to the launch of all commercial and foreign non-commercial satellites from the Pacific Ocean utilizing a modified oil platform.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 096–07.

September 28, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns future commercial activities with Russia related to the launch of all commercial and foreign non-commercial satellites from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 097–07.

September 28, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification concerns future commercial activities related to the co-development of the Galaxy Express space launch vehicle upgrade program for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 098–07.

October 16, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia for the manufacture of U.S. military gun propellants in connection with the Australian Mulwala Gun Propellant and Explosive Plant upgrade.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 050–07.

October 16, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of hardware, technical data, and defense services to Denmark, the Netherlands, and Belgium in support of the MK 41 Vertical Launching System, including manufacture of selected subassemblies.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 052–07.

October 16, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the manufacture of F–15 electrical generator, constant speed drives for end use by the Japanese Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 080–07.

October 16, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea to support the manufacture of F–16 airframe structural components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 087–07.

October 18, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Iraq to provide continued basic and intermediate maintenance support for the Iraqi Government's UH–1H helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 104–07.

October 18, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, a proposed re-export for defense services and defense articles in the amount of $1 million or more.

The transaction contained in the attached certification involves the re-export of firearms for end-use by the Afghan National Army (ANA).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 107–07.

October 19, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense services, technical data and defense articles to Japan to support the manufacture and maintenance of the AN/AAS–44(JM) and the TIFLIR–49(JM) Infrared Detecting System for the Japan Maritime Self Defense Force (JMSDF).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 049–07.

October 19, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data, defense articles and defense services to Italy to establish a depot repair facility for night vision equipment in the inventories of the Ministries of Defense of Poland and Ireland.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 067–07.

October 19, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to Germany and the United Kingdom related to the AN/AAQ–24(V) Nemesis Multi-Band Viper Laser Based Directional Infrared Countermeasures System and Associated Equipment for the NATO E–3A Airborne Warning and Control System Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 069–07.

October 19, 2007.

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, and defense services and articles in support of the Multi-Role Electronically Scanned Array Radar/Identification Friend or Foe Subsystem for the Korea EX 737 Airborne Early Warning and Control Program. This transaction is part of a sub-contract to the Korea EX 737 Program notified to congress under CN# 054–07.

The United States Government is prepared to license the export of these items having

taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 070–07.

October 19, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the manufacture of significant military equipment abroad and the export of major defense equipment in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Spain for the production of select components of the M2HB Machine Gun and the MK19 Grenade Machine Gun.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 077–07.

October 19, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of technical data, defense articles and defense services to Canada, for the development and manufacture of 45/9mm GI (patent pending) ammunition, to be sold to the Armed Forces of the United States, Canada and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 083–07.

October 26, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Australia of technical data and assistance in the manufacture of water coolers and supporting material for the Spy-ID Radar for end use in Navy programs for the governments of Australia, Japan, Korea, Spain and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 031–07.

October 30, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of firearms sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of firearms to Georgia for use by the Georgian Defense Ministry.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 075–07.

October 31, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to The Republic of Korea for the manufacture and assembly of the X1100 Series Transmissions.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 005–07.

November 8, 2007.
Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to Saudi Arabia for the operation and maintenance of the Saudi Ministry of Defense and Aviation, and the Royal Saudi Air Defense Forces HAWK and PATRIOT Air Defense Missile Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 086–07.

Dated: November 9, 2007.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Department of State.

[FR Doc. E7–22564 Filed 11–16–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5968]

Industry Advisory Panel: Notice of Open Meeting

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, December 13, 2007 from 9:30 until 3:30 p.m. Eastern Standard Time. The meeting will be held in Room 1107 of the U.S.

Department of State, located at 2201 C Street, NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance. The majority of the meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Building Operations' senior management and the panel members, on design, operations, and building maintenance. Members of the public are asked to kindly refrain from joining the discussion until Director Williams opens the discussion to them.

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by December 5, 2007, their name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (i.e., U.S. government ID, U.S. military ID, passport, or drivers license (and state) by e-mailing: *iapr@state.gov.* Due to limited space, please remember that only one person per company may register.

If you have any questions, please contact Andrea Walk at *walkam@state.gov* or on (703) 516–1544.

Dated: November 8, 2007.

Charles E. Williams,

Director and Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. E7–22562 Filed 11–16–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) on a Short Form Environmental Assessment (EA); Greater Peoria Regional Airport, Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Greater Peoria Airport, Peoria, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is : (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below; (b) Approval of the Airport Layout Plan (ALP) for the development items listed below; and (c) Establish eligibility of the Greater Peoria Airport Authority to compete for Federal funding for the development projects depicted on the Airport Layout Plan.

The specific item in the local airport development project is to acquire approximately 34 acres of land in fee simple title off the Runway 31 end.

Copies of the environmental decision and the Short Form EA are available for public information review during regular business hours at the following locations:

1. Greater Peoria Regional Airport, 6100 West Everett McKinley Dirksen Parkway, Peoria, Illinois 61607.

2. Division of Aeronautics-Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, Illinois 62707.

3. Chicago Airports District Office, Room 320, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Amy Hanson, Environmental Specialist, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Hanson can be contacted at (847) 294–7354 (voice), (847) 294–7046 (facsimile) or by e-mail at *amy.hanson@faa.gov.*

Dated: Issued in Des Plaines, Illinois on October 25, 2007.

Jack Delaney,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–5722 Filed 11–16–07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eleventh Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held December 11–13, 2007.

Times: December 11th from 9 a.m.–5 p.m., December 12th from 9 a.m.–5 p.m., December 13th from 9 a.m.–3 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036. Point of Contact: Rudy Ruana; Telephone: 202–833–9339; e-mail: *rruana@rtca.org.*

Note: Workgroup 1 breakout sessions will take place at SAIC, located at 400 Virginia Ave., SW., Ste 800 and 525 School Street, 4th Floor, Washington, DC 20024; Metro: L'Enfant Plaza; Dress is Business Casual; Workgroup meetings on December 13th may go on until 5 p.m.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include;

- December 11:
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Eleventh Plenary Summary).
- Approval of Eleventh Plenary Summary.
- Presentations to the Plenary.
- Work plan status and review.
- Workgroup 1 status.
- Workgroup 2 status.
- Workgroup 3 status.
- Plenary Adjourns.
- Workgroups 1, 2, and 3 Breakouts.
- December 12:
- Workgroups 1, 2, and 3 Breakouts.
- December 13:
- Workgroups 1, 2, and 3 Breakouts.
- Plenary Reconvenes.
- Closing Plenary Session (Other Business, Date, Place and Time of Next Plenary, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FUTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 5, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–5721 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting, Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

SUMMARY: The FAA is issuing this notice to advise the public of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

DATES: The meeting will be held December 5, 2007, from 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 212 meeting. The agenda will include:

- December 5:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- Resolve comments ont he draft HTAWS MOPS document.
- Consider and approve the draft HTAWS MOPS document for final review and comment (FRAC).
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in **FOR FURTHER INFORMATION CONTACT** Section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on November 8, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–5723 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, State Route 91 from post miles 15.6–21.6 in Riverside County, California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 19, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Marie J. Petry, California Department of Transportation District 8, 464 W. 4th Street, San Bernardino, CA 94201–1400, telephone (909) 383–6379, *Marie_Petry@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the California Department of Transportation (Caltrans), pursuant to its assigned responsibilities under 23 U.S.C. 327, has taken final agency actions subject to 23 U.S.C. 139(l)(1) by approving the following highway project in the State of California. When completed, the State Route 91 (SR–91) High Occupancy Vehicle (HOV) project will widen existing SR–91 by adding one HOV lane in each direction, adjacent to the median between Adams Street (Kilometer Post [KP] 25.11 [Post Mile {PM 15.6]) and University Avenue (KP 32.93 [PM 20.46]) in the city of Riverside by adding a single HOV lane adjacent to the median in each direction. The westbound HOV lane will begin immediately after the State Route 60/SR–91/ Interstate 215 (SR–60/91/I–215) separation and continue to west of Mary Street. The eastbound HOV lane will connect to the existing HOV lane east of Adams Street, will continue to approximately 1,000 feet west of the SR 60/91/I–215 interchange, and will then merge into the existing mixed-flow lane. The project will include an addition of one eastbound auxiliary lane between Indiana Avenue and Central Avenue and a westbound auxiliary lane between Central Avenue and Arlington Avenue. In addition, the project will reconfigure existing interchanges, replacement of existing over crossings, widening of existing under crossings, and re-striping within existing right-of-way to accommodate the mainline and interchange improvements. Other project improvements include retaining walls, sound walls, landscaping, pavement re-striping, and the modification and extension of various drainage structures to accommodate the widening of SR–91. Project improvements between University Avenue and the SR–60/91/I–215 interchange consist of pavement re-striping only.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on August 30, 2007, in the FHWA Finding of No Significant Impact (FONSI) issued on August 30, 2007, and in other documents in the FHWA project records. The FEA, FONSI, and other project records are available by contacting FHWA or the California Department of Transportation, District 8 at the addresses provided above. The FHWA FONSI can be viewed and downloaded from the project Web site at *http://district8.dot.ca.gov/projects/index.htm*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 9, 2007.

Maiser Khaled,

Director, Project Development & Environment, Sacramento, California.

[FR Doc. E7–22580 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 18, 2008.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0557, OMB control number 2130–0564, or OMB control number 2130–0565.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via E-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Christodoulou at *gina.christodoulou@dot.gov*. Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce

information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of current information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Safety Integration Plans.

OMB Control Number: 2130–0557.

Abstract: The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB), working in conjunction with each other, have issued joint final rules establishing procedures for the development and implementation of safety integration plans (''SIPs'' or ''plans'') by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA uses the information collected, notably the required SIPs, to maintain and promote a safe rail environment by ensuring that affected railroads (Class Is and some Class IIs) address critical safety issues unique to the amalgamation of large, complex railroad operations.

Form Number(s): N/A.

Affected Public: Railroads.

Respondent Universe: Class I Railroads.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
244.13—Safety Integration Plans: Amalgamation of Operations—SIP Development & Quarterly Meetings.	8 railroads	1 plan	340 hours	340 hours	$24,016
244.17—Procedures	8 railroads	25 reports	40 hours/2 hours	88 hours	5,632
—Responses to FRA Inquiries Re: SIP data.	8 railroads	6 responses	8 hours	48 hours	3,072
—Coordination in Implementing Approved SIP.	8 railroads	25 phone calls	10 minutes	4 hours	256
—Request for Confidential Treatment	8 railroads	1 request	16 hours	16 hours	2,512
244.19—Disposition: —Comments on Proposed SIP Amendments.	8 railroads	2 reports	16 hours	32 hours	2,048

Total Responses: 60.

Estimated Total Annual Burden: 528 hours.

Status: Extension of a Currently Approved Collection.

Title: Locomotive Crashworthiness.

OMB Control Number: 2130–0564.

Abstract: In a final rule published June 28, 2006, the Federal Railroad Administration (FRA) issued comprehensive standards for locomotive crashworthiness. These crashworthiness standards are intended to help protect locomotive cab occupants in the event of a locomotive collision. The collection of information is used by FRA to ensure that locomotive manufacturers and railroads meet minimum performance standards and design load requirements for newly manufactured and re-manufactured locomotives in order to help protect locomotive cab occupants in the event that one of these covered locomotives collides with another locomotive, the rear of another train, a piece of on-track equipment, a shifted load on a freight car on an adjacent parallel track, or a highway vehicle at a rail-highway grade crossing.

Form Number(s): N/A.

Affected Public: Railroads.

Respondent Universe: 685 Railroads/4 Locomotive Manufacturers.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
229.207—Petition for FRA Approval of New Locomotive Crashworthiness Standards.	685 Railroads + 4 Loco. Manufacturers	2 petitions	1,050 hours	2,100 hours	$4,000
—Subsequent Years—Petitions	685 Railroads + 4 Loco. Manufacturers	1 petition	1,050 hours	1,050 hours	2,000
—Petition for FRA Approval of Substantive Change to FRA-Approved Crashworthiness Design Standard.	685 Railroads + 4 Loco. Manufacturers	2 petitions	1,050 hours	2,100 hours	254,000
—Petition for FRA Approval of Non-Substantive Change to FRA-Approved Crashworthiness Design Standard.	685 Railroads + 4 Loco. Manufacturers	4 petitions	400 hours	1,600 hours	183,000
229.109—Petition for FRA Approval of Alternative Locomotive Crashworthiness Design Standard.	685 Railroads + 4 Loco. Manufacturers	1 petition	2,550 hours	2,550 hours	2,000
229.211—Comments on FRA Notice of Petitions Received by Agency.	4 Loco. Manuf./RR Association/Labor Organizations/Public.	10 comments	16 hours	160 hours	6,400
—Agency Request for Additional Information Concerning Petitions: Hearings.	685 Railroads/4 Loco. Manuf./Other Interested Parties/Public.	4 hearings (16 comments).	24 hours	96 hours	3,840
229.213—Locomotive Manufacturing Information: Retention of Required Info.	685 Railroads	700 records or stickers or badge plates.	6 minutes	70 hours	2,800
229.215—Retention of Records—Original Designs.	4 Loco. Manuf.	24 loco. rcds.	8 hours	192 hours	7,680

CFR section	Respondent universe	Total annual responses	Average time per esponse	Total annual burden hours	Total annual burden cost
—Retention of Records—Repairs and Modifications.	685 Railroads	6 records	4 hours	24 hours	960
—Inspection of Records	6 Loco. Manuf./Rebuilders	10 records	2 minutes	.33 hour	13

Total Responses: 764.

Estimated Total Annual Burden: 9,942 hours.

Status: Extension of a Currently Approved Collection.

Title: Safety Appliance Concern Recommendation Report; Guidance Checklist Forms.

OMB Control Number: 2130–0565.

Abstract: In an ongoing effort to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations, FRA has developed a safety concern recommendation report form, and a group of guidance checklist forms that facilitate railroad, rail car owner, and rail equipment manufacturer compliance with agency Railroad Safety Appliance Standards regulations. In lieu of completing an official inspection report (Form FRA F 6180.96), which takes subject railroad equipment out of service and disrupts rail operations, Form FRA F 6180.4a enables Federal and State safety inspectors to report to agency headquarters systemic or other safety concerns. FRA headquarters safety specialists can then contact railroads, car owners, and equipment manufacturers to address the reported issue(s) and institute necessary corrective action(s) in a timely fashion without unnecessarily having to take affected rail equipment out of service, unless deemed defective. Forms FRA F 6180.4(b)–(m) are used in conjunction with the Special Inspection of Safety Appliance Equipment form (Form FRA F 6180.4) to assist Federal Motive, Power, and Equipment (MP&E) field inspectors in ensuring that critical sections of 49 CFR part 231 (Railroad Safety Appliance Standards), pertaining to various types of freight equipment, are complied with through use of a check-off list. By simplifying their demanding work, check-off lists for 12 essential sections of part 231 ensure that FRA MP&E field personnel completely and thoroughly inspect each type of freight car for compliance with its corresponding section in part 231. The Guidance Checklist forms may later be used by state field inspectors as well. FRA believes that this collection of information will result in improved construction of newly designed freight cars and improved field inspections of all freight cars currently in use. This, in turn, will serve to reduce the number of accidents/incidents and corresponding injuries and fatalities that occur every year due to unsafe or defective equipment that was not promptly repaired/replaced.

Form Number(s): FRA F 6180.4(a)–(m).

Affected Public: Businesses.

Reporting Burden:

Form No.	Respondent universe	Total annual responses (forms)	Average time per response (minutes)	Total annual burden hours (hours)	Total annual burden cost
FRA F 6180.4a—MP&E Safety Concern and Recommendation Report.	100 Fed'l & State Inspectors.	50	60	50	$2,450
FRA F 6180.4b—Check List Sec. 231.1	100 Fed'l & State Inspectors.	20	60	20	980
FRA F 6180.4—Check List Sec. 231.2	100 Fed'l & State Inspectors.	20	60	20	980
FRA F 6180.4d—Check List Sec. 231.3	100 Fed'l & State Inspectors.	10	60	10	490
FRA F 6180.4e—Check List Sec. 231.4	100 Fed'l & State Inspectors.	5	60	5	245
FRA F 6180.4f—Check List Sec. 231.5	100 Fed'l & State Inspectors.	5	60	5	245
FRA F 6180.4g—Check List Sec. 231.6	100 Fed'l & State Inspectors.	30	60	30	1,470
FRA F 6180.4h—Check List Sec. 231.7	100 Fed'l & State Inspectors.	5	60	5	245
FRA F 6180.4i—Check List Sec. 231.8	100 Fed'l & State Inspectors.	5	60	5	245
FRA F 6180.4j—Check List Sec. 231.9	100 Fed'l & State Inspectors.	5	60	5	245
FRA F 6180.4k—Check List Sec. 231.21	100 Fed'l & State Inspectors.	50	60	50	2,450
FRA F 6180.4l—Check List Sec. 231.27	100 Fed'l & State Inspectors.	25	60	25	1,225
FRA F 6180.4m—Check List Sec. 231.28	100 Fed'l & State Inspectors.	10	60	10	490

Respondent Universe: Federal and State Safety Inspectors.

Frequency of Submission: On occasion.

Total Responses: 240 Forms.

Estimated Total Annual Burden: 240 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on November 13, 2007.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E7–22593 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2007 0010]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 18, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2646; or E-Mail: *patricia.thomas@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0504.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Maritime Administration requires approved maritime training institutions seeking excess or surplus government property to provide a statement of need/justification prior to acquiring the property.

Need and Use of the Information: This information is needed by MARAD to determine compliance with applicable statutory requirements regarding surplus government property.

Description of Respondents: Maritime training institutions such as the U.S. Merchant Marine Academy, State Maritime Academies and non-profit maritime institutions.

Annual Responses: 40 responses.

Annual Burden: 40 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

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

Authority: 49 CFR 1.66.

Dated: November 7, 2007.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E7–22188 Filed 11–16–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 13, 2007.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 19, 2007 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0117.

Type of Review: Revision.

Title: Resolution For Transactions Involving Registered Securities.

Forms: PD–F–1010.

Description: Completed by an official of an organization that is designated to act on behalf of the organization.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 85 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–8150. Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–22600 Filed 11–16–07; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 9, 2007.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 19, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1317.

Type of Review: Extension.

Title: NTL–79–91 (Final) Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.

Description: These regulations clarify certain requirements of sections 1.6035–1, 1.6038–2 and 1.6046–1 of the Income Tax Regulations relating to Form 5471 and affect controlled foreign corporations and their United States shareholders.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1361.

Type of Review: Extension.

Title: PS–89–91 (Final) Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

Description: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof. Section 4682 provides exemptions and reduced rates of tax for certain uses of ozone-depleting chemicals. This regulation provides reporting and recordkeeping rules.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 201 hours.

OMB Number: 1545–1743.

Type of Review: Extension.

Title: Summary of Archer MSAs.

Description: This form is used by the IRS to determine whether numerical limits set forth in section 220(j)(1) have been exceeded.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 1,540,000 hours.

OMB Number: 1545–1341.

Type of Review: Extension.

Title: EE–43–92 (Final) Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions from Qualified Plans.

Description: These regulations provide rules implementing the provisions of the Unemployment Compensation Amendments (Pub. L. 102–318) requiring 20 percent income tax withholding upon certain distributions from qualified pension plans or tax-sheltered annuities.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,129,669 hours.

OMB Number: 1545–1904.

Type of Review: Extension.

Title: Revenue Procedure 2004–56, Model 457 Plan Provisions.

Description: This revenue procedure contains model amendments to be used by section 457(b) plans (deferred compensation plans) of state or local governments.

Respondents: State, Local, or Tribal Governments.

Estimated Total Burden Hours: 41,040 hours.

OMB Number: 1545–1416.

Type of Review: Extension.

Title: Credit for Contributions to Selected Community Development Corporations.

Form: 8847.

Description: Form 8847 is used to claim a credit for qualified contributions to a selected community development corporation (CDC).

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 41 hours.

OMB Number: 1545–1201.

Type of Review: Revision.

Title: REG–152549–03 (NPRM/Temporary) Section 179 Elections; TD 8455 (Final) Election to Expense Certain Depreciable Business Assets.

Description: The regulations provide rules on the election described in section 179(b)(4); the apportionment of the dollar limitation among component members of a controlled group; the proper order for deducting the carryover of disallowed deduction; and the maintenance of information which permits the specific identification of each piece of section 179 property and reflects how and from whom such property was acquired and when such property was placed in service. The recordkeeping and reporting is necessary to monitor compliance with the section 179 rules.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 3,022,500 hours.

OMB Number: 1545–2072.

Type of Review: Extension.

Title: RP–144921–06 Statistical Sampling for purposes of Section 199.

Description: The revenue procedure provides for determining when statistical sampling may be used for purposes of section 199, which provides a deduction for income attributable to domestic production activities, and establishes acceptable statistical sampling methodologies. The collection of information in the proposed revenue procedure involves a recordkeeping requirement for taxpayer that use statistical sampling under section 199.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 2,400 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–22601 Filed 11–16–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Entities Pursuant to Executive Order 13405

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 two newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13405 of June 16, 2006, ''Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus.''

DATES: The designation by the Director of OFAC of the two entities identified in this notice, pursuant to Executive Orders 13405, is effective November 13, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about this designation and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 16, 2006, the President issued Executive Order 13405 (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President declared a national emergency to address political repression, electoral fraud, and public

corruption in Belarus. The Order imposes economic sanctions on persons responsible for actions or policies that undermine democratic processes or institutions in Belarus. The President identified ten individuals as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons listed in the Annex and those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(E) of Section 1. On November 13, 2007, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in Section 1, subparagraphs (a)(ii)(A) through (a)(ii)(E) of the Order, the following two entities, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked, pursuant to Executive Order 13405:

1. BELNEFTEKHIM (a.k.a. BELARUSIAN STATE CONCERN FOR OIL AND CHEMISTRY; a.k.a. BELARUSIAN STATE PETROLEUM AND CHEMICALS CONCERN; a.k.a. BELNEFTEKHIM CONCERN; a.k.a. CONCERN BELNEFTEKHIM), 73 Dzerzhinskogo Avenue, Minsk 220116, Belarus; Oederweg 43, Frankfurt-am-Main D–60318, Germany; ul Trevskaya, 20/1, Room 536, Moscow 103789, Russia; ul Pavlovskaya, 29, Kiev 01135, Ukraine; Tower B 19–B Oriental Kenzo, 48 Dongzhimenwai Street, Dongcheng District, Beijing 100027, China; GP 1 Apes Street, Riga LV–1039, Latvia [BELARUS]
2. BELNEFTEKHIM USA, INC., 13 Branch St., # 213, Methuen, MA 01844; U.S. FEIN 000920912 (United States) [BELARUS]

Dated: November 13, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–22559 Filed 11–16–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2005–04, Fuel Tax Guidance, and Request for comments.

DATES: Written comments should be received on or before January 18, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Fuel Tax Guidance, Request for comments.

OMB Number: 1545–1915.

Notice Number: Notice 2005–04.

Abstract: Notice 2005–04 provides guidance on certain excise tax Code provisions that were added or effected by the American Jobs Creation Act of 2004. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,263.

Estimated Time per Respondent: 3 hours, 46 minutes.

Estimated Total Annual Burden Hours: 76,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall 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 to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 8, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–22579 Filed 11–16–07; 8:45 am]

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Federal Register

Monday,
November 19, 2007

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number: EE–RM/STD–01–350]

RIN 1904–AA78

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) has determined that revised energy conservation standards for residential furnaces and boilers will result in significant conservation of energy, are technologically feasible, and are economically justified. On this basis, DOE is today amending the existing energy conservation standards for these products.

DATES: The rule is effective January 18, 2008. The standards established in today's final rule have a compliance date of November 19, 2015.

ADDRESSES: For access to the docket to read background documents, the technical support document (TSD), transcripts of the public meetings in this proceeding, or comments received, visit the U.S. Department of Energy, the Resource Room of the Building Technologies Program at 950 L'Enfant Plaza Drive, SW., Washington, DC. 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials. You may also obtain copies of certain previous rulemaking documents from this proceeding (i.e., Framework Document, advance notice of proposed rulemaking (ANOPR), notice of proposed rulemaking (NOPR or proposed rule)), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/furnaces_boilers.html*.

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I. Summary of the Final Rule and Its Benefits

A. The Standard Levels

The Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 et seq.; EPCA), directs the Department of Energy (DOE) to consider amending the energy conservation standards for residential furnaces and boilers established under EPCA. (42 U.S.C. 6295(f)(3)(B)) Any amended standard must be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)) Moreover, EPCA states that the Secretary may not establish an amended standard if such standard would not result in

''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B)) The standards in today's final rule, which apply to non-weatherized and weatherized gas furnaces, mobile home gas furnaces, oil-fired furnaces, and gas- and oil-fired boilers,[1] satisfy these requirements.

Table I.1 shows the standard levels DOE is promulgating today. These standards will apply to products manufactured for sale in the United States, or imported to the United States, on or after November 19, 2015.

TABLE I.1.—STANDARD LEVELS FOR FURNACES AND BOILERS

Product class	AFUE* (%)
Non-weatherized gas furnaces	80
Weatherized gas furnaces	81
Mobile home gas furnaces	80
Oil-fired furnaces	82
Gas boilers	82
Oil-fired boilers	83

*AFUE = annual fuel utilization efficiency.

B. Current Federal Standards for Residential Furnaces and Boilers

Table I.2 presents the current Federal minimum energy conservation standards for residential furnaces and boilers.

TABLE I.2.—CURRENT FEDERAL STANDARDS FOR RESIDENTIAL FURNACES AND BOILERS

Product class	AFUE (%)
Non-weatherized gas furnaces	78
Weatherized gas furnaces	78
Mobile home gas furnaces	75
Oil-fired furnaces	78
Gas boilers	80
Oil-fired boilers	80

C. Consumer Benefits

Table I.3 summarizes the implications of today's standards for consumers of residential furnaces and boilers.

TABLE I.3.—IMPLICATIONS OF NEW STANDARDS FOR CONSUMERS*

Product class	AFUE (%)	Installed cost	Installed cost increase	Life-cycle cost savings	Payback period (years)
Non-weatherized gas furnaces	80	$2,044	$8	$2	1.7
Weatherized gas furnaces	81	3,907	19	62	3.4
Mobile home gas furnaces	80	940	96	111	3.7
Oil-fired furnaces	82	3,142	17	177	0.7
Gas boilers	82	3,826	199	208	12
Oil-fired boilers	83	3,920	28	69	0.9

* Average values.

The economic impacts on consumers (i.e., the average life-cycle cost (LCC) savings) are positive. For example, a non-weatherized gas furnace meeting the standard is projected to have a very small increase in average total installed cost, and the annual energy savings result in an average LCC savings of $2 and a payback period of 1.7 years. No households purchasing non-weatherized gas furnaces, including southern households, would experience a net LCC increase. A gas boiler meeting the standard is projected to have an increase in average total installed cost of $199, but the annual energy savings result in an average LCC savings of $208 and a payback period of 12 years.

D. Impact on Manufacturers

Using a real corporate discount rate of 7.4 percent for furnaces and 6.2 percent for boilers, DOE estimates the industry net present value (INPV) of the residential furnace industry to be $1,528 million and the INPV of the residential boiler industry to be $279 million, in 2006$. DOE estimates the impact of today's standards on the INPV of the residential furnace and boiler industry to be between a 4.0 percent loss and a 2.7 percent loss (-$74 million to -$48 million). Based on DOE's interviews with the major manufacturers of residential furnaces and boilers, DOE estimates minimal plant closings or loss of employment as a result of the standards promulgated today.

E. National Benefits

DOE estimates the standards will save approximately 0.25 quads (quadrillion (10^{15}) British thermal units (Btu)) of energy over 24 years (2015–2038). For comparison, approximately four quads are used annually for space heating in U.S. homes.

These energy savings are projected to result in cumulative greenhouse gas emission reductions of approximately 7.8 million tons (Mt) of carbon dioxide (CO_2). Additionally, the standards will help alleviate air pollution by resulting in approximately 9.2 thousand tons (kt) of nitrogen oxides (NO_X) emission reductions from 2015 through 2038, or a similar amount of NO_X emissions allowance credits in areas where such emissions are subject to emissions caps, and approximately 1.8 kt of household emission reductions of sulfur dioxide (SO_2). DOE expects the standards to have negligible impact on electricity generating capacity.

The national net present value (NPV) of the standards is $0.69 billion using a seven-percent discount rate and $2.18 billion using a three-percent discount rate, cumulative from 2015 to 2038 in 2006$. This is the estimated total value of future savings minus the estimated increased costs for purchasing complying products, discounted to the year 2007.

The benefits and costs of today's final rule can also be expressed in terms of annualized 2006$ values over the forecast period 2015 through 2038. Using a seven percent discount rate for the annualized cost analysis, the cost of the standards established in today's final rule is $41 million per year in increased equipment and installation costs while the annualized benefits are $144 million per year in reduced equipment operating costs. Using a three percent discount rate, the cost of the standards established n today's final rule is $40 million per year while the benefits of today's standards are $204 million per year.

[1] These types of products are referred to collectively hereafter as ''residential furnaces and boilers'' or ''furnaces and boilers.''

F. Conclusion

DOE concludes that the benefits (energy savings, consumer LCC savings, national NPV increases, and emissions reductions) to the Nation of the standards outweigh their costs (loss of manufacturer INPV and consumer LCC increases for a relatively small number of furnace and boiler users). DOE also concludes that today's standards for furnaces and boilers represent that maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant energy savings. At present, products that meet the new standard levels are commercially available.

II. Introduction

A. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency; specifically, Part B of title III establishes the Energy Conservation Program for Consumer Products other than Automobiles. (42 U.S.C. 6291–6309) The program covers consumer products (referred to hereafter as ''covered products''), including residential furnaces and boilers. (42 U.S.C. 6292(a)(5))

Under EPCA, the energy conservation program consists essentially of the following: Testing, labeling, and Federal energy conservation standards. The Federal Trade Commission (FTC) has primary responsibility for labeling, and DOE implements the remainder of the program. (42 U.S.C. 3294) Section 323 of EPCA authorizes DOE, with assistance from the National Institute of Standards and Technology (NIST) and subject to certain criteria and conditions, to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) The applicable furnace and boiler test procedures appear at Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, Appendix N.

EPCA provides criteria for prescribing new or amended standards for covered products. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A))

Additionally, EPCA provides specific prohibitions on prescribing new and amended standards. Generally, DOE may not prescribe an amended or new standard for products if no test procedure has been established for the product.[2] (42 U.S.C. 6295(o)(3)(A). Further, DOE may not prescribe an amended or new standard if DOE determines by rule that such standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B))

EPCA also provides that, in deciding whether a standard is economically justified, DOE must, after receiving comments on a proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i))

EPCA contains what is commonly known as an ''anti-backsliding'' provision. This provision mandates that the Secretary not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or a new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) with performance characteristics, features, sizes, capacities, and volume that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

[2] This prohibition does not apply to standards for dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens. (42 U.S.C. 3295(o)(3)(A))

Section 325(q) of EPCA is applicable to promulgating a standard for a type or class of covered product that has two or more subcategories. (42 U.S.C. 6295(q)) DOE must specify a different standard level than that which applies generally to such type or class of products ''for any group of covered products which have the same function or intended use, if * * * products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other products. (42 U.S.C. 6295(q)(l)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider ''such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which DOE established such higher or lower level. (42 U.S.C. 6295(q)(2)) In 1993, DOE relied on this authority to establish four product classes of residential furnaces and two product classes of residential boilers, which are the subject of this rulemaking. 58 FR 47326 (September 8, 1993).

Federal energy conservation requirements generally preempt State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE is authorized, however, to grant waivers from preemption for particular State laws or regulations, in accordance with the procedures and provisions set forth in section 327(d) of EPCA. (42 U.S.C. 6297(d)) Specifically, States with a regulation that provides for an energy conservation standard for any type of covered product for which there is a Federal energy conservation standard may petition the Secretary for a DOE rule that permits the State regulation to become effective with respect to such covered product. In order for a petition to be granted, a State must establish by a preponderance of the evidence that its regulation is needed to meet ''unusual and compelling State or local energy * * * interests.'' (42 U.S.C. 6297(d)(1)(B))

B. Background

1. Current Standards

EPCA established an energy conservation standard for residential furnaces and boilers. It set the standard

in terms of the annual fuel utilization efficiency (AFUE) descriptor at a minimum value of 78 percent for most furnaces. (42 U.S.C. 6295(f)(1)) It set the minimum AFUE at 75 percent for gas steam boilers and 80 percent for other boilers. (42 U.S.C. 6295(f)(1)(A)) For mobile home furnaces, EPCA set the minimum AFUE at 75 percent. (42 U.S.C. 6295(f)(2)) These standards became effective on January 1, 1992, with the exception of the standard for mobile home furnaces, for which the effective date was September 1, 1990. (42 U.S.C. 6295(f)(1) and (2))

2. History of Standards Rulemaking for Residential Furnaces and Boilers

As discussed in the October 2006 notice of proposed rulemaking (NOPR), this rulemaking began with the publication of an advance notice of proposed rulemaking (ANOPR) on September 28, 1990. 55 FR 39624. A second ANOPR was published on July 29, 2004. 69 FR 45420. On October 6, 2006, DOE published a NOPR in the **Federal Register** proposing amended energy efficiency standards for residential furnace and boilers. 71 FR 59203. In conjunction with the October 2006 NOPR, DOE also published on its Web site the complete technical support document (TSD) for the proposed rule, which incorporated the final analyses DOE conducted and technical documentation of each analysis. The NOPR TSD included the engineering analysis spreadsheet, the LCC spreadsheets, the national and regional impact analysis spreadsheets, and the manufacturer impact analysis (MIA) spreadsheet—all of which are available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/fb_nopr_analysis.html*. The energy efficiency standards proposed for furnaces and boilers were as shown in Table II.1.

TABLE II.1.—OCTOBER 2006 PROPOSED ENERGY EFFICIENCY STANDARDS FOR FURNACES AND BOILERS

Product class	AFUE* (%)
Non-weatherized gas furnaces	80
Weatherized gas furnaces	83
Mobile home gas furnaces	80
Oil-fired furnaces	82
Gas boilers	84
Oil-fired boilers	83

* AFUE = annual fuel utilization efficiency.

The October 2006 NOPR also included additional background information on the history of this rulemaking and on DOE's use in this rulemaking of the procedures, interpretations, and policies set forth in the Process Rule. 71 FR 59207–59208. DOE held a public meeting in Washington, DC, on October 30, 2006, to hear oral comments relevant to the October 2006 proposed rule.

After the publication of the October 2006 proposed rule, DOE met with GAMA, Carrier, and Rheem on December 14, 2006, to receive comments regarding cost and safety issues concerning weatherized gas furnaces that are manufactured to operate at 83-percent AFUE. (GAMA, No. 146 at p. 1)[3] These comments are further described in section IV.A. In addition, DOE issued a notice of data availability and reopening of comment period on February 9, 2007, to respond to questions raised at the public meeting concerning DOE's assumptions regarding shipments in the base case and the installation cost for oil-fired furnaces. 72 FR 6184.

III. General Discussion

A. Test Procedures

Section 7(c) of the Process Rule indicates that, if modifications are needed to its test procedures for a covered product, DOE will issue a final, modified test procedure before issuing a proposed rule for energy conservation standards for that product. DOE has determined that modifications are not needed to its existing test procedure for furnaces and boilers, and accordingly has not adopted a revised test procedure for these products. Comments received about test procedures are discussed in section V.B.9.

B. Technological Feasibility

1. General

As stated above, standards that DOE establishes for furnaces and boilers must be technologically feasible. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. The Process Rule sets forth a definition of technological feasibility as follows: ''Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, Appendix A, section 4(a)(4)(i).

This final rule considers the same design options as those evaluated in the October 2006 proposed rule. (See the final rule TSD accompanying this notice, Chapter 4.) The evaluated technologies all have been used (or are being used) in commercially available products or working prototypes. The designs all incorporate materials and components that are commercially available in today's furnace and boiler supply market. DOE has determined that all of the efficiency levels evaluated in this notice are technologically feasible.

2. Maximum Technologically Feasible Levels

In developing the October 2006 proposed rule, consistent with section 325(p)(2) of EPCA, DOE identified the maximum technologically feasible levels. (See NOPR TSD Chapter 6.) DOE did not receive any comments on the October 2006 proposed rule to lead DOE to consider changes to the maximum technologically feasible (max tech) levels. Therefore, for today's final rule, the max tech levels for all classes are the same max tech levels identified in the October 2006 proposed rule and are provided in Table II.2 below. 71 FR 59211.

TABLE II.2.—MAX TECH LEVELS CONSIDERED IN FURNACE AND BOILER RULEMAKING

Product class	AFUE* (%)
Non-weatherized gas furnaces	96
Weatherized gas furnaces	83
Mobile home gas furnaces	90
Oil-fired furnaces	85
Gas boilers	99
Oil-fired boilers	95

* AFUE = annual fuel utilization efficiency.

C. Energy Savings

As stated above, EPCA directs DOE to establish amended standards at a level of maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) DOE is prohibited from adopting a standard for a product if that standard would not result in ''significant'' energy savings, or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) While EPCA does not define the term ''significant,'' the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, indicated that Congress intended ''significant'' energy savings in this context to be savings that were not

[3] A notation in the form ''GAMA, No. 146 at p. 1'' identifies a written comment DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment (1) By the Gas Appliance Manufacturers Association (GAMA), (2) under document number 146 in the docket of this rulemaking (maintained in the Resource Room of Building Technologies Program), and (3) appearing on page 1 of document number 146.

''genuinely trivial.'' 768 F.2d 1355, 1373 (D.C. Cir. 1985). The energy savings for energy conservation standards at each of the trial standard levels (TSLs) considered in this rulemaking are nontrivial, and therefore, DOE has determined them to be ''significant'' within the meaning of section 325 of EPCA.

DOE forecasted energy savings attributable to the TSLs using the national energy savings (NES) spreadsheet tool, as discussed in the October 2006 proposed rule. 71 FR 59211–59212, 59224–59227, and 59245–59246. For the purpose of today's final rule, DOE has relied on the NES analysis as presented in the October 2006 proposed rule. EPCA further requires consideration of energy savings in the context of the economic justification.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors for DOE to evaluate in determining whether an energy conservation standard for residential furnaces and boilers is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following discusses how DOE has addressed each of those seven factors in this rulemaking. Changes to considerations of those criteria between the proposed rule and the final rule are also discussed below. The inputs relied upon in consideration of each criterion and changes to those inputs are discussed in section V, below.

a. Economic Impact on Consumers and Manufacturers

DOE considered the economic impact of the standard on consumers and manufacturers, as discussed in the October 2006 proposed rule. 71 FR 59212, 59219–59223, 59228–59233, 59234–59245. For this final rule, DOE updated the analyses to incorporate more recent material price information.

b. Life-Cycle Costs

DOE considered life-cycle costs of furnaces and boilers, as discussed in the October 2006 proposed rule. 71 FR 59212–59213, 59219–59224, 59234–59239. It calculated the sum of the purchase price and the operating expense—discounted over the lifetime of the products—to estimate the range in expected LCC benefits to consumers due to the standards.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA also requires DOE, in determining the economic justification of a proposed standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As in the October 2006 Proposed Rule, DOE used the NES spreadsheet results in its consideration of total projected savings that are directly attributable to the considered standard levels. 71 FR 59211–59212, 59224–59227, 59245–59246.

d. Lessening of Utility or Performance of Products

As reflected in the October 2006 proposed rule, DOE considered whether any lessening of the utility or performance of furnaces and boilers would be likely to result from today's standards. 71 FR 59213.

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition that is likely to result from standards. Accordingly, as discussed in the October 2006 proposed rule, 71 FR 59213, 59247, DOE requested that the Attorney General transmit to the Secretary a written determination of the impact, if any, of any lessening of competition likely to result from the standard, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such a determination, DOE provided the Department of Justice (DOJ) with copies of the October 2006 proposed rule and the NOPR TSD for review. The Attorney General's response is discussed in section VI.C.5 below, and is reprinted at the end of this final rule.

f. Need of the Nation To Conserve Energy

In considering standards for furnaces and boilers, the Secretary must consider the need of the Nation to conserve energy. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The Secretary recognizes that energy conservation benefits the Nation in several important ways, including slowing the depletion of domestic natural gas resources, improving the security of the Nation's energy system, and reducing greenhouse gas emissions. The potential benefits from additional natural gas conservation are further discussed in section V.B.4 below.

g. Other Factors

The Secretary, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In considering amended standards in the October 2006 proposed rule and in adopting today's standards, the Secretary considered the potential for furnace and boiler standards to pose public health risks due to carbon monoxide release into the home as a result of venting system or heat exchanger failure. As discussed in section VI of this preamble, potential safety concerns were weighed against adopting certain standard levels.

2. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of EPCA states that there is a rebuttable presumption that an energy conservation standard is economically justified if the increased installed cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) Under the standard levels adopted in this document for non-weatherized and weatherized gas furnaces, mobile home gas furnaces, and hot-water oil-fired boilers, DOE determined that this presumption applies. Regardless of the rebuttable presumption, DOE also determined that all of the standard levels adopted in today's final rule are economically justified based on the above-described analyses.

IV. Methodology and Revisions to the Analyses Employed in the Proposed Rule

DOE used a number of analytical tools that it previously developed and adapted for use in this rulemaking. One of the tools is a spreadsheet that calculates LCC and payback period (PBP). Another tool calculates NES and national NPV. DOE also used the Government Regulatory Impact Model (GRIM), along with other methods, in its MIA. Finally, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of residential furnace and boiler energy efficiency standards on utilities and the environment. Each of the analytical tools is discussed in detail in the October 2006 NOPR. 71 FR 59213–59234.

As a basis for this final rule, DOE has continued to use the spreadsheets and approaches explained in the October 2006 NOPR. DOE used the same general methodology as applied in the October 2006 NOPR but revised some of the assumptions and inputs for the final rule in response to stakeholder comments. These updates are discussed in the sections below.

A. Engineering Analysis

The purpose of the engineering analysis was to characterize the relationship between the efficiency and the cost of residential furnaces and boilers. As discussed in the NOPR, DOE used the design-option approach, the efficiency-level approach, and the cost-assessment approach to the engineering analysis. 71 FR 59214–59219. As part of the analysis, DOE developed data—including manufacturing costs, markups, installation costs, and maintenance costs—that it used to establish the manufacturing selling price of more-efficient equipment. Chapter 6 of the TSD contains detailed discussion of the engineering analysis methodology.

In response to the publication of the October 2006 proposed rule, DOE received a number of comments on the engineering analysis methodology. These comments referred to the assumptions concerning the heat exchanger materials, costs for weatherized gas furnaces, the installation costs for gas-fired boilers, and other topics. In response to these comments, DOE made several changes to the data applied in its approach. Table IV.1 summarizes the data DOE used to derive the inputs to the engineering analysis for the NOPR and for today's final rule.

TABLE IV.1.—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE ENGINEERING ANALYSIS

Input	NOPR analysis	Final rule analysis
Equipment Cost	For the most widely used efficiency levels, DOE used a cost model of manufacturing costs created by tear-down analysis. For the remaining levels, DOE used design-option analysis. Incorporated industry feedback from GAMA and individual manufacturers to generate manufacturing-cost-versus-efficiency curves. Updated manufacturing-cost-versus-efficiency curves.	Same method, using average materials prices for the period 2002 to 2006. For weatherized gas furnaces, assumed stainless steel heat exchangers for 82-percent and 83-percent AFUE products. For gas boilers, assumed those fractions of boilers requiring Category III venting at various AFUE levels will also incorporate a draft inducer into the product design.
Markups	Derived markups from an analysis of corporate financial data. Multiplied manufacturing costs by manufacturer, distributor, contractor, and builder markups, and sales tax, as appropriate, to get equipment price.	No change.
Installation Cost	Used a distribution of weighted-average installation costs from the Installation Model. Installation configurations are weight-averaged by frequency of occurrence in the field, and vary by installation size. The Installation Model is based on a commonly used cost-estimation method and is comparable to available, known data. New assumption that all 81-percent AFUE gas furnaces use double-wall vents.	No change.
Maintenance Costs	Used Gas Research Institute data for gas furnaces and boilers, water heater rulemaking survey results for oil-fired equipment, and data from the 1993 rulemaking for mobile home furnaces. Accounted for higher maintenance frequency for modulating design option, and used same costs for condensing and non-condensing equipment.	Same sources for maintenance costs. Included repair costs for gas-fired equipment as a function of the equipment price.
Annual Energy Use *	Calculated energy use using the DOE test procedure	No change.
Energy Prices *	*Annual Energy Outlook (AEO)2005* forecast prices for effective date of 2015.	*AEO2007* forecast prices for effective date of 2015.

* Inputs required to calculate rebuttable-presumption payback period. For more details on the rebuttable-presumption payback period, refer to sections III.D.2 and VI.C.1.a.

GAMA, Lennox, Carrier, and Trane submitted comments urging DOE to revise the costs assumed in the engineering analysis for manufacturing high-efficiency weatherized gas furnaces. Specifically, GAMA commented that DOE underestimated the cost of attaining 83-percent AFUE. GAMA stated that a significant amount of condensation can build up upon start-up of a weatherized gas furnace having an 83-percent AFUE and that the unit must run for a considerable amount of time before the heat exchanger completely dries out. As a result, GAMA commented that manufacturers would need to design their weatherized gas furnaces at 83-percent AFUE to handle condensate. (GAMA, No. 116 at pp. 5–8) [4] Lennox pointed out that it is physically possible to design a furnace that will deliver 83-percent AFUE in a laboratory test, but that the variability of outdoor conditions will pose condensation problems at efficiency levels above 80-percent AFUE. At 83-percent AFUE, which translates to a steady-state efficiency of 85.5 percent or higher, Lennox stated that it may also be necessary to provide a condensate disposal system for the furnace. (Public Meeting Transcript, No. 107.6 at p. 107)

Carrier commented that weatherized gas furnaces are installed outdoors, and moisture in the flue gas cannot be allowed to condense, regardless of the corrosion-resistance of the material used. (Carrier, No. 118 at pp. 1–2) Carrier stated its belief that a means to dispose of the condensate in cold outdoor ambient conditions must be developed to provide for drainage or freeze protection. It further stated that, when cold outside air and safety factors are taken into account, the maximum design efficiency to avoid significant potential for continuous condensation on a complete model family is 80-percent AFUE. (Carrier, No. 118 at pp. 1–2)

Trane commented that 83-percent AFUE for weatherized gas furnaces would result in a steady-state efficiency of 85–86 percent, which would necessitate different, more costly materials than the materials DOE assumed in the October 2006 proposed rule. (Public Meeting Transcript, No. 107.6 at p. 107)

GAMA and Lennox specifically commented on DOE's incremental

manufacturing cost increase of $30 for an 83-percent AFUE weatherized gas furnace over the baseline. GAMA pointed out that DOE's NOPR analysis used increased heat exchanger area as the only design option needed to achieve 83-percent AFUE. GAMA stated that, based on manufacturer experience, the proposed 83-percent AFUE standard for weatherized gas furnaces would require the use of stainless steel for internal components such as the heat exchanger, collector box, and internal flue, due to the expected internal condensation. GAMA also commented that AL 29–4C is the most probable type of stainless steel that manufacturers would use, which would significantly increase the cost of the product. GAMA also stated its opinion that weatherized gas furnaces at 83-percent AFUE would also require a condensate disposal system that could function in below-freezing temperatures. GAMA surveyed its members and provided estimates of the incremental manufacturing costs to reach 83-percent AFUE over the baseline, which range from $78 to $320. (GAMA, No. 116 at pp. 5–8)

Lennox also disagreed with DOE's analysis, which indicated that an 83-percent AFUE weatherized gas furnace with characteristics satisfactory for the expected use can be manufactured and sold to the consumer for an additional $30. Lennox stated that GAMA's average incremental manufacturing cost estimate of $223 over the baseline for an 83-percent AFUE weatherized gas furnace, for the addition of stainless steel heat exchangers and condensate removal components, results in an increase in consumer cost of approximately $500. (Lennox, No. 130 at pp. 2–3)

DOE reviewed all the statements from GAMA, Lennox, Carrier, and Trane and revised its engineering analysis accordingly. Specifically, DOE revised its cost assumptions for the heat exchangers in 82-percent- and 83-percent-AFUE weatherized gas furnaces. In the October 2006 proposed rule, DOE assumed that these heat exchangers were made of aluminized steel—the same material used for the higher volume non-weatherized gas furnaces, which would allow manufacturers to take advantage of high-volume material pricing. Thus, the incremental costs of increasing from the baseline to an 83-percent AFUE were only $30. (See NOPR TSD Chapter 6.) In light of the comments, DOE revised the cost model to include heat exchangers made of AL 29–4C at these two AFUE levels and included the cost of a condensate disposal system that could function at below-freezing temperatures. DOE specifically reviewed the costs that GAMA submitted and, based on information obtained during manufacturing interviews and internal engineering expertise, DOE believes GAMA's estimates are within the range of possible manufacturing costs for these systems (see Chapter 6 of the final rule TSD). Therefore, DOE conducted analysis at both the low and high points of the cost range (*i.e.*, $78 and $320, respectively). DOE examined both the low and high scenarios using the LCC spreadsheet and presented the results in Chapter 8 of the final rule TSD.

Ultimately, DOE used the low-cost scenario as the basis for the analysis because DOE's estimates corresponded more closely to the low-range cost that GAMA provided (i.e., $78). However, DOE recognizes that some installations may incur a higher cost. DOE believes inclusion of stainless steel heat exchanger and condensate removal component costs takes into account manufacturer longevity and safety concerns associated with near-condensing weatherized gas furnaces.

DOE did not include the cost of stainless steel heat exchangers for weatherized gas furnaces at 81-percent AFUE. Given the presence of 81-percent AFUE products in the marketplace that do not contain stainless steel heat exchangers, DOE assumed that only units with an AFUE of 82 percent and 83 percent would need stainless steel heat exchangers to prevent corrosion.

Burnham and GAMA commented that DOE neglected to consider the costs associated with adding induced-draft technology to a Category III gas-fired boiler at 84-percent AFUE and above. Burnham further stated that some 84-percent AFUE boilers are natural draft with draft hoods, vent dampers, and electronic ignition, and some are induced draft with either Category I or Category III venting, depending on the manufacturer's requirements in a given installation. In its comments on the October 2006 proposed rule, Burnham pointed out that DOE estimated that 24 percent of installations at 84-percent AFUE would be Category III, and this percentage represents a partial transformation of the baseline boiler market. However, although DOE included the costs associated with Category III special gas vents, Burnham noted that all Category III installations are induced-draft boilers, and that DOE neglected the costs associated with adding induced-draft technology to the boiler. (Public Meeting Transcript, No. 107.6 at p. 42; Burnham, No. 99 at p. 4) Burnham also predicted that, to avoid the venting risks associated with installing natural draft 84-percent AFUE boilers in every installation, all boiler installations at 84-percent AFUE will become induced-draft, and most or all of those will require Category III venting. Burnham urged DOE to apply the costs associated with adding induced-draft technology to all Category III installations. (Public Meeting Transcript, No. 107.6 at p. 42; Burnham, No. 99 at p. 4)

GAMA commented that additional concerns regarding venting safety would require manufacturers to reconsider the application and installation guidelines if the minimum standards for gas-fired boilers were set at 84-percent AFUE. GAMA noted that atmospheric units cost less and meet certain customers' requirements, but they can only be installed in a subset of locations due to venting limitations. At 84-percent AFUE, GAMA commented these gas-fired boilers would be operating at near-condensing conditions, which would lead to potential venting corrosion. GAMA stated that it has been told by its members that concern for safety and reliability would force manufacturers to specify AL 29–4C stainless steel chimney liners and vent connectors in all Category I installations. GAMA estimated the cost of this change to 100-percent stainless steel venting to be roughly $700 to $900. GAMA stated that manufacturers desiring an additional margin of safety might eliminate natural draft products from their product lines completely in favor of induced-draft units. (GAMA, No. 116 at p. 11)

GAMA stated that safety concerns would force manufacturers to specify Category II or III stainless steel venting systems in some gas boiler installations. GAMA stated its belief that DOE's projections for venting consequences of 86-percent and 85-percent-AFUE gas-fired boilers would actually occur at 84-percent and 83-percent AFUE. GAMA further commented that 84-percent-AFUE gas-fired boilers would require 100 percent stainless steel venting. GAMA surveyed its boiler manufacturer members regarding the additional cost of incorporating induced-draft technology and provided DOE with the resulting cost estimates, ranging between $108.75 and $145.75. (GAMA, No. 116 at pp. 10–11)

In response to the comments from Burnham and GAMA, DOE revised the cost model for gas-fired boilers and added the cost of induced-draft technology to the fraction of Category III boilers assumed for each AFUE level. In other words, DOE applied the cost of induced-draft technology to the 24 percent of installations requiring Category III venting at 84-percent AFUE. DOE agrees with stakeholders that

induced-draft technology is likely required for the population of installations using Category III venting. DOE specifically reviewed the costs that GAMA submitted and, based on information obtained during manufacturing interviews and internal engineering expertise, DOE believes GAMA's estimates are within the range of possible manufacturing costs for these systems. Therefore, DOE conducted analyses at both the low and high points of the cost range (i.e., $108.75 and $145.75, respectively). DOE used the low and high scenarios as inputs to the LCC model; the results are presented in Chapter 6 of the final rule TSD.

DOE did not revise its estimates of the fraction of installations requiring Category III venting and induced-draft technology from that relied upon in October 2006 proposed rule. In other words, DOE did not apply the added cost to the entire population of gas-fired boilers at 84-percent AFUE and above, as both Burnham and GAMA suggested. DOE relied on the survey data of actual installations requiring Category III venting that GAMA originally supplied. GAMA and Burnham did not provide any additional survey data to validate their claim that all boilers at 84-percent AFUE and above would require Category III venting and induced-draft technology. DOE acknowledges Burnham's and GAMA's assertions of safety concerns relating to venting systems failure at 84-percent AFUE and above, and considered this issue for a standard level for gas-fired boilers.

B. Life-Cycle Cost and Payback Period Analyses

The purpose of the LCC and PBP analyses was to evaluate the economic impacts of possible new furnace and boiler energy conservation standards on individual consumers. The LCC is the total consumer expense over the life of the furnace or boiler, including purchase and installation expense and operating costs (energy expenditures and maintenance costs). The PBP is the number of years it would take for the consumer to recover the increased costs of a higher-efficiency product through energy savings. As discussed in the NOPR, the LCC and PBP analyses calculated furnace and boiler energy consumption under field conditions for a representative sample of housing units. 71 FR 59219–59220. To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the furnace or boiler. DOE measured the change in LCC and the change in PBP associated with a given efficiency level relative to a base case forecast of equipment efficiency. The base case forecast reflects the market in the absence of amended mandatory energy conservation standards.

As part of the LCC and PBP analyses, DOE developed data that it used to establish equipment prices, installation costs, annual household energy consumption, marginal natural gas and electricity prices, maintenance and repair costs, equipment lifetime, and discount rates. Chapter 8 of the TSD contains detailed discussion of the methodology followed for the LCC and PBP analyses.

In response to the publication of the proposed rule, DOE received several comments on the LCC and PBP methodology. In response to these comments, DOE made several changes in its approach. Table IV.2 summarizes the approaches and data DOE used to derive the inputs to the LCC and PBP calculations for the NOPR, and the changes it made for today's final rule. Discussion of the inputs and the changes follows in the sections below.

TABLE IV.2.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LIFE-CYCLE COST AND PAYBACK PERIOD ANALYSES

Inputs	NOPR analysis	Final rule analysis
Affecting Installed Costs		
Equipment Price	Derived by multiplying manufacturer cost by manufacturer, distributor, contractor, and builder markups and sales tax, as appropriate.	Same method, using average materials prices for the period 2002–2006. For weatherized gas furnaces, assumed stainless steel heat exchanger for 82% and 83% AFUE. For gas boilers, assumed that furnaces that require Category III venting incorporate a draft inducer.
Installation Cost	Used a distribution of weighted-average installation costs from the Installation Model. Weight-averaged installation configuration by frequency of occurrence in the field.	No change.
Affecting Operating Costs		
Maintenance and Repair Costs.	Used Gas Research Institute data for gas furnaces and boilers, water heater rulemaking survey results for oil-fired equipment, and data from the 1993 rulemaking for mobile home furnaces. Supplemented with information that indicates higher maintenance frequency for modulating equipment, and identical maintenance costs for condensing and non-condensing equipment. Did not include repair costs.	Same sources for maintenance costs. Included repair costs for gas-fired equipment.
Annual Heating Load	Calculated heating loads using 2001 Residential Energy Consumption Survey (RECS) data (cooling loads not considered). Incorporated adjustment to account for change in new home size and shell performance between 2001 and 2015.	No change.
Annual Energy Use	Used 26 virtual models that captured the range of common furnace sizes. Energy calculations used annual heating load for each housing unit based on RECS 2001.	No change.

TABLE IV.2.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LIFE-CYCLE COST AND PAYBACK PERIOD ANALYSES—Continued

Inputs	NOPR analysis	Final rule analysis
Energy Prices	Calculated 2001 average and marginal energy prices for each sample house. Used *AEO2005* forecasts to estimate future average and marginal energy prices.	Same method, using *AEO2007* forecasts to estimate future average and marginal energy prices.
Affecting Present Value of Annual Operating Cost Savings		
Lifetime	Used 2001.58(9) Appliance Magazine survey results, except for boilers, for which DOE developed new estimates based on a literature review.	No change.
Discount Rate	Applied data from 1998 and 2001 Survey of Consumer Finances and other sources to estimate a discount rate for each house.	Same sources, using additional data from 1989, 1992, 1995, and 2004 Survey of Consumer Finances. (See TSD, Chapter 8).

The changes in the approach for estimating the equipment prices are discussed in Chapter 6 of the TSD.

In the October 2006 proposed rule analysis, DOE assumed that maintenance costs would not vary with the AFUE level of furnaces and boilers. Several stakeholders commented that DOE should apply a higher maintenance cost for condensing gas furnaces than for non-condensing equipment. (Carrier, No. 100 at p. 3; Public Meeting Transcript, No. 107.6 at p. 57; GAMA, No. 116 at p. 5; Rheem, No. 138 at p. 3)

In its analysis for today's final rule, DOE included repair costs for gas furnaces and boilers. The repair cost is the cost to the consumer for replacing or repairing components that have failed in the space-conditioning equipment, while the maintenance cost is a regular expense. Since representative data on repair costs were not available, DOE used the same approach as in the 2001 Central Air Conditioner standards rulemaking (67 FR 36383) and assumed that annualized repair costs are equal to one-half the equipment price divided by the average lifetime. Since the equipment cost is higher for equipment that contains more sophisticated mechanical or electronic components, such as condensing furnaces, DOE applied a higher repair cost for these products. Since all gas equipment components are fully covered by a manufacturer warranty for five years, DOE assumed that consumers would not incur any repair costs in the first five years. As a conservative assumption, DOE applied the annualized cost beginning in the sixth year and ending in the last year of service for the equipment.

For oil-fired furnaces and boilers, DOE included an annual maintenance contract, which typically includes repair of failed components. Therefore, DOE did not include a separate repair cost for these products.

DOE defines the equipment lifetime as the age at which a furnace or boiler is retired from service. The American Council for an Energy-Efficient Economy (ACEEE) commented that DOE's equipment lifetime estimate for oil-fired furnaces should be 18 years rather than 15 years, which DOE assumed in the NOPR analysis. (ACEEE, No. 120 at p. 10) DOE based the assumed lifetime of 15 years from *Appliance Magazine,* which reports data provided by furnace manufacturers. ACEEE did not provide data to substantiate the 18-year lifetime. Thus, DOE did not change its assumption about equipment lifetime for oil-fired furnaces.

As it has done in previous rulemakings, DOE derived the discount rates for the LCC analysis from estimates of the finance cost to purchase a furnace or boiler. The Natural Resources Defense Council (NRDC) commented that DOE's decision to use consumer-borrowing rates as a basis for consumer discount rates in the LCC analysis is flawed. (NRDC, No. 63 at p. 12) Consistent with financial theory, the finance cost of raising funds to purchase appliances can be interpreted as: (1) The financial cost of any debt incurred to purchase products, or (2) the opportunity cost of equity used to purchase equipment. DOE used both of these interpretations in estimating discount rates for the LCC analysis for furnaces and boilers. For the NOPR analysis, DOE used data from the Federal Reserve Board's 1998 and 2001 Survey of Consumer Finances (SCF). 71 FR 59233. For the analysis in today's final rule, DOE expanded the data to include the 1989, 1992, 1995, and 2004 SCF. These additional data on consumer finances represent a wide range of economic conditions affecting consumer behavior. Thus, DOE decided to continue to use consumer-borrowing rates as a suitable basis for consumer discount rates in the LCC analysis.

C. National Impact Analysis

The purpose of the national impact analysis (NIA) was to evaluate the energy and economic impacts of possible new furnace and boiler energy conservation standards at the national level. As discussed in the NOPR, DOE calculated the NES and the NPV of total customer costs and savings expected to result from new standards at specific efficiency levels. 71 FR 59224–59228. Table IV.3 summarizes the approach and data DOE used to derive the inputs to the shipments analysis for the NOPR, and the changes it made in the analysis for final rule. In the analysis for the NOPR, DOE analyzed fuel switching only in the new construction market. For this final rule, DOE also analyzed fuel switching in the replacement market, using the same method as for the new construction market. This change results in a larger drop in shipments of non-weatherized gas furnaces at higher efficiency levels than reported in the NOPR. As part of the MIA, furnace manufacturers provided a shipments scenario (i.e., the manufacturers' shipments scenario) that shows significantly greater decreases in gas furnace shipments with a standard at condensing levels (see section E, below).

TABLE IV.3.—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE SHIPMENTS ANALYSIS

Input	NOPR analysis	Final rule analysis
Shipments	Calculated total shipments for replacements based on past shipments and retirement function, and for new homes based on projection of new housing from *(AEO)2005*. The projected market shares in new homes were a function of relative heating equipment prices. Based conversions-upon-replacement on historic survey data. Model used two additional shipment categories to calibrate with GAMA data. Included shipments for mobile home furnace replacement.	Same approach as NOPR, with projection of new housing updated to *AEO2007*.
Replacements in Kind	Replacement of worn-out heating equipment with unit of same equipment type (i.e., furnace or boiler) and same fuel. Applied a replacement probability distribution based on equipment lifetime.	Same approach as NOPR, except for non-weatherized gas furnaces, for which DOE modeled fuel switching in the replacement market according to energy and equipment price trends, using same method and data as for installations in new housing.
Conversions	Replacement of worn-out heating equipment with equipment using a different fuel. Based on utility surveys conducted by American Gas Association that report the numbers of households that converted from oil or electricity to natural gas space heating.	No change.
Installations in New Housing	Installation of heating equipment into new single-family, multi-family, or mobile homes according to construction rates and equipment type market shares. Used housing completions according to *AEO* forecast and modeled fuel market shares according to energy and equipment price trends.	No change.
Gas Furnace Early Replacement.	Early replacement of non-condensing furnaces with more-efficient condensing furnaces. Model calibrated to GAMA data, which show a large increase in condensing furnace shipments in response to rising natural gas prices.	No change.
Conversion from Non-Central Gas Heating to Central Heating with a Gas Furnace.	Conversion from non-central gas heating to central heating with a gas furnace. Model used Residential Energy Consumption Survey data, which show a large increase between 1993 and 2001 in homes with central gas heating that were built before 1990.	No change.

In its assessment of fuel switching from gas to electric heating, DOE estimated that heat pumps and electric resistance furnaces would have the same market shares. The Appliance Standards Awareness Project (ASAP), GAMA, Nordyne, the Northeast Power Coordinating Council, and Rheem commented that market shares might change over the analysis period. (Public Meeting Transcript, No. 107.6 at p. 96; Public Meeting Transcript, No. 107.6 at p. 96; public Meeting Transcript, No. 107.6 at p. 98; Public Meeting Transcript, No. 107.6 at p. 97; Rheem, No. 101 at p. 2) DOE reviewed the projections of heating equipment market shares in EIA's AEO2007, and found that EIA's projections show little change in the national market shares of heat pumps and electric resistance furnaces until 2030. Thus, DOE believes that its assumption of constant market shares is reasonable.

Table IV.4 summarizes the approach and data DOE used to derive the inputs to the NES and NPV analyses for the NOPR, and the changes it made in the analyses for this final rule.

TABLE IV.4.—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE ANALYSES

Input	NOPR analysis	Final rule analysis
Shipments	Annual shipments from shipments model	See Table IV.3.
Date Products Must Meet Standard.	2015	No change.
Annual Unit Energy Consumption (UEC).	Annual weighted-average values were a function of efficiency level. Base case UEC for non-weatherized gas furnaces accounted for projected share of condensing furnaces.	No change.
Installed Cost per Unit	Annual weighted-average values were a function of efficiency level (established from the LCC analysis).	No change.
Maintenance Cost per Unit	Annual weighted-average values were a function of efficiency level (established from the LCC analysis).	No change.
Energy Prices	AEO2005 forecasts to 2025 and extrapolation beyond 2025.	*AEO2007* forecasts to 2030 and extrapolation beyond 2030.
Energy Site-to-Source Conversion.	Generated by DOE/EIA's NEMS includes electric generation, transmission, and distribution losses.	No change.

TABLE IV.4.—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE ANALYSES—Continued

Input	NOPR analysis	Final rule analysis
Discount Rate	7-percent and 3-percent real	No change.
Present Year	Future expenses discounted to year 2004	Future expenses discounted to year 2006.

The NPV calculation for the October 2006 proposed rule used marginal energy prices to value energy savings for natural gas and electricity, and average energy prices to value energy savings for fuel oil and liquefied petroleum gas (LPG) from *AEO2005.* 71 FR 59227. ACEEE commented that DOE should use the *AEO2007* price forecast in its analysis for the final rule. (ACEEE, No. 120 at p. 10) DOE used energy price projections from *AEO2007* (which ends in 2030) in its analysis for the final rule. For the years after 2030, DOE applied the average annual growth rate in 2020–2030, except for heating oil prices, for which DOE applied the average annual growth rate in 2015–2030. The above approach follows guidance provided by EIA.[5]

To discount future impacts, DOE used discount rates of both seven percent and three percent, in accordance with the Office of Management and Budget (OMB)'s guidelines contained in Circular A–4, Regulatory Analysis, September 17, 2003. (OMB Circular A–4, § E (September 17, 2003)). NRDC commented that DOE should rely exclusively on a three-percent discount rate in making determinations about the economic value of prospective standards, in part because investments in energy efficiency reduce overall societal risk. (NRDC, No. 131 at p. 16) As mentioned above, OMB recommends using discount rates of both seven percent and three percent for regulatory analysis. DOE concluded that both seven percent and three percent are appropriate to use because they reflect a broad range of discount rates at a national level.

D. Consumer Subgroup Analysis

In analyzing the potential consumer impact of new or amended standards, DOE evaluates the impact on identifiable groups of consumers (i.e., subgroups) that may be disproportionately affected by a new national standard level. For this rulemaking, DOE analyzed the potential effect of standards on households with low income levels and households occupied by seniors, two consumer subgroups of interest. (See TSD, Chapter 11.)

For today's final rule, DOE also analyzed the impact of standards for non-weatherized gas furnaces on households located in northern and southern regions. DOE defined the southern region as comprising states with an average of less than 5,000 heating degree-days (HDD)[6], and the northern region as comprising states with an average of more than 5,000 HDD. DOE also performed an analysis using a definition of the southern region as comprising states with an average of less than 6,000 HDD and a definition of the northern region as comprising states with an average of more than 6,000 HDD. See TSD Chapter 11 for a listing of the states included in each grouping.

E. Manufacturer Impact Analysis

In determining whether a standard for a covered product is economically justified, the Secretary of Energy is required to consider in part ''the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(I)) EPCA also requires for an assessment of the impact of any lessening of competition as determined by the Attorney General. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE performed the MIA to estimate the financial impact of efficiency standards on the residential furnace and boiler industry and to assess the impact of such standards on employment and manufacturing capacity, and published the results in the October 2006 NOPR. 71 FR 59228–59232, 59240–59245. For this final rule, DOE did not introduce changes to the methodology as described in the October 2006 NOPR, but did update the manufacturers' shipments scenario based on the updated NIA results. (See TSD, Chapter 12.)

F. Employment Impact Analysis

The Process Rule includes employment impacts among the factors DOE considers in selecting a proposed standard. Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees for furnace and boiler manufacturers. Indirect impacts are those changes of employment in the larger economy that occur due to the shift in expenditures and capital investment that is caused by the purchase and operation of more efficient furnace and boiler equipment. The MIA addresses direct employment impacts; the employment impact analysis describes indirect impacts.

For today's final rule, DOE estimated indirect national employment impacts using a model of the U.S. economy called IMBUILD (impact of building energy efficiency programs). DOE's Office of Building Technology, State, and Community Programs (now the Building Technologies Program) developed the model. IMBUILD is a personal-computer-based, economic-analysis model that characterizes the relationships among 35 sectors of the economy using national input/output structural matrices, and data from the U.S. Bureau of Labor Statistics (BLS). The IMBUILD model estimates changes in employment, industry output, and wage income in the overall economy of the United States resulting from changes in expenditures in the various sectors of the economy.

In comments on the proposed rule, NRDC stated that DOE failed to consider the economic value of increased employment at TSL 4. (NRDC, No. 131 at p. 12) DOE takes employment impacts into account without quantifying the net economic value of such impacts. While both the IMBUILD input/output model and the direct use of BLS employment data suggest the proposed furnace and boiler standards could increase the net demand for labor in the economy, DOE believes the gains would most likely be very small relative to total national employment. DOE, therefore, concludes only that the furnace and boiler standards are likely to produce employment benefits that are sufficient to offset any adverse impacts on employment in the furnace and boiler or energy industries. (See TSD, Chapter 14.)

G. Regulatory Impact Analysis

The regulatory impact analysis provides a description and analysis of

[5] Memorandum about Energy Price Projections for Federal LCC Analysis, Attachment 2, EIA/DOE, 2/10/2006.

[6] HDDs are quantitative indices demonstrated to reflect demand for energy to heat residential buildings. These indices are derived from daily temperature observations.

the feasible policy alternatives to this regulation and a quantitative comparison of the impacts of the alternatives. In this analysis, DOE also investigated the impact of standards on northern and southern regions. DOE used the NIA spreadsheet, which uses inputs generated by LCC spreadsheets constructed to separately analyze the northern and southern regions, to generate the results presented in the NOPR for both regions. DOE performed the national LCC analysis on the basis of the nine Census divisions, plus four large States (New York, California, Texas, and Florida), rather than on a State-by-State basis. Commenting on the NOPR, ASAP stated that the results for the northern region, defined as areas with more than 6,000 HDDs, appear to be incorrect. (Public Meeting Transcript, No. 107.6 at p. 154)

For the NOPR analysis of the potential impacts of regional standards, DOE based the distribution of furnace efficiency in the base case on data that GAMA provided on the percentage of condensing furnace sales in each State. DOE combined the State-level GAMA data into Census divisions, and then assumed condensing gas furnaces were installed in households solely on the basis of climate (i.e., high HDDs). This assumption led to the comparatively small energy savings estimated to result from a condensing-level standard for the northern region.

Upon review, DOE determined that the assumption that the existing (and future) market for condensing furnaces (absent a standard) was likely to be concentrated in the coldest states was not an accurate reflection of the State-level data that GAMA provided. By using distribution assumptions that are based on the State-level data, DOE subsequently developed an alternative analysis, which it now believes is a better indicator of the energy savings likely to result in specified regions from various standard levels. In the revised analysis, a much lower percentage (45 percent) of households in the States with HDDs of 6,000 or higher is assigned condensing furnaces. This share is half of the comparable 90 percent value in the NOPR analysis and is close to the 48 percent share of condensing furnaces for the 20 States with an average HDD of 6,000 or higher in the GAMA shipments data. See Appendix V of the TSD for further discussion.

H. Utility Impact Analysis

The utility impact analysis estimates the change in the forecasted power generation capacity for the Nation. This analysis separately determines the changes in energy supply and demand as a result of natural gas, fuel oil, LPG, or electricity residential consumption savings due to the standard. DOE calculated these changes using the NEMS–BT computer model.[7] The analysis output provides a forecast for the needed generation capacities at each TSL. The estimated net benefit of the standard is the difference between the generation capacities forecasted by NEMS–BT and the *AEO2006* Reference Case.

DOE obtained the energy savings inputs associated with electricity and natural gas consumption savings from the NES analysis. These inputs reflect the effects of efficiency improvement on furnace energy consumption, including both fuel (natural gas, fuel oil, and LPG) and electricity. The inputs also reflect the impacts associated with the market shift from natural gas heating to electric heating projected to occur at TSLs that result in an increased installed cost for gas furnaces. See Chapter 13 of the TSD for further discussion.

The American Gas Association (AGA) stated that DOE's approach for analyzing utility impacts, and in particular its evaluation of market shifts from gas to electric heating equipment, does not adequately account for impacts on gas utilities. (AGA, No. 137 at p. 6) Historically, DOE's approach for the utility impact analysis has been to only evaluate the impact of market shifts associated with standards on utility energy sales. DOE has not been able to characterize what the impacts of standards would be on gas utilities, other than the financial impacts as measured by sales. Thus, DOE was not able to perform further evaluation of the gas utility impacts for the furnace and boiler standards rulemaking.

I. Environmental Analysis

Under 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE estimated the environmental impacts of the standards established in today's final rule. DOE estimated direct emissions impacts at the household level as well as impacts on power plant emissions. While DOE regulating furnace and boiler electricity use, the electricity consumption of these appliances affects power plant emissions. As discussed in the NOPR, DOE calculated the reduction in power plant emissions of CO_2 and NO_X using the NEMS–BT computer model.[8] DOE does not report estimated reduction in power plant emissions of SO_2 because any such reduction resulting from an efficiency standard would not affect the overall level of SO_2 emissions in the U.S.[9]

The operation of most furnaces and boilers requires use of fossil fuels, and results in household emissions of CO_2, NO_X, and SO_2 at the sites where appliances are used. NEMS–BT provides no means for estimating such household emissions, so DOE calculated separate estimates of the effect of the standards on household emissions of CO_2, NO_X, and SO_2, based on emissions factors derived from the literature. DOE reports household SO_2 emissions savings, because the SO_2 emissions caps do not apply to household emissions.

The operation of furnaces and boilers requires use of fossil fuels, and results in household emissions of CO_2, NO_X, and SO_2 at the sites where appliances are used. NEMS–BT provides no means for estimating such household emissions, so DOE calculated separate estimates of the effect of the standards on household emissions of CO_2, NO_X, and SO_2, based on emissions factors derived from the literature. DOE reports household SO_2 emissions savings, because SO_2 emissions caps do not apply to household emissions.

NRDC and Dow Chemical commented that, although DOE had quantified emissions savings, it failed to put an economic value on them. (NRDC, No.

[7] NEMS, which is available in the public domain, is a large, multi-sectoral, partial-equilibrium model of the U.S. energy sector. The EIA uses NEMS to produce its AEO—a widely recognized baseline energy forecast for the U.S. DOE used a variant known as NEMS–BT.

[8] Power sector NO_X emissions impacts will be affected by the Clean Air Interstate Rule (CAIR), which the U.S. Environmental Protection Agency (EPA) issued on March 10, 2005. CAIR will permanently cap emissions of NO_X in 28 eastern States and the District of Columbia. 70 FR 25162 (May 12, 2005). As with SO_2 emissions, a cap on NO_X emissions means that equipment efficiency standards may result in no physical effects on these emissions. When NO_X emissions are subject to emissions caps, DOE's emissions reduction estimate corresponds to incremental changes in emissions allowance credits in cap-and-trade emissions markets rather than physical emissions reductions. Therefore, while the emissions cap may not result in physical emissions reduction from the proposed standards, it does produce an environment-related economic benefit in the form of emissions allowance credits.

[9] The Clean Air Act Amendments of 1990 set an SO_2 emissions cap on all power generation. The attainment of this target is flexible among generators and is enforced through the use of emissions allowances and tradable permits. Accurate simulation of SO_2 trading implies that the effect of efficiency standards on physical emissions will be near zero because emissions will always be at or near the allowed ceiling. However, although there may not be an environmental benefit from reduced SO_2 emissions from electricity savings, there still may be an economic benefit. Electricity savings can decrease the need to purchase or produce SO_2 emissions allowance credits, which decreases the costs of complying with regulatory caps on emissions.

131 at p. 13; NRDC and Dow Chemical, No. 132 at p. 9) In keeping with the guidance of the 1996 Process Rule, DOE's analysis of the environmental impacts of standards included estimated impacts on emission of carbon and relevant criteria pollutants. 61 FR 36983 (July 15, 1996). For the purpose of promulgating new standard levels for furnaces and boilers, DOE considers the potential changes to physical emission resulting from new standards. The detailed environmental analysis is part of the TSD.

V. Discussion of Other Comments

Since DOE opened the docket for this rulemaking, it received more than 150 comments from a diverse set of parties, including manufacturers and their representatives, States, energy conservation advocates, consumer advocates, and utilities. Comments regarding the analytic methodologies DOE used are discussed in section IV of this preamble. Other comments addressed the burdens and benefits associated with new energy efficiency standards, the information DOE used in its analyses, results of and inferences drawn from the analyses, impacts of standards, the merits of the different TSLs DOE considered, other issues affecting adoption of standards for residential furnaces and boilers, and the DOE rulemaking process. DOE addressed the comments raised regarding the ANOPR in the October 2006 NOPR. Comments received on the October 2006 proposed rule are addressed below.

A. Information and Assumptions Used in Analyses

As a basis for analysis for this final rule, DOE has continued to use the types of data as explained in the October 2006 NOPR. 71 FR 59213–59234. For the final rule, DOE revised some inputs and expanded some of the data sources in response to stakeholder comments on the October 2006 proposed rule. These revisions are discussed below.

1. Engineering Analysis

In the October 2006 proposed rule analyses, DOE used a five-year average of materials prices from years 2000 through 2004. 71 FR 59216. For the final rule, DOE revised the material price averages used in the cost model to include material price data from 2005 and 2006. For this rulemaking, DOE believes a five-year span is the longest span that would still provide appropriate weighting to current prices experienced in the market. DOE calculated a new five-year average materials price for cold rolled steel, aluminized steel, galvanized steel, painted cold rolled steel, and stainless steel. DOE used the BLS Producer Price Indices (PPIs) for cold rolled steel and stainless steel spanning from 2002 to 2006 to calculate new averages, which incorporate the changes within each material industry and inflation. Finally, DOE adjusted all averages to 2006$ using the gross-domestic-product implicit-price deflator.

As was the case for the October 2006 proposed rule, DOE created two scenarios for the material-price-sensitivity analysis: a low-bound and a high-bound scenario. DOE calculated the low-bound scenario by finding the year ranging between 2002 and 2006 with the lowest cost of cold rolled steel, which was 2002. DOE then used the annual prices for all other materials in 2002 and applied a 15-percent reduction to each of the raw material costs. Likewise, DOE calculated the high-bound scenario using the annual average price for each of the raw materials from 2006, when prices of raw materials were uncharacteristically high. DOE expressed both the low-bound scenario and the high-bound scenario in 2006$. DOE evaluated the results of the material-price-sensitivity analysis, using all three material-cost scenarios, in the engineering analysis and then used them as inputs for the LCC analysis. The results for the material-price-sensitivity analysis are presented in Appendix Z of the final rule TSD.

GAMA commented that DOE's analysis for non-weatherized gas furnaces appears to be in error, especially as related to the 81-percent AFUE option, for several reasons. First, while DOE estimated in the October 2006 NOPR that eight percent of non-weatherized gas furnace installations would require Category III venting at 81-percent AFUE, GAMA stated that this number is too low. Second, DOE concluded in the October 2006 NOPR that a significant fraction of the replacement installations will require a Type B vent connector, but GAMA pointed out that DOE only added the additional costs for these connectors to 40 percent of the installations. Lastly, GAMA stated its belief that the number of horizontal venting configurations assumed in the October 2006 NOPR analyses is too low.

Regarding GAMA's first point, DOE used the approach described by GAMA in the ANOPR analysis. For the NOPR, DOE determined that non-weatherized gas furnaces at 81-percent AFUE when applied in vertical venting installations fall into Category I. To GAMA's second point, DOE accounted for the cost of Type-B double-wall vent connectors for all replacement installations. GAMA appears to be referring to the fraction of existing models that already have a double walled vent connector in DOE's Installation Model, which was approximately 40 percent as discussed in the NOPR. To GAMA's last point regarding the number of horizontal venting configurations, DOE's October 2006 proposed rule analysis based the number of non-condensing horizontal vent configurations on the Gas Research Institute's venting survey (see NOPR TSD Chapter 6). DOE then verified this percentage in consultations with installers. Consequently, DOE did not revise the number of horizontal venting configurations for today's final rule.

2. Life-Cycle Cost Analysis

The base case forecasts equipment that consumers are expected to purchase in the absence of new standards. In the NOPR analysis, DOE assigned gas furnaces to sampled housing units in the base case to reflect the trend toward a higher market share for condensing furnaces, as shown in shipments data through 2003, which GAMA provided. DOE also based the projected market share of condensing furnaces in 2015 on an evaluation of the correlation between condensing furnace market share and the natural gas price for the 1990–2003 period, projected natural gas prices from *AEO2005,* and market factors that could sustain the condensing furnace market share even with a lower gas price. The projected condensing furnace market share for 2015 was 35.6 percent. Therefore, for the LCC analysis base case, DOE assigned condensing furnaces to 35.6 percent of the sampled housing units with non-weatherized gas furnaces.

GAMA stated the market share for condensing furnaces might continue to grow because of growth in the replacement market, and thus DOE's assumption may be low. (Public Meeting Transcript, No. 107.6 at p. 105) Lennox commented that the market share for condensing furnaces should consider the replacement market. (Public Meeting Transcript, No. 107.6 at p. 105) Rheem disagreed with DOE's estimate of market share for condensing furnaces, and stated that the share will be higher if historic trends continue. (Rheem, No. 138 at p. 5) ACEEE stated that the market share for condensing furnaces will depend on the price of natural gas and that DOE's assumptions should be internally consistent and reflect the price projections it uses. (Public Meeting Transcript, No. 107.6 at p. 102) DOE found that the empirical,

national-level data strongly support a correlation between condensing furnace market share and the natural gas price. The natural gas projections DOE used in this rulemaking (*AEO2007*) forecast that the national-average natural gas price in the period to 2015 does not exceed the recent level of prices. The condensing furnace market share in 2005 was approximately 35 percent. DOE determined that its assumption of a market share of 35.6 percent in 2015 reflects the empirical correlation.

3. Manufacturer Impact Analysis

NRDC stated that DOE's assessment of the impact of TSL 4 on manufacturers is flawed because a decline in sales of furnaces associated with TSL 4 would result in increased sales of heat pumps, many of which are sold by the furnace manufacturers. (NRDC, No. 131 at p. 14) Pacific Gas and Electric (PG&E) also commented that DOE's analysis overstates the deleterious effect of TSL 4 on INPV. PG&E commented that experience with other standards has shown that the costs and competitiveness difficulties presented by improved energy efficiency standards are less burdensome in implementation than initially projected. (PG&E, No. 129 at p. 1)

While some larger manufacturers of furnaces and boilers sell both heat pumps and furnaces, DOE is tasked with assessing the impacts of increased efficiency standards on furnace and boiler manufacturers, not on the heating, ventilation, and air-conditioning industry as a whole. In the furnace and air conditioner businesses, some manufacturers produce both types of products, switching primarily to furnaces in the winter and air conditioners in the summer. Heat pumps, on the other hand, tend to be manufactured in other manufacturing facilities. For the large production volume shifts found for TSL 4, DOE determined that the furnace divisions of large companies likely will be impacted as analyzed in the October 2006 proposed rule MIA. The capital (equipment) and labor (location) in a manufacturing facility cannot easily be transformed from manufacturing furnaces to manufacturing heat pumps. For small companies, which focus on fewer types of product lines, the material costs are less interchangeable. DOE also notes that, under TSL 4, other options—such as electric furnaces—become a choice for consumers. In light of these uncertainties, DOE determined that its MIA captures the potential range of impacts at TSL 4 on furnace manufacturers.

NRDC commented that, in determining industry value, DOE should not give equal weight to scenarios of product sales created by DOE and those provided by manufacturers. (NRDC, No. 131 at pp. 14–15) DOE looked at a range of impacts for each of the six product classes of furnaces and boilers and presented this entire range of results in the October 2006 NOPR. In doing so, DOE used both the NES shipments projections and the manufacturers' shipments scenario to assess the range of impacts on the industry value at each TSL. Although this final rule presents results using both shipments scenarios for the MIA, DOE only used the NES shipments scenario to assess the impacts on the Nation in the NIA.

NRDC stated its belief that DOE's assumptions regarding markups biased the INPV result. (NRDC, No. 131 at pp. 14–15) NRDC also questioned DOE's assumption that the industry cost structure will not decrease. NRDC stated that manufacturers could distinguish value-added products in the mid-90s AFUE range based on modulating capacity and continue to collect higher markups on above-standard products. NRDC further stated that, as manufacturers gain more experience with 90-percent AFUE products, the price of the products will come down; it requested that the cost structure in DOE's analysis account for this. (NRDC, No. 131 at pp. 14–15)

With regard to markups, DOE considered up to four distinct markup scenarios to bound the range of expected product prices following standards. For each product class, DOE used the markup scenarios that characterize the markup conditions described by manufacturers, and that reflect the type of market responses manufacturers expect as a result of standards. Details of the markup scenarios by product class were presented in the October 2006 NOPR. 71 FR 59240. DOE has determined that these scenarios capture the range of variability within the furnace and boiler industry.

As to NRDC's point on the industry cost structure, for condensing, non-weatherized gas furnaces that are already made in high volumes in an industry with decades of manufacturer experience, the potential cost of innovation prompted by higher standards is limited to that of an already mature industry. DOE recognizes that manufacturers' continuous improvement programs will continue to reduce future costs, with or without increased efficiency standards. DOE believes these programs are not a result of energy conservation standard rulemakings and are not appropriate to consider when estimating the impacts of energy conservation standards. DOE estimated the manufacturing cost of a condensing furnace to be $422.85 in the engineering analysis and DOE recognizes these costs could be reduced in a standards case scenario. Therefore, the MIA analysis excludes this effect, and shows a range of impacts on the industry results from an amended standard.

Rheem stated that DOE's assessment of impacts on manufacturers is inadequate with respect to domestic manufacturing employment, capacity, plant closures, and loss of capital investment. Rheem commented that domestic manufacturing of refrigerators has declined substantially as a result of three energy standards and the phaseout of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), since manufacturers have chosen to invest outside the USA in new facilities rather than upgrade their domestic facilities. Rheem summarized by stating that the cumulative burden of environmental and efficiency regulations has been a factor in the consolidation of the domestic appliance industry. (Rheem, No. 138 at p. 3)

DOE notes that the two most significant regulatory actions affecting the furnace and boiler industries are more stringent Federal energy conservation standards for residential and commercial air conditioners, and the EPA-mandated phaseout of hydrofluorocarbon (HFC) and HCFC refrigerants. DOE is aware that manufacturers are working to redesign all of the product lines of residential air conditioners and have allocated most of their capital resources for redesigning and retooling their production lines to meet the new minimum efficiency standard and refrigerant phaseout. DOE quantified the anticipated level of investment needed to meet each of these two regulatory actions along with others facing the industry in Chapter 12 of the NOPR TSD. 71 FR 59244–29245.

In the October 2006 NOPR, DOE specifically sought comment on information that would allow it to monetize changes in warranty costs resulting from the installation of products at near-condensing levels. 71 FR 59258. GAMA stated that DOE should consider changes in warranty costs related to gas-fired boilers at 84-percent AFUE. However, GAMA also stated that it is inappropriate with respect to anti-trust considerations for manufacturers to discuss information related to monetizing changes in warranty costs. (Public Meeting Transcript, No. 107.6 at pp. 108–109)

Rheem stated that it is inappropriate to provide DOE with information that attempts to monetize the changes in warranty costs resulting from installation of products at near-condensing levels. Rheem further commented that these products should not be considered as an option due to their unacceptable safety and reliability. (Rheem, No. 101 at p. 2; Public Meeting Transcript, No. 107.6 at p. 82; Rheem, No. 138 at p. 6) Trane stated that it is inappropriate for manufacturers to discuss information related to monetizing changes in warranty costs for products at near-condensing levels. (Public Meeting Transcript, No. 107.6 at p. 108)

In light of the comments, DOE was not able to monetize the changes in warranty costs resulting from the installation of products at near-condensing levels. However, as discussed in section VI of this preamble, safety concerns for standards at near-condensing levels were a greater factor in considering such standards, which were eventually rejected.

B. Other Issues

1. Joint Stakeholder Recommendation for Boilers

On July 14, 2006, GAMA and ACEEE, on behalf of 28 residential boiler manufacturers and four energy efficiency organizations, submitted a joint recommendation for new national standards for residential boilers that would consist of a performance requirement (minimum AFUE levels) and design requirements. Table V.1 exhibits the performance and design requirements in the joint stakeholder recommendation for boilers.

TABLE V.1.—JOINT STAKEHOLDER RECOMMENDATION FOR BOILERS PERFORMANCE AND DESIGN REQUIREMENTS

Product class			Joint stakeholder recommendation for boilers
Gas Boiler	Water Steam	82% 80	No Standing Pilot * Temperature Reset **. No Standing Pilot *.
Oil-Fired Boiler	Water Steam	84 82	Temperature Reset. None.

* The manufacturer shall not equip gas boilers with standing pilots.

** The manufacturer shall equip hot water heating boilers with automatic means for adjusting the temperature of the water supplied by the boiler such that an incremental change in inferred heat load produces a corresponding incremental change in supply water temperature. When there is no inferred heat load, such automatic means shall adjust the supply water temperature to no more than 140 deg. F. The boiler shall be operable only when the automatic means is installed. These requirements should be implemented five (5) years after publication of the Final Rule.

For gas-fired boilers, the recommendation calls for a ban on standing pilots. For gas-fired water boilers only, it suggests two design requirements: In addition to the ban on standing pilots, the recommendation also requires a ''temperature reset'' feature that automatically adjusts the boiler output according to the outdoor ambient air temperature. For oil-fired water boilers, the recommendation contains the design requirement for the same ''temperature reset'' feature.

In the October 2006 NOPR, DOE determined that the recommended standards in the joint stakeholder recommendation are beyond the scope of its statutory authority. 71 FR 59209. In comments on the October 2006 proposed rule, all of the parties to the joint recommendation urged DOE to reconsider and adopt the standards in the recommendation. (Public Meeting Transcript, No. 107.6 at p. 58; ACEEE, No. 120 at p. 4; Public Meeting Transcript, No. 107.6 at pp. 69, 142; Burnham, No. 99 at pp. 1–3; Public Meeting Transcript, No. 107.6 at p. 38; GAMA, No. 102 at p. 2; GAMA, No. 116 at p. 2; Public Meeting Transcript, No. 107.6 at p. 28; Lochinvar, No. 106 at p. 2; Public Meeting Transcript, No. 107.6 at p. 74)

Despite these comments, DOE cannot promulgate design requirements for unspecified products: The plain language of section 321(6)(B) of EPCA limits design requirements to only those products for which design requirements are specified in the statute. (42 U.S.C. 6291(6)(b)) Furnaces are not one of those specified products. DOE legally cannot establish a design requirement for furnaces.

Congress's establishment of a design requirement on an unspecified product, i.e., a ceiling fan, does not lift the bar on DOE placing design requirements on unspecified products as suggest by ACEEE. (ACEEE, No. 120 at p. 4) While Congress may have amended provisions of EPCA to require design requirements in conjunction with performances requirements, it did not amend section 321(6)(B) of EPCA, 42 U.S.C. 6291(6)(B), which remains applicable to furnaces and boilers.

Burnham suggested that section 325(r) of EPCA (42 U.S.C. 6295(r)) grants DOE the authority to add design requirements covered by performance standards under certain conditions. (Burnham, No. 99 at pp. 1–3) Section 325(r) states in relevant part:

> Any new or amended energy conservation standard prescribed under this section * * * may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required level of energy efficiency * * * specified in such a standard.

(42 U.S.C. 6295(r)) Despite Burnham's suggestion, the plain language of section 325(r) grants authority to establish requirements necessary to assure compliance with a required level of energy efficiency. It does not grant authority to establish requirements that affect the required level of energy efficiency, e.g., design requirements. Further, if the language were such that DOE could interpret the language as broadly as Burnham suggested, the distinction made in section 321(6)(A) and (B) between products for which design standards can be established and those for which such standards cannot, would be rendered meaningless.

2. Regional Standards and Waiver From Federal Preemption for States

In the October 2006 NOPR, DOE stated that the establishment of regional standards or design requirements for residential furnaces and boilers is beyond the scope of DOE's statutory authority. 71 FR 59209; see also, 69 FR 45420, 45425 (July 29, 2004). DOE received numerous comments advocating the adoption of separate standards for northern and southern regions. (ACEEE, No. 120 at p. 3; Public Meeting Transcript, No. 107.6 at p. 59; Public Meeting Transcript, No. 107.6 at p. 54; Public Meeting Transcript, No. 107.6 at p. 68; Office of the Ohio Consumers' Counsel (OCC), No. 125 at p. 9; National Consumer Law Center (NCLC), No. 108 at p. 2; Belmont Housing Trust, Inc., No. 127 at p. 8; City

of Boston, No. 115 at p. 1; Consumer Group, No. 121 at pp. 9–10; Northeast Division of Energy Resources (NEDER), No. 123 at p. 4; New Hampshire Office of Consumer Advocate (NHOCA), No. 134 at p. 1; State of Michigan (SOM), No. 114 at p. 1; State of New Hampshire Office of Energy and Planning, No. 139 at p. 1; NRDC, No. 131 at p. 18; Public Meeting Transcript, No. 107.6 at p. 116; NRDC, No. 132 at p. 10; Ohio Department of Development (ODD), No. 124 at p. 1; Western Electricity Coordinating Council (WECC), No. 113 at p. 1) DOE received comments that DOE incorrectly determined that it cannot implement regional standards. Conversely, DOE also received comments opposing the adoption of separate standards for northern and southern regions. (Air Conditioning Contractors of America, No. 135 at p. 1; Air-Conditioning and Refrigeration Institute (ARI), No. 133 at p. 1; National Propane Gas Association (NPGA), No. 142 at p. 3)

DOE recognizes the potential benefit that could be achieved through regional standards. As discussed in the October 2006 NOPR, DOE analyzed a regional regulatory scheme based on heating degree-days. 71 FR 59253. This scheme contemplated efficiency standards for non-weatherized gas furnaces only, depending on the region of the country.

DOE modeled the policy of regional performance standards by aggregating States into two broad geographic regions based on climate (i.e., based on heating degree-days). DOE selected the efficiency level for this scheme based on maximizing consumer NPV. Under this analysis the TSL projected to yield the maximum consumer NPV at a seven-percent discount rate for the cold-climates (i.e., ≥5,000 heating degree days and ≥6,000 heating degree days) was the proposed TSL 4, with the proposed TSL 2 for the warm climates. The projected results for both regions, the proposed TSL 2 (South) and the proposed TSL 4 (North), combined were estimated to yield higher energy savings than the than the proposed TSL 2 standard levels. The projected results for both regions combined were estimated to yield greater national NPVs (at 7% discount rate) than the proposed levels of TSL 2, applied as national standards. A more detailed discussion of this analysis is provided in the October 2006 NOPR and in the February 9, 2007 Notice of Data Availability (72 FR 6184).

However, DOE has determined that it does not have authority under EPCA to establish regional standards. The language of EPCA demonstrates that the Secretary's authority to establish and amend standards for furnaces and boilers is limited to establishing and amending a single national standard for a particular type of furnace and boiler, as opposed to a national standard plus one or more regional standards. Section 325(a)(2) of EPCA authorizes the ''Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.'' (42 U.S.C. 6295(a)(2)) In defining an energy conservation standard, EPCA employs ''a performance standard'' or ''a design requirement'' in the singular. (42 U.S.C. 6291(6)) This use of the singular indicates that the Secretary generally may only set one energy conservation standard for a product.

Further, were the language of EPCA not clear as to DOE's authority for setting national standards, interpreting section 325 as generally prohibiting the establishment of regional standards is reasonable, particularly when section 325 is read in total. Consumer Groups stated that, under 1 U.S.C. section 1, the use of the singular tense includes consideration of the plural tense unless context indicates otherwise. (No. 121 at p. 10) However, the context of EPCA indicates that the reliance on the singular tense in the definition of energy conservation standard for the purpose of the Secretary establishing amended standards for furnaces and boilers is proper.

EPCA specifies that the Secretary can only set multiple standards for a product if that product has more than one major function:

> The Secretary may set more than 1 energy conservation standard for products that serve more than 1 major function by setting 1 energy conservation standard for each major function.

(42 U.S.C. 6295(o)(5)). If DOE could adopt multiple performance standards or design requirements under a single conservation standard, as suggested by commenters, EPCA's limit of one conservation standard per major product function would be meaningless.

Additional commenters stated that because Congress established in certain instances multiple requirements on a single product, section 321(6) should be read more broadly to define a ''conservation standard.'' [10] However, while Congress has enacted multiple performance and design standards for covered products, the Secretary's authority to do so is limited under section 325(o)(5) as stated above.

Moreover, the Senate Report language accompanying the amendments to EPCA under the National Appliance Energy Conservation Act (NAECA; Pub. L. 95–619) indicates that the Secretary is to set national standards. ''The purpose of [NAECA] is to reduce the Nation's consumption of energy and to reduce the regulatory and economic burdens on the appliance manufacturing industry through the establishment of *national* energy conservation standards for major residential appliances.'' S. Rep. No. 100–6, at 2 (1987) (Emphasis added).

The two basic provisions of the NAECA amendments to EPCA concern the establishment of Federal standards and the preemption of State standards. Id. Although NAECA goes on to state that States have the ability to petition DOE for a waiver from the national standard, NAECA warns that achieving such a waiver is ''difficult,'' again indicating a preference for a national standard. Id.

As a policy matter, national standards established under EPCA enable DOE to address the Nation's need to conserve energy while reducing the regulatory burden on manufacturers. The establishment of regional standards would be overly complicated due to the structure of DOE's enforcement authority as established in EPCA. Under EPCA, DOE's enforcement authority generally applies to products as manufactured. (42 U.S.C. 6302 and 6303) Under current authority, enforcement of Federal regional standards would be difficult given that a furnace or boiler could be manufactured for compliance in one region, yet be easily transported to a region in which it would be noncompliant. The potential interaction of various standards between regions, the subsequent potential for products to be shipped and installed in regions in which they are not compliant, and the resulting impact on energy savings would have to be considered when establishing standards. DOE recognizes the potential for regional standards to increase the net benefits of energy conservation programs under certain circumstances. However, establishing regional standards in the context of DOE's current enforcement authority would make it more difficult to achieve the goals of improved energy conservation and reduced regulatory burden.

While DOE is prohibited from promulgating regional standards under the authority in section 325 of EPCA, States can apply for waivers from Federal preemption under section 327 of EPCA. (42 U.S.C. 6297) In the October 2006 NOPR, DOE discussed the necessary conditions in order for it to grant States a waiver from Federal

[10] Section 325(ff) of EPCA establishes multiple requirements for ceiling fans. (42 U.S.C. 6295(ff)).

preemption of State energy efficiency standards for appliances subject to Federal regulation, as established in 10 CFR 430.41(a)(1). 71 FR 59209.

DOE received several comments with regard to the waiver from Federal preemption discussion in the NOPR. Some commenters expressed concern that DOE was encouraging States to apply for waivers. (Public Meeting Transcript, No. 107.6 at p. 111; AGA, No. 103 at p. 5; Association of Home Appliance Manufacturers (AHAM), No. 141 at pp. 1–2; ARI, No. 133 at pp. 2–3; GAMA, No. 102 at pp. 2–3; GAMA, No. 116 at p. 2; Public Meeting Transcript, No. 107.6 at p. 30; Lennox, No. 130 at p. 3; NPGA, No. 142 at pp. 3–4; Rheem, No. 138 at p. 3; Public Meeting Transcript, No. 107.6 at p. 113; GAMA, No. 153 at p. 1) Other commenters supported DOE giving States guidance with regard to waivers from Federal preemption. (Public Meeting Transcript, No. 107.6 at p. 112; ACEEE, No. 120 at pp. 2–3; Public Meeting Transcript, No. 107.6 at p. 70; Consumer Groups, No. 121 at p. 2; Public Meeting Transcript, No. 107.6 at p. 116; NEDER, No. 123 at p. 3; NRDC, No. 131 at p. 18; NRDC and Dow Chemical, No. 132 at p. 10; New York State Energy Research and Development Authority (NYSERDA), No. 117 at p. 2; OCC, No. 125 at p. 9; SOM, No. 114 at p. 2; WECC, No. 113 at p. 2)

While the October 2006 NOPR provided a discussion of the necessary elements of a petition for waiver from Federal preemption, DOE recognizes the practical limitations of the process as well as the potential burden resulting from multiple standards. For example, DOE suggested that a State may include information regarding the efficiencies of product shipments to that State. 71 FR 59210. One commenter raised concern that such information may be considered proprietary or confidential by the manufacturers or trade organizations. (NCLC, No. 108 at p. 19) However, DOE notes that inclusion of such information was a suggestion of what a State should consider including if available, and that such information is not required for a State waiver petition.

NCLC expressed concern that petitions filed by more than one State, especially if filed by contiguous or nearby States with similar HDDs, could be deemed in per se violation of the requirement that a petition must demonstrate an ''unusual and compelling State or local energy interest.'' (NCLC, No. 108 at p. 19) DOE provided guidance on this matter in the denial of the California petition for waiver from Federal preemption for residential clothes washer standards. 71 FR 78157 (December 28, 2006). In that notice, DOE stated that whether a State has an ''unusual and compelling State interest,'' DOE will evaluate that interest in terms of national averages. 71 FR 58161.

DOE has estimated that the potential energy savings likely under a scenario in which all northern States with 5000 HDD or 6000 HDD obtained waivers at a level of 90-percent AFUE is 2 quads and 1.45 quads, respectively. While DOE does not have authority to issue regional standards, EPCA does provide an avenue for DOE to consider this savings through the waiver provision in section 327(d). As stated in the October 2006 NOPR, and as required under section 327(d), DOE would be required to evaluate the benefit of such savings from State level standards against the potential effects on manufacturers and consumer. 71 FR 59210; 42 U.S.C. 6297(d)(3) and (4).

3. Effective Date for New Standards

In the October 2006 NOPR, DOE proposed approximately an eight-year implementation period for the proposed standards; i.e., DOE proposed an effective date in 2015. 71 FR 59223. DOE noted that EPCA had directed DOE to publish a final rule to determine whether to amend standards for furnaces and boilers by January 1, 1994, and that any amendment shall apply to products manufactured on or after January 1, 2002. (42 U.S.C. 6295(f)(3)(B)) DOE applied the eight-year implementation period of the EPCA schedule to determine the effective date of the proposed standard. 71 FR 59233.

NRDC stated that the eight-year implementation period is not required by law and that the earlier central air conditioner efficiency standard rulemaking established an implementation period shorter than that provided in the statute. (NRDC, No. 131 at p. 13; Public Meeting Transcript, No. 107.6 at pp. 54, 150) ACEEE stated that large amounts of equipment already meet the proposed 2015 standards and are already available on the market. (ACEEE, No. 107 at pp. 61, 149) For furnaces, ACEEE suggested that DOE rely on a five-year implementation period associated with the second round of rulemaking for furnaces and boilers specified in section 325 of EPCA. (42 U.S.C. 6295(f)(3)(C)) With regard to boilers, ACEEE requested that DOE use the dates in the ACEEE-GAMA joint recommendation, given that manufacturers have agreed on those timeframes. (ACEEE, No. 120 at p. 9) A number of other stakeholders also stated that DOE should make the effective date earlier than 2015. (Public Meeting Transcript, No. 107.6 at p. 69; North American Insulation Manufacturers Association, No. 136 at p. 2; NEDER, No. 123 at p. 6; NHOCA, No. 134 at p. 1; NRDC and Dow Chemical, No. 132 at p. 9; NYSERDA, No. 117 at p. 2; OCC, No. 125 at p. 9; ODD, No. 124 at p. 1; State of New Hampshire Office of Energy and Planning (OEP), No. 139 at p. 1; South Coast Air Quality Management District, No. 128 at p. 1; SOM, No. 114 at p. 2; WECC, No. 113 at p. 2; National Multi Housing Council, No. 148 at p. 2) Other stakeholders stated that DOE should maintain the effective date given in the NOPR. (Public Meeting Transcript, No. 107.6 at p. 150; GAMA, No. 116 at p. 4; GAMA, No. 153 at p. 1; Rheem, No. 156 at p. 2; Midwest Energy Efficiency Alliance, No. 150 at p. 1)

The standards adopted in today's final rule are applicable to products manufactured on or after the date 8 years following publication of this notice of final rulemaking. DOE is maintaining an eight-year implementation period consistent with EPCA. NRDC is correct that DOE established standards with implementation periods substantially shorter than that specified in EPCA for central air conditioners. However, in that instance all of the participants in the rulemaking, including representatives of the manufacturers who would have to comply with the standards and who had expressed a view about the matter, had agreed that five years (the period provided in the statute) of lead time was not needed for central air conditioner manufacturers to come into compliance with the standards. 69 FR 50997, 50998 (Aug. 17, 2004); 67 FR 36368, 36394 (May 23, 2002). There is no similar consensus among furnace and boiler manufacturers.

In today's final rule, DOE is providing a lead time consistent with that provided under EPCA. Today's final rule has a compliance date that begins on the date 8 years following publication of this notice.

4. Consumer Benefits From Reduction in Natural Gas Prices Associated With a Standard of 90-Percent AFUE or Higher for Non-Weatherized Gas Furnaces

In the October 2006 NOPR, DOE stated that it believed it would be unable to consider the potential impact of energy efficiency standards on natural gas prices because DOE believed that the analytical methods necessary to estimate such an impact were not available. 71 FR 59210. DOE

acknowledged a then recent study [11] that considered the potential impacts of furnace and boiler standards on natural gas prices, but stated that DOE did not find that the study provided any conclusive evidence. 71 FR 59280.

NRDC and Dow Chemical challenged DOE's decision not to consider the potential impacts of reductions in natural gas use due to furnace and boiler standards with increased stringency, including the impact on natural gas prices. Commenters stated the Wiser study as well as an analysis performed by ACEEE indicate ''major influences of efficiency on price.'' (NRDC and DOW, No. 132 at p. 4) NRDC and Dow stated that such a price impact provides a substantial economic benefit that may be estimated using EIA's NEMS model. (NRDC and Dow, No. 132 at p. 10)

In response to these comments, DOE undertook further review of the issue of the potential impact of residential furnace and boiler energy efficiency standards on natural gas prices. A review of the economic literature indicates that there is support for the idea that an impact will occur and that that impact would result in a reduction in overall natural gas prices. DOE conducted a preliminary analysis using a version of the 2007 NEMS-BT, modified to account for energy savings associated with possible standards. The preliminary analysis estimated that gas demand reductions resulting from a 90-percent-AFUE non-weatherized gas furnace standard would reduce the U.S. average wellhead natural gas price by an average of 0.7 cents per million Btu over the 2015–2030 forecast period and would reduce the average user price of gas by an average of 1.4 cents per million Btu.[12]

The projected change in the natural gas price varies among the end use sectors. DOE estimated that natural gas prices would decrease for the industrial and electric power sectors, and increase for residential consumers. The estimated average price changes amount to a decrease of 0.7 cents per million Btu for the industrial sector and of 0.6 cents per million Btu for the electric power sector, an increase of 4.2 cents per million Btu for the residential sector, and no change for the commercial sector. The increase in the residential price occurs because the fixed charges (*e.g.*, transmission infrastructure costs) are spread over fewer million Btu of gas sales in the standards case, thus placing upward pressure on the average price per million Btu.

A projected decrease for the electric power sector would likely result in a small reduction in electricity prices across all sectors. Although the estimated reduction in average natural gas prices is small, the estimated economy-wide savings in natural gas expenditures over the 2015–2030 forecast period have an estimated net present value of $1.7 billion at a seven-percent discount rate.[13]

In addition to conducting its own analysis using NEMS, DOE reviewed the results of: (1) Studies that used NEMS to investigate the price impact of reductions in natural gas demand, and (2) studies that used other energy-economic models to investigate the price impact of substantial change in natural gas demand. While the results vary considerably among the different studies, they generally show a price response similar to or larger than that shown by DOE's NEMS analysis.[14]

NRDC and Dow Chemical argued that this outcome would likely represent a net gain to society since most gas users would be better off, and producers, whose revenues and costs both would fall, would likely be no worse off. (NRDC and Dow, No. 132 at pp. 4–8). In the short run, DOE's preliminary analysis indicates that consumer savings from lower natural gas prices would be offset by declines in gas producer revenue.

In most instances, a reduction in the price of a good would not represent a net economic benefit, but rather a transfer from producers (domestic or foreign) to consumers. In other words, there is a corresponding $1.7 billion *reduction* in revenue to natural gas producers.

However, since natural gas is an exhaustible resource, price effects may be felt differently. There is a literature [15] [16] indicating that, for exhaustible resources, at least some portion of a price reduction reflects the fact that reduced demand effectively increases future supply and as such would represent a net economic or resource benefit, rather than just a transfer between parties. Although, it is uncertain as to the magnitude of price reduction that would not be a transfer benefit.

Based on the discussed analysis, DOE recognizes that there is uncertainty about the magnitude, distribution, and timing of the costs, benefits, and net benefits within the economy. DOE's preliminary analysis indicates that the prices of natural gas to residential consumers would increase slightly. If there is an increase in the prices of natural gas for residential consumers the LCCs will be affected and the LCC savings would be reduced if such price changes were incorporated in the LCC analysis. While DOE has not been able to estimate these potential effects, DOE anticipates the effect will be small since the magnitude of the residential gas price change is small (but likely to vary as the natural gas savings increases).

Similarly, DOE is uncertain of the effects of the drop in natural gas on producers and distributors of natural gas. While their revenues and costs are expected to drop, it is uncertain whether they will drop in proportion over time. The supply side will likely experience revenue loss due to both the price changes and the reduction in gas sales that they will experience.

DOE considered the potential impact on natural gas prices in the establishment of the final standards, but because of the uncertainty of these impacts, and because DOE's analysis has not been subjected to public review, this factor had little impact on DOE's conclusion. The Department did seek to provide an opportunity for public review and comment on this analysis, which if affirmed, would have merited consideration in deciding whether to finalize higher efficiency levels in this rulemaking, but because certain parties opposed DOE's ability to provide opportunity for additional comment and because the U.S. District Court ultimately denied DOE the additional

[11] Wiser, R., M. Bolinger, M. St. Clair. Easing the Natural Gas Crisis: Reducing Natural Gas Prices through Increased Deployment of Renewable Energy and Energy Efficiency. Lawrence Berkley National Laboratory. January 2005. (*http://eetd.lbl.gov/EA/reports/56756.pdf*).

[12] DOE only analyzed the impact of a 90-percent AFUE standard because it anticipates that impacts to natural gas prices would not result from energy savings associated with the efficiency levels considered by DOE, which are below 90-percent AFUE.

[13] The economy-wide savings over 2015–2038 (the period used to estimate the NPV of the national consumer benefits) equals $3.6 billion at a seven-percent discount rate.

[14] The ratio of the percentage change in price to the percentage change in consumption is termed ''inverse price elasticity.'' DOE's analysis using NEMS found an average inverse price elasticity (IPE) over the forecast period of 0.9. Analysis of the results from studies using six other models (as reported by Stanford's Energy Modeling Forum in a 2003 report ''Natural Gas, Fuel Diversity and North American Energy Markets'') found a wide range of inverse price elasticities for change in natural gas consumption. Four of the models show an IPE in the range of 1.1 to 2.1; two others show unusually high values of 6.3 and 7.3. DOE also reviewed studies that used the Energy and Environmental Analysis Corporation's model and found that this model results in higher inverse price elasticity (ranging from 4 to 16) than does NEMS.

[15] Fisher, A., Resource and Environmental Economics. Cambridge University Press. 1981.

[16] Hotelling, H., The economics of exhaustible resources. Journal of Political Economy. Vol. 39, 137–75. 1931.

time that would be required, DOE was unable to do so.

More specifically, this rulemaking is subject to a Consent Decree filed with the U.S. District Court for the Southern District of New York, which settled the consolidated cases of *State of New York, et al.* v. *Bodman, and Natural Resources Defense Council, Inc., et al.*, v. *Bodman (No. 05-Civ.-7807 (JES) and No. 05-Civ.-7808 (JES), respectively (S.D.N.Y consolidated December 6, 2005)*. Under that Consent Decree, DOE was required to publish a final rule for amended energy conservation standards for residential furnaces and boilers by September 30, 2007.

DOE had received comments on the NOPR that indicated the feasibility and desirability of addressing natural gas price impacts as a result of the standards at issue in this rulemaking. DOE wished to consider those impacts prior to promulgating a final rule, and preliminarily believed that, if confirmed, would have merited consideration in evaluating higher efficiency standards for the products covered by this rulemaking, including a 90% AFUE standard for non-weatherized gas furnaces. Therefore, in order to further address the natural gas price analysis and potentially promulgate higher efficiency standard levels, DOE moved the Court to modify the Consent Decree so that the required publication date for the final rule would be extended nine months, which would allow DOE to publish a supplemental notice of proposed rulemaking, consider the additional information, and potentially use it to form the basis for a final rule.

However, certain other parties—specifically, the Gas Appliance Manufactures Association, the Air-Conditioning and Refrigeration Institute, the Association of Home Appliance Manufacturers objected to DOE's motion. The State of New York *et al.* and NRDC *et al.* submitted that DOE did not establish the requisite ''good cause'' for modifying the Consent Decree, but would be willing to stipulate to the DOE's proposed extension, provided that certain conditions are met.

On September 25, 2007, the Court granted a stay of the September 30th deadline to further consider DOE's motion, then on November 1, 2007, the Court denied the motion, thus necessitating DOE's issuance of a final rule by November 8, 2007. As part of its basis for denying the motion, the Court said that the 90-percent AFUE standard for non-weatherized gas furnaces was previously subject to public review. However, nowhere had DOE made available an analysis of the potential impact of such a standard on natural gas prices. As indicated by GAMA, DOE must provide a rationale for the final standard level, and that generally requires that the analysis underlying DOE's determination be subject to review and comment. See, Memorandum Filed in Support of Plaintiff-Intervenors' Opposition to Motion to Modify the Consent Decree, p. 23. Because DOE was denied additional time to promulgate a final rule, DOE was unable to solicit data and comment on its natural gas price analysis, particularly with regard to the uncertainty thereof. Therefore, DOE must issue a final rule by November 8, 2007, as ordered by the Court, based on the record available to DOE at this time.

5. Efficiency Standards for Electric Furnaces

In the October 2006 NOPR, DOE did not propose energy efficiency standards for electric furnaces because DOE found that the resulting energy savings would be de minimis given the high efficiency level of such furnaces. AGA and NPGA objected to DOE's decision not to propose efficiency standards for electric furnaces, stating that these furnaces meet the statutory definition of 'furnaces' under current law. (AGA, No. 103 at p. 3; NPGA, No. 142 at p. 4) AGA disagreed with DOE's finding that energy savings would be de minimis. (AGA, No. 137 at p. 4)

DOE found that the reports of furnace manufacturers to the FTC list the efficiency of the electric furnaces at 100-percent AFUE. 16 CFR Part 305, Appendix G2. As stated in the October 2006 NOPR, DOE did not consider electric furnaces since their efficiency approaches 100-percent AFUE and improvements to them would also offer de minimis energy-savings potential. 71 FR 59214. In addition, commenters did not provide any additional data to substantiate their claims for electric furnaces. Therefore, for electric furnaces, DOE is not adopting standards in today's final rule.

6. Electricity Consumption of Furnace Fans

ACEEE, NEDER, NHOCA, NYSERDA, ODD, and OEP commented that DOE should consider standards concerning the electricity consumption of furnace fans, either in the current rulemaking or in the future. (ACEEE, No. 120 at p. 9; Public Meeting Transcript, No. 107.6 at p. 69; NEDER, No. 123 at pp. 5–6; NHOCA, No. 134 at p. 1; NYSERDA, No. 117 at p. 1; ODD, No. 124 at p. 2; OEP, No. 139 at p. 1) As stated in the October 2006 NOPR, since adding electricity consumption standards to this rulemaking would likely cause further substantial delay in the rulemaking process, DOE accepted the recommendations from GAMA and ASAP and decided not to address furnace electricity consumption in this rulemaking. 71 FR 59209. DOE may consider furnace electricity consumption separately in a subsequent rulemaking.

7. Use of LCC Results in Selecting Standard Levels

ACEEE commented that the average LCC results reported in the October 2006 NOPR show inconsequential differences among ''mainstream'' efficiency options. Therefore, ACEEE stated that, given ''virtually indistinguishable differences in LCC and the fact that all of these options are technically feasible,'' DOE should follow NAECA's dictate to select standards with the maximum savings that are technically feasible and economically justified. (ACEEE, No. 120 at p. 11) As discussed above in section III.D.1.b, the LCC is one factor DOE used in determining whether an energy conservation standard for residential furnaces and boilers is economically justified. In its consideration, DOE took into account the magnitude of differences in average LCC impacts between alternative standards, as well as the percentages of consumers predicted to experience a positive or negative LCC impact.

8. Definition of Trial Standard Levels

NRDC and Dow Chemical commented that DOE should analyze two intermediate levels between 90-percent AFUE and 96-percent AFUE (92-percent AFUE and 94-percent AFUE) for non-weatherized gas furnaces. NRDC stated that DOE has failed to determine whether these two additional levels may be economically justified. (NRDC and Dow Chemical, No. 132 at p. 8; NRDC, No. 131 at p. 10) DOE included the 92-percent AFUE for non-weatherized gas furnaces in most of the rulemaking analyses. DOE did not include this efficiency level in any TSL because it has a lower NPV (at a three-percent discount rate) than the 90-percent-AFUE furnace. DOE did not include 94-percent AFUE for non-weatherized gas furnaces in any TSL because DOE's initial evaluations indicate the costs and benefits of this efficiency level are similar to those of the 96-percent-AFUE level, which DOE has initially determined is the max-tech option.

9. Test Procedure

National Oilheat Research Alliance (NORA) encouraged DOE to more fully

integrate information about energy saving strategies into the DOE test procedure for oil-fired equipment. (Public Meeting Transcript, No. 107.6 at p. 63) While the test procedure for furnaces and boilers is not under revision at this time, DOE acknowledges the comment from NORA and will take it into consideration when DOE revises the test procedure.

10. Structural Costs Associated With Condensing Furnaces

DOE stated in the October 2006 NOPR that it recognizes that some consumers may experience additional costs that exceed those used in DOE's analysis to address necessary structural changes for installing a condensing furnace, primarily for the vent systems associated with non-weatherized gas furnaces and for mobile home gas furnaces at or above 90-percent-AFUE. 71 FR 59218. DOE noted that, for some dwellings, it may be necessary to make ''structural'' changes, such as the removal or penetration of an interior wall, exterior wall, or roof, to accommodate new vent systems (and combustion air intakes). While DOE did not have data to quantify the number of consumers that may be affected in this manner and the cost magnitude, it believes the possible cost impacts may be significant enough to warrant consideration in evaluating the adoption of a standard level that would require condensing technology. Therefore, DOE invited comments on the number of consumers that may be affected by structural changes for installing a condensing furnace and the cost magnitude of any structural changes. 71 FR 59218.

DOE received two opposing comments on this issue. ACEEE commented that it does not believe there are extraordinary costs or structural changes needed for condensing furnaces that DOE did not account for in the Installation Model. (Public Meeting Transcript, No. 107.6 at p. 94) Conversely, Rheem acknowledged that there could be structural changes associated with installing a new vent system in a house, assuming it is physically feasible to do so in the existing house. (Rheem, No. 101 at p. 2; Rheem, No. 138 at p. 4) Specifically, Rheem stated that major building structural changes could be required when changing from a traditional, 80-percent-AFUE, Category I vent, which is a high-temperature and negative-pressure metal B-vent, to a 90-percent-AFUE, Category IV vent, which is a low-temperature, sealed, positive-pressure vent made with polyvinyl chloride (PVC). In many cases, Rheem pointed out that installing a new condensing furnace in retrofit applications may be impossible, which would require the consumer to change to all-electric heating. (Rheem, No. 101 at p. 2; Rheem, No. 138 at p. 4)

DOE did not revise the Installation Model to include costs associated with the structural changes that could be required for installing a condensing furnace in retrofit applications. DOE accounted for many types of installation configurations and the costs associated with each of these in the Installation Model, which it derived with consultations and studies conducted by the Gas Research Institute. See, Appendix C of the TSD.

VI. Analytical Results and Conclusions

A. Trial Standard Levels

Table VI.1 presents the TSLs analyzed for today's final rule and the efficiency levels within each TSL for each class of product. TSL 5 is the max-tech level for each class of product. TSL levels 1, 2, 4, and 5 represent the corresponding TSL levels evaluated in the October 2006 NOPR, but with the revisions to the analysis discussed above. TSL levels A and B are comprised of standard levels presented in the NOPR, but not in the particular grouping as present in TSL A and B. TSL A and B were also evaluated using the updated analysis.

TABLE VI.1.—TRIAL STANDARD LEVELS FOR FURNACES AND BOILERS

Product classes	Trial standard levels (AFUE, %)					
	TSL 1	TSL A	TSL 2	TSL B	TSL 4	TSL 5
Non-weatherized gas furnaces	80	80	81	90	90	96
Weatherized gas furnaces	80	81	81	81	81	83
Mobile home gas furnaces	80	80	80	90	90	90
Oil-fired furnaces	80	82	82	82	84	85
Gas boilers	82	82	84	82	84	99
Oil-fired boilers	83	83	83	84	84	95

TSL 1 represents the most common product efficiencies of the current market. For example, for non-weatherized gas furnaces, TSL 1 is 80-percent AFUE, which represents the highest number of models listed in the 2005 GAMA directory.

TSL 2 is the set of efficiencies for all product classes that yields the maximum NPV as calculated in the NES analysis, assuming a seven-percent discount rate and only considering non-condensing technologies.

TSL A is comparable to TSL 2 except DOE modified the efficiency levels for non-weatherized gas furnaces and gas boilers. As discussed in section IV.A, DOE determined there are safety concerns related to potential venting failure due to condensation for non-weatherized gas furnaces at 81-percent AFUE and for gas boilers at 84-percent AFUE. Therefore, TSL A includes efficiency levels at which DOE initially determined that there are no safety concerns for these two products (i.e., 80-percent AFUE for non-weatherized gas furnaces and 82-percent AFUE for gas boilers).

TSL 4 consists of efficiency levels that correspond to the maximum efficiency level with a positive NPV as calculated in the NES analysis, assuming a three-percent discount rate.

TSL B is comparable to TSL 4 except DOE modified the efficiency levels for oil-fired furnaces and gas boilers. As discussed in section IV.A, DOE determined there are safety concerns related to potential venting failure due to condensation for oil furnaces at 84-percent AFUE and for gas boilers at 84-percent AFUE. Therefore, TSL B includes lower efficiency levels for these two products where there are no safety concerns (i.e., 82-percent AFUE for oil-fired furnaces and 82-percent AFUE for gas boilers). TSL B also includes the 84-percent AFUE level for oil-fired boilers as found in TSL 4, which is the same AFUE level as included in the Joint Stakeholder Recommendation for boilers discussed in section V.B.1, above.

TSL 5 is the max-tech level. It represents condensing technologies for all classes except weatherized gas-fired

furnaces. For the latter class, other technologies provide the maximum technical efficiency.

As presented in the October 2006 NOPR, the only difference between TSL 3 and 2 was the efficiency levels for non-weatherized gas furnaces and mobile home furnaces, 81-percent AFUE as compared to 80-percent AFUE, respectively. In today's notice of final rulemaking, an 81-percent AFUE for non-weatherized gas furnaces is included in TSL 2. Further, an 81-percent AFUE for mobile home furnaces no longer yields the maximum NPV as calculated in the NES analysis, assuming a seven-percent discount rate. As such, DOE did not evaluate the proposed standard TSL 3 in this notice, as it would have been redundant for non-weatherized gas furnaces and inappropriate for mobile home furnaces.

B. Significance of Energy Savings

To estimate the energy savings through 2038 that would result from new standards, DOE compared the energy consumption of residential furnaces and boilers under the base case (no new standards) to the energy consumption of these products under amended standards. Table VI.2 shows DOE's NES estimates for each TSL. DOE reports both undiscounted and discounted values of energy savings. Discounted energy savings represent a policy perspective wherein energy savings farther in the future are less significant than energy savings closer to the present.

TABLE VI.2.—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR RESIDENTIAL FURNACES AND BOILERS

[Energy savings for units sold from 2015 to 2038]

Trial standard level	National energy savings (quads)		
	Not discounted	3% discounted	7% discounted
1	0.20	0.10	0.04
A	0.25	0.13	0.06
2	0.69	0.35	0.15
B	3.21	1.62	0.70
4	3.34	1.68	0.73
5	6.76	3.41	1.47

C. Economic Justification

1. Economic Impact on Consumers

a. Life-Cycle Costs and Payback Period

Consumers will be affected by the standards in that they will experience higher purchase prices and lower operating costs. Generally, these impacts are best captured by changes in LCC and by the PBP. Therefore, DOE calculated the LCC and PBP for the standard levels considered in this rulemaking. DOE's LCC and PBP analyses provided six key outputs for each TSL, which are reported in Tables VI.3 through VI.8 below. The first two outputs are the LCC and the average net life-cycle savings for a design that complies with each TSL, and the next three outputs are the proportion of purchases where the purchase of a complying unit would create a net life-cycle cost, no impact, or net life-cycle savings for the consumer.

The final output is the average PBP for the consumer purchase of a design that complies with the TSL. The PBP is the number of years it would take for the consumer to recover, as a result of energy savings, the increased costs of higher-efficiency equipment, based on the operating cost savings from the first year of ownership. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. DOE's PBP analysis and its analysis under the rebuttable-presumption test both concern the payback period for a standard. However, DOE based the PBP analysis for residential furnaces and boilers on energy consumption under conditions of actual use of each product by consumers, whereas, as required by EPCA, it based the rebuttable presumption test on consumption as determined under conditions prescribed by the DOE test procedure. As indicated previously, while DOE examined the rebuttable-presumption criteria, it evaluated whether the standard levels in today's notice are economically justified through a more detailed analysis of the economic impacts of increased efficiency as directed under section 325(o)(2)(B)(i) of EPCA. (42 U.S.C. 6295(o)(2)(B)(i)) Detailed information on the LCC and PBP analyses can be found in TSD Chapter 8.

TABLE VI.3.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR NON-WEATHERIZED GAS FURNACES

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
	78	13,016	.....	.....	.....	.....	.....
1	80	12,804	2	0	99	1	1.7
A	80	12,804	2	0	99	1	1.7
2	81	12,771	15	29	36	35	22
B	90	12,617	55	37	36	27	20
4	90	12,617	55	37	36	27	20
5	96	13,547	(865)	89	2	9	76

TABLE VI.4.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR WEATHERIZED GAS FURNACES

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
	78	10,491	.....	.....	.....	.....	.....
1	80	10,383	19	0	82	18	1.6
A	81	10,337	62	3	7	91	3.4
2	81	10,337	62	3	7	91	3.4
B	81	10,337	62	3	7	91	3.4
4	81	10,337	62	3	7	91	3.4
5	83	10,419	(20)	71	0	29	20

TABLE VI.5.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR MOBILE HOME GAS FURNACES

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
	75	11,271	.....	.....	.....	.....	.....
1	80	10,529	111	1	85	14	3.7
A	80	10,529	111	1	85	14	3.7
2	80	10,529	111	1	85	14	3.7
B	90	10,187	434	30	5	65	18
4	90	10,187	434	30	5	65	18
5	90	10,187	434	30	5	65	18

TABLE VI.6.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR OIL-FIRED FURNACES

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
	78	16,248	.....	.....	.....	.....	.....
1	80	15,971	10	0	96	4	0.3
A	82	15,716	177	0	30	70	0.7
2	82	15,716	177	0	30	70	0.7
B	82	15,716	177	0	30	70	0.7
4	84	15,815	96	38	15	47	14
5	85	15,876	40	51	7	42	16

TABLE VI.7.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR GAS BOILERS

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
	80	20,472	.....	.....	.....	.....	.....
1	82	19,898	208	11	44	46	12
A	82	19,898	208	11	44	46	12
2	82	19,898	208	11	44	46	12
B	82	19,898	208	11	44	46	12
4	84	19,802	300	18	15	67	12
5	99	21,042	(881)	75	3	22	35

TABLE VI.8.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR OIL-FIRED BOILERS

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
	80	24,594	.....	.....	.....	.....	.....
1	83	23,952	69	0	84	16	0.9

TABLE VI.8.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR OIL-FIRED BOILERS—Continued

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	Years
		2006$	2006$	%	%	%	
A	83	23,952	69	0	84	16	0.9
2	83	23,952	69	0	84	16	0.9
B	84	23,987	56	17	61	22	19
4	84	23,987	56	17	61	22	19
5	95	24,551	(456)	72	0	28	27

b. Consumer Subgroup Analysis

DOE estimated consumer subgroup impacts by analyzing the potential effects of standards for non-weatherized gas furnaces on low-income households, households occupied only by seniors, and southern and northern households. DOE defined northern households as those in States with average HDD over 6,000, and it defined southern households as those in States with average HDD below 5,000.

DOE's analysis indicates that today's standard for non-weatherized gas furnaces would have an impact on low-income households and senior-only households that would be similar to its impact on all households.

Tables VI.9 and VI.10 show for each TSL the summary of LCC and PBP results for northern and southern households. Today's standard for non-weatherized gas furnaces (80 percent AFUE) would result in similar LCC savings in northern and southern households, with a shorter PBP for northern households.

TABLE VI.9.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR NON-WEATHERIZED GAS FURNACES IN NORTHERN HOUSEHOLDS

[>6000 HDD]

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	years
		2006$	2006$	%	%	%	
	78	15,492	.....	.....	.....	.....	.....
1	80	15,222	3	0	98	2	0.7
A	80	15,222	3	0	98	2	0.7
2	81	15,161	32	47	47	34	14
B	90	14,779	212	22	47	31	13
4	90	14,779	212	22	47	31	13
5	96	15,582	(598)	84	2.4	13	61

TABLE VI.10.—SUMMARY OF LCC AND PAYBACK PERIOD RESULTS FOR NON-WEATHERIZED GAS FURNACES IN SOUTHERN HOUSEHOLDS

[<5000 HDD]

Trial standard level	Efficiency level (AFUE) (percent)	LCC					Payback period
		LCC	LCC savings	Net cost	No impact	Net benefit	years
		2006$	2006$	%	%	%	
	78	10,439	.....	.....	.....	.....	.....
1	80	10,285	2	0	98	2	2.2
A	80	10,285	2	0	98	2	2.2
2	81	10,280	1	40	23	37	29
B	90	10,345	(82)	55	21	23	26
4	90	10,345	(82)	55	21	23	26
5	96	11,389	(1,108)	92	1.4	7	101

Chapter 11 of the TSD explains DOE's method for conducting the consumer subgroup analysis and presents the detailed results of that analysis.

2. Economic Impact on Manufacturers

DOE determined the economic impacts on manufacturers of more stringent standards for residential furnaces and boilers, as described in the October 2006 NOPR. 71 FR 59212, 59228–59232, 59240–59245. The only modifications DOE made to the MIA for this final rule were the inclusion of the revised manufacturing costs from the engineering analysis, the conversion of the capital and product conversion cost to 2006$, and the revised shipments from the NES analysis. DOE fully describes this analysis in Chapter 12 of the final rule TSD.

a. Industry Cash-Flow Analysis Results

Using four different markup scenarios and two shipments forecasts, 71 FR 59230–59232, 59240, DOE estimated the impact of amended standards for

residential furnaces and boilers on the INPV of the furnace and boiler industry. The impact of new standards on INPV consists of the difference between the INPV in the base case (no new standards) and the INPV in the standards case (with amended standards). INPV is the primary metric used in the MIA, and provides one measure of the fair value of the industry in today's dollars. DOE calculated the INPV by summing all of the net cash flows, discounted at the industry's cost of capital, or discount rate.

Tables VI.11 through VI.16 show the estimated changes in INPV that would result from the TSLs DOE considered in this rulemaking, using both the shipments estimates calculated in the NES analysis, and the shipments data that manufacturers provided. Each table shows the changes attributable to one of the product classes DOE evaluated. The figures in these tables reflect and are affected by the product conversion expenses and capital investments that the industry would incur at each TSL, but the tables do not display these expenses and investments.

TABLE VI.11.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR NON-WEATHERIZED GAS FURNACES

[2006$]

TSL	NES shipments					
	Flat markup			Two-tier markup		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
Base case	1,197			1,161		
1	1,197	0	0	1,162	1	0
A	1,197	0	0	1,162	1	0
2	1,125	(72)	−6	1,084	(78)	−7
B	1,217	20	2	881	(280)	−24
4	1,217	20	2	881	(280)	−24
5	1,505	307	26	937	(224)	−19
	Manufacturers' shipments					
Base case	1,227			1,235		
1	1,227	0	0	1,235	0	0
A	1,227	0	0	1,235	0	0
2	1,152	(74)	−6	1,155	(79)	−6
B	1,110	(117)	−10	839	(396)	−32
4	1,110	(117)	−10	839	(396)	−32
5	902	(324)	−26	595	(640)	−52

TABLE VI.12.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR WEATHERIZED GAS FURNACES

[2006$]

TSL	NES shipments					
	Flat markup			Constant price markup		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
Base case	272			272		
1	239	(32)	−12	235	(37)	−14
A	232	(40)	−15	218	(54)	−20
2	232	(40)	−15	218	(54)	−20
B	232	(40)	−15	218	(54)	−20
4	232	(40)	−15	218	(54)	−20
5	223	(48)	−18	181	(91)	−33

TABLE VI.13.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR MOBILE HOME GAS FURNACES

[2006$]

TSL	Flat markup					
	NES shipments			Manufacturers' shipments		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
Base case	23			23		
1	23	0	0	23	0	0
A	23	0	0	23	0	0
2	23	0	0	23	0	0

TABLE VI.13.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR MOBILE HOME GAS FURNACES—Continued

[2006$]

TSL	Flat markup					
	NES shipments			Manufacturers' shipments		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
B	11	(11)	−50	11	(13)	−56
4	11	(11)	−50	11	(13)	−56
5	11	(11)	−50	11	(13)	−56

TABLE VI.14.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR OIL-FIRED FURNACES

[2006$]

TSL	NES Shipments					
	Flat markup			Constant price markup		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
Base case	36			36		
1	35	(2)	–5	35	(2)	–5
A	33	(4)	–10	31	(5)	–14
2	33	(4)	–10	31	(5)	–14
B	33	(4)	–10	31	(5)	–14
4	29	(8)	–21	25	(12)	–32
5	28	(8)	–23	22	(15)	–40

TABLE VI.15.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR GAS BOILERS

[2006$]

TSL	Manufacturers' Shipments					
	Flat markup			Three-tier markup		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
Base case	201			201		
1	200	(1)	–1	196	(5)	–3
A	200	(1)	–1	196	(5)	–3
2	184	(17)	–8	174	(27)	–13
B	200	(1)	–1	196	(5)	–3
4	184	(17)	–8	174	(27)	–13
5	171	(30)	–15	100	(101)	–50

TABLE VI.16.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR OIL-FIRED BOILERS

[2006$]

TSL	Manufacturers' Shipments					
	Flat markup			Three-tier markup		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
Base case	78			78		
1	74	(4)	–5	63	(14)	–18
A	74	(4)	–5	63	(14)	–18
2	74	(4)	–5	63	(14)	–18
B	74	(4)	–5	62	(15)	–20
4	74	(4)	–5	62	(15)	–20

TABLE VI.16.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR OIL-FIRED BOILERS—Continued

[2006$]

TSL	Manufacturers' Shipments					
	Flat markup			Three-tier markup		
	INPV $MM	Change in INPV from base		INPV $MM	Change in INPV from base	
		$MM	% change		$MM	% change
5	59	(18)	–23	32	(45)	–58

The October 2006 NOPR provides a detailed discussion of the estimated impact of amended furnace and boiler standards on INPV for each product class. 71 FR 59240–59244.

b. Impacts on Manufacturing Capacity and Subgroups of Manufacturers

As discussed in the October 2006 NOPR, to the extent that more stringent energy conservation standards increase the size of the heat exchanger, they could reduce plant throughput, particularly for those plants that are limited in available space used for fabricating heat exchangers. The standards, thus, could necessitate that manufacturers add floor space to their existing plants and warehouses. In addition, assembly and fabrication times could increase for the larger equipment. In an attempt to recoup capacity, manufacturers might need to invest in productivity, or equipment, or consider outsourcing some heat exchanger production. 71 FR 59244.

It is not clear that all new capacity would be added in the United States. During the MIA interviews, several manufacturers stated that there has been a trend in the industry to move production facilities to overseas locations where labor markets offer cost savings. Some of these companies commented that new standards could speed up this trend. However, DOE does not expect the standards being adopted in today's final rule to significantly reduce plant throughput.

As discussed in the October 2006 NOPR, using average cost assumptions to develop an industry-cash-flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. 71 FR 59244. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs largely from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. As discussed in the October 2006 NOPR, DOE expects the standard levels being adopted in today's final rule to have a relatively minor differential impact on small manufacturers of residential furnaces and boilers. 71 FR 59244.

c. Cumulative Regulatory Burden

As discussed in the October 2006 NOPR, one aspect of the assessment of manufacturer burden is the cumulative impact of multiple DOE standards and other regulatory actions that affect the manufacture of the same covered products. 71 FR 59244–59245. Manufacturers of residential furnaces and boilers also manufacture approximately 82 percent of the residential central air conditioners and heat pumps. New, higher Federal efficiency standards became applicable to residential central air conditioners manufactured after January 23, 2006, and new, higher Federal standards will apply to commercial air conditioning equipment manufactured after January 1, 2010. In addition, the EPA has mandated the phaseout, by January 1, 2010, of certain refrigerants used in these products. The furnace and boiler manufacturers who also produce residential and commercial air conditioning products have been and will be devoting substantial resources to complying with these requirements. Manufacturers have been working to redesign all of the product lines and have allocated most of their capital resources for redesigning and retooling their production lines to meet the new minimum efficiency standards. Manufacturers are also now re-designing their product offerings and will need to retool to meet the EPA standards. Chapter 12 of the final rule TSD addresses in greater detail the issue of cumulative regulatory burden.

3. National Net Present Value and Net National Employment

The NPV analysis estimates the cumulative benefits or costs to the Nation that would result from particular standard levels. While the NES analysis estimates the energy savings from a proposed energy efficiency standard, the NPV analysis provides estimates of the national economic impacts of a proposed standard relative to a base case of no new standard. Table VI.17 provides an overview of the NPV results, using both a seven-percent and a three-percent real discount rate. See TSD Chapter 10 for more detailed NPV results.

TABLE VI.17.—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR RESIDENTIAL FURNACES AND BOILERS

[Impacts for units sold from 2015 to 2038]

Trial standard level	NPV (billion 2006$)	
	7% discount rate	3% discount rate
1	0.51	1.69
A	0.69	2.18
2	0.89	4.02
B	0.98	11.07
4	0.98	11.53
5	−21.38	−26.03

DOE also estimated the national employment impacts due to each of the TSLs. As discussed in the October 2006 NOPR, 71 FR 59232–59233, 59247, DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. As shown in Table VI.18, DOE estimates net indirect employment impacts—changes in employment in the larger economy (other than in the manufacturing sector being regulated)—from furnace and boiler energy efficiency standards to be positive but relatively small. Although DOE's analysis suggests that today's furnace and boiler standards would result in a very small increase in the net demand for labor in the economy, relative to total national employment, this increase would be sufficient to offset fully any adverse impacts on employment that might occur in the furnace and boiler industry. For details on the employment impact analysis methods and results, see TSD Chapter 14.

TABLE VI.18.—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT

[Thousands of jobs in 2038]

Trial Standard Level (Thousands of Jobs)					
TSL1	TSLA	TSL2	TSLB	TSL4	TSL5
0.74	0.94	2.55	11.71	12.96	26.07

4. Impact on Utility or Performance of Equipment

As indicated in section V.B.4 of the October 2006 NOPR, DOE believes that the new standards it is adopting today will not lessen the utility or performance of any residential furnaces and boilers. 71 FR 59247.

5. Impact of Any Lessening of Competition

As previously discussed in the October 2006 NOPR, 71 FR 59213, 59247, and in section II.F.1.e of this preamble, DOE considers any lessening of competition that is likely to result from standards and the Attorney General determines the impact, if any, of any such lessening of competition. To assist the Attorney General in making such a determination, DOE provided DOJ with copies of the October 2006 proposed rule and the NOPR TSD for review.

In comment on the October 2006 proposed rule, DOJ expressed concern that the proposed standards for weatherized gas furnaces at 83 percent AFUE and gas boilers at 84 percent AFUE could adversely affect competition, and that manufacturers would have difficulty designing products that safely meet the proposed standards. (DOJ at No. 144, p. 2) DOJ noted that, for weatherized gas furnaces, meeting the standard would likely result in increased condensation, potentially resulting in significant deterioration that would jeopardize the safety of the product, and, for gas-fired water boilers, meeting the standard would make effective CO_2 venting more difficult. DOJ further noted that any resulting costs incurred to solve these issues could adversely affect the competitiveness of these products in relation to electric heat pumps and water heaters. DOJ urged DOE to carefully consider its proposed standards in light of these concerns.

As described in section V.D of this preamble, DOE is adopting lower efficiency levels for the standards for weatherized gas furnaces and gas boilers than the levels proposed in the October 2006 proposed rule. DOE expects that the lower efficiency levels avoid the problems that DOJ mentioned for weatherized gas furnaces and gas boilers. Manufacturers would not incur costs to solve these issues and, therefore, the standards established in today's rule would not adversely affect the competitiveness of these products in relation to electric heat pumps and water heaters.

6. Need of the Nation To Conserve Energy

The Secretary recognizes the need of the Nation to save energy. Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts or costs of energy production. The energy savings from residential furnace and boiler standards is projected to result in (1) reduced power sector emissions of CO_2, (2) either reduced power sector emissions of NO_X or an economic benefit in the form of emission allowance credits for this pollutant, and (3) reduced household emissions (i.e., emissions at the sites where appliances are used) of CO_2, NO_X, and SO_2. DOE expects the standards to have negligible impact on electricity generating capacity.

Table VI.19 provides DOE's estimate of the emissions reductions projected to result from adoption of the TSLs considered in this rulemaking.

TABLE VI.19.—SUMMARY OF EMISSIONS REDUCTIONS FOR RESIDENTIAL FURNACES AND BOILERS

[Cumulative reductions for units sold from 2015 to 2038]

Emission	TSL 1	TSL A	TSL 2	TSL B	TSL 4	TSL 5
CO_2 (Mt)	−6.1	−7.8	−20.0	−137.1	−141.3	−322.0
NO_X (kt)	−7.3	−9.2	−23.9	−164.6	−169.2	−373.1
SO_2 (kt)	0.0	−1.8	−2.0	−6.2	−10.5	−63.9

DOE also calculated discounted values for future emissions, using the same seven-percent and three-percent real discount rates that it used in calculating the NPV. Table VI .20 shows the discounted cumulative emissions impacts for residential furnaces and boilers.

TABLE VI.20.—SUMMARY OF DISCOUNTED EMISSIONS REDUCTIONS FOR RESIDENTIAL FURNACES AND BOILERS

[Cumulative reductions for units sold from 2015 to 2038]

Emission	TSL 1	TSL A	TSL 2	TSL B	TSL 4	TSL 5
7% Discount Rate						
CO_2 (Mt)	−1.6	−2.1	−5.3	−36.2	−37.3	−83.9
NO_X (kt)	−1.7	−2.1	−5.4	−37.3	−38.3	−84.4
SO_2 (kt)	0.0	−0.4	−0.5	−1.4	−2.4	−14.7

TABLE VI.20.—SUMMARY OF DISCOUNTED EMISSIONS REDUCTIONS FOR RESIDENTIAL FURNACES AND BOILERS—Continued

[Cumulative reductions for units sold from 2015 to 2038]

Emission	TSL 1	TSL A	TSL 2	TSL B	TSL 4	TSL 5
3% Discount Rate						
CO_2 (Mt)	−3.4	−4.3	−10.9	−74.8	−77.1	−174.9
NO_X (kt)	−3.8	−4.7	−12.3	−84.5	−86.9	−191.5
SO_2 (kt)	0.0	−0.9	−1.0	−3.2	−5.4	−33.0

For further details on the environmental impacts of today's standards, see the ''Environmental Assessment for Proposed Energy Conservation Standards for Residential Furnaces and Boilers,'' a separate report in the TSD for today's rule.

7. Other Factors

EPCA provides that, in deciding whether a standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)) In developing today's standard, the Secretary took into consideration safety concerns related to carbon monoxide exposure resulting from potential failures of venting systems (and heat exchangers), stemming from extraneous condensate production in furnaces and boilers.

D. Conclusion

EPCA contains criteria for DOE to consider in prescribing new or amended energy conservation standards. It states that any such standard for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) As stated above, in determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standards exceed its burdens considering:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)) A determination of whether a standard level is economically justified is not made based on any one of these factors in isolation. The Secretary must weigh each of these seven factors in total in determining whether a standard is economically justified. Further, the Secretary may not establish an amended standard if such standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B))

In selecting energy conservation standards for residential furnaces and boilers for consideration in the October 2006 proposed rule as well as this final rule, DOE started by examining the maximum technologically feasible levels, and determined whether those levels were economically justified. Upon finding the maximum technologically feasible levels not to be justified, DOE analyzed the next lower TSL to determine whether that level was economically justified. DOE repeated this procedure until it identified a TSL that was economically justified.

Table VI.21 summarizes DOE's quantitative analysis results for all of the TSLs it considered. This table presents the results or, in some cases, a range of results, for each TSL, and will aid the reader in the discussion of costs and benefits of each TSL. The range of values reported in this table for industry impacts represents the results for the different markup scenarios and shipments forecasts that DOE used to estimate manufacturer impacts.

TABLE VI.21.—SUMMARY OF RESULTS

	TSL 1	TSL A	TSL 2	TSL B	TSL 4	TSL 5
Primary energy saved (quads)	0.20	0.25	0.69	3.21	3.34	6.76
7% Discount rate	0.04	0.06	0.15	0.70	0.73	1.47
3% Discount rate	0.10	0.13	0.35	1.62	1.68	3.41
Generation capacity change (GW)**	0.4	0.5	1.2	8.2	8.4	17.8
NPV (2006$billion):						
7% Discount rate	0.51	0.69	0.89	0.98	0.98	−21.38
3% Discount rate	1.69	2.18	4.02	11.07	11.53	−26.03
Industry impacts:						
Industry NPV (2006$million)	−38 to −58	−48 to −74	−136 to −179.	−39 to −483	−59 to −519	192 to −904
Industry NPV (% Change)	−2 to −3	−3 to −4	−8 to −10	−2 to −26	−3 to −28	11 to −49
Cumulative emissions impacts:***						
CO_2 (Mt)	−6.1	−7.8	−20.0	−137.1	−141.3	−322.0
NO_X (kt)	−7.3	−9.2	−23.9	−164.6	−169.2	−373.1

TABLE VI.21.—SUMMARY OF RESULTS—Continued

	TSL 1	TSL A	TSL 2	TSL B	TSL 4	TSL 5
SO_2 (kt)	0.0	−1.8	−2.0	−6.2	−10.5	−63.9
Mean life-cycle cost savings (2006$):						
Non-Weatherized Gas Furnaces	$2	$2	$15	$55	$55	($865)
Weatherized Gas Furnaces	$19	$62	$62	$62	$62	($20)
Oil-Fired Furnaces	$10	$177	$177	$177	$96	$40
Gas Boilers	$208	$208	$208	$208	$300	($881)
Oil-Fired Boilers	$69	$69	$69	$56	$56	($456)
Mobile Home Gas Furnaces	$111	$111	$111	$434	$434	$434
Mean Payback Period (years):						
Non-Weatherized Gas Furnaces	1.7	1.7	22	20	20	76
Weatherized Gas Furnaces	1.6	3.4	3.4	3.4	3.4	20
Oil-Fired Furnaces	0.3	0.7	0.7	0.7	14	16
Gas Boilers	12	12	12	12	12	35
Oil-Fired Boilers	0.9	0.9	0.9	19	19	27
Mobile Home Gas Furnaces	3.7	3.7	3.7	18	18	18

* Parentheses indicate negative (−) values.
** Change in installed generation capacity by the year 2038 based on *AEO2007* Reference Case.
*** CO_2 emissions impacts include physical reductions at power plants and households. NO_X emissions impacts include physical reductions at power plants and households as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps. SO_2 emissions impacts include physical reductions at households only.

In addition to the quantitative results, DOE also considered other burdens and benefits that affect economic justification. DOE took into consideration safety concerns arising from the potential failure of venting systems or heat exchangers used for residential furnaces and boilers. These concerns affect non-weatherized gas furnaces at 81 percent, weatherized gas furnaces at 83 percent and 82 percent, oil furnaces at 84 percent, and gas boilers at 84 percent AFUE. See section IV.A of this preamble and final rule TSD Chapter 6 for further discussion.

First, DOE considered TSL 5, the maximum technologically feasible level, for each product class. TSL 5 would likely save 6.76 quads of energy through 2038, an amount DOE considers significant. Discounted at seven percent, the energy savings through 2038 would be 1.47 quads. For the Nation as a whole, TSL 5 would result in a net cost of $21.4 billion in NPV, discounted at seven percent. Although DOE did not quantify the potential benefits from reductions in natural gas prices as a result of TSL 5, DOE has determined that the overall impact on the economy would still be overwhelmingly negative because the decline in NPV at TSL 5 is very large. The emissions reductions are projected at 322 Mt of CO_2,[17] 373 kt of NO_X, and 64 kt of SO_2. Total generating capacity in 2030 is estimated to increase 17.8 gigawatts (GW) under TSL 5, due to projected switching from gas furnaces to electric heating equipment.

At TSL 5, the average consumer is projected to experience a significant increase in LCC for most product classes. Purchasers of non-weatherized gas furnaces are projected to lose on average $865 over the life of the product in present value terms and purchasers of gas-fired boilers would lose on average $881 in present value terms.[18] The LCC savings are estimated to be negative for 89 percent of households in the Nation that purchase non-weatherized gas furnaces, and for 92 percent of all non-weatherized gas furnace consumers in the southern region. The mean payback period of all product classes, except for oil-fired gas furnaces, is estimated to be substantially longer than the mean lifetime.

The projected change in industry value (INPV) ranges from an increase of $192 million to a decrease of $904 million. The magnitude of the impacts is largely determined by the cashflow results for non-weatherized gas furnaces. For this product class, the impacts are driven primarily by the assumptions regarding future product shipments and the ability of manufacturers to offer differentiated products that command a premium markup. DOE recognizes the significant difference between the shipments forecasted by the NES analysis and those anticipated by manufacturers. DOE is concerned about the projected increase in total installed cost of $1,859, or 82 percent, for non-weatherized gas furnaces. With an increase of this size, there is a significant risk of consumers switching to other heating systems, including heat pumps and electric resistance heating. DOE also recognizes that maintaining a full product line is more difficult for manufacturers at higher standard levels. Therefore, DOE places more weight on the two-tiered markup scenario for non-weatherized gas furnaces at TSL 5. In particular, if the high range of impacts is reached as DOE expects, TSL 5 could result in a net loss of $640 million to the non-weatherized gas furnace industry.

After carefully considering the analysis, comments on the proposed rule, and weighing the benefits and burdens, the Secretary reached a similar conclusion as set forth in the NOPR: At TSL 5 the benefits of energy savings and emissions reduction are expected to be outweighed by the potential multi-billion dollar negative net economic cost to the Nation, the economic burden on consumers, and the large capital-conversion costs that could result in a reduction in INPV for manufacturers. Consequently, the Secretary has concluded that TSL 5, the maximum technologically feasible level, is not economically justified.

Next, DOE considered TSL 4. Primary energy savings is estimated at 3.34 quads of energy through 2038, which DOE considers significant. Discounted at seven percent, the energy savings through 2038 would be 0.73 quads. For the Nation as a whole, TSL 4 is projected to result in net savings of $0.98 billion in NPV, discounted at seven percent. The emissions reductions

[17] For all of the TSLs, CO_2 emissions impacts include physical reductions at power plants and households. NO_X emissions impacts include physical reductions at power plants and households as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps. SO_2 emissions impacts include physical reductions at households only.

[18] Non-weatherized gas furnaces are the most prominent class of residential furnaces and boilers, accounting for approximately 72 percent of the total industry sales and approximately 81 percent of residential furnace sales. Gas-fired boilers are the most prominent class of residential boilers, accounting for 6 percent of the total industry sales and 61 percent of residential boiler sales.

are projected to be 141 Mt of CO_2, 169 kt of NO_X, and 10.5 kt of SO_2. Total generating capacity in 2030 under TSL 4 is estimated to increase by 8.4 GW due to the projected switching from gas furnaces to electric heating equipment.

At TSL 4, consumers are projected to experience a decrease in LCC for all of the product classes. Purchasers of non-weatherized gas furnaces are projected to save, on average, $55 over the life of the product in present value terms, and purchasers of gas-fired boilers are projected to save, on average, $300 over the life of the boiler in present value terms. DOE found that 37 percent of households with non-weatherized gas furnaces would be expected to experience a net cost, and 27 percent of households with non-weatherized gas furnaces would be expected to experience a net gain.

TSL 4 requires the use of condensing technology for non-weatherized gas furnaces. A majority of the affected consumers in the south would be expected to experience a significant increase in total installed cost. Since the operating cost savings of condensing technology are less of a factor in warmer climates, the substantial increase in total installed cost leads to increased life-cycle costs. DOE found that 55 percent of households in the south purchasing a non-weatherized gas furnace would experience a life-cycle net cost. The average LCC increase to the southern consumer purchasing a non-weatherized gas furnace is $82. The mean payback period of non-weatherized gas furnaces in the south would be substantially longer than the mean lifetime of these furnaces.

At TSL 4, the projected change in INPV ranges from a loss of $59 million to a loss of $519 million, which could potentially cause up to a 42 percent drop in total industry value. The magnitude of projected impacts is still largely determined by the cashflow results for the non-weatherized gas furnaces. For this product class, the projected impacts continue to be driven primarily by the assumptions regarding future product shipments and the ability to offer differentiated products. Although the projected impacts will not be as severe as expected for TSL 5 for the non-weatherized gas furnace industry, the magnitude of the projected impacts would still be determined primarily by the assumptions regarding future product shipments and the ability to offer differentiated products that command a premium markup. Although the range of possible impacts is not as large as for TSL 5, DOE still recognizes the significant differences between the shipments forecast by the NES analysis and those anticipated by manufacturers. DOE believes that with an increase in total installed cost of $701 for non-weatherized gas furnaces, or 31 percent, some consumers are likely to switch to other heating systems, including heat pumps and electric resistance heating. The low-end estimate of losses in INPV is based on DOE's estimate of the fuel switching that is most likely to occur, while the high end estimate of losses is based largely on manufacturer estimates of fuel switching. Additionally, some product classes would likely require large product-conversion costs because the products would require new heat-exchanger designs to meet the efficiency requirements prescribed in TSL 4. Even though the ability of manufacturers to differentiate products is greater at TSL 4 than at TSL 5, it will still be harder for manufacturers to differentiate products because all of the products offered in TSL 4 for non-weatherized gas furnaces use condensing technology. In particular, if the high range of impacts is reached, TSL 4 could result in a net loss of $396 million to the non-weatherized gas furnace industry.

After carefully considering the results of the analysis, comments on the proposed rule, and the benefits versus burdens, the Secretary reached a similar conclusion as set forth in the NOPR: At TSL 4, the benefits of energy and cost savings and emissions impacts would be outweighed by the economic burden on southern households and the capital conversion costs that are likely to result in a significant reduction in INPV for manufacturers. In addition, DOE determined that there are safety concerns related to potential venting failure due to condensation with oil-fired furnaces at 84 percent AFUE and with gas boilers at 84 percent AFUE. DOE received numerous comments reaffirming these safety concerns, and the Secretary has concluded upon consideration of the factors to determine whether a standard is economically justified that TSL 4 is not economically justified and contains two efficiency levels that could pose a safety or health risk to consumers.

Next, DOE considered TSL B. TSL B is the same as TSL 4 except for oil-fired furnaces and gas boilers, for which there are safety concerns as described above. Therefore, for these two products TSL B includes lower efficiency levels at which these safety concerns are not present (i.e., 82 percent AFUE for oil furnaces and 82 percent for gas boilers).

TSL B is projected to save 3.21 quads of energy through 2038, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2038 would be 0.70 quads. For the Nation as a whole, TSL B would result in net savings in NPV of $0.98 billion, discounted at seven percent. The emissions reductions are projected at 137 Mt of CO_2, 165 kt of NO_X, and 6.2 kt of SO_2. Total generating capacity in 2030 under TSL B is projected to increase by 8.2 GW due to the projected switching from gas furnaces to electric heating equipment.

At TSL B, DOE estimates that purchasers of non-weatherized gas furnaces would save, on average, $55 over the life of the product and purchasers of gas-fired boilers would save, on average, $208. As with TSL 4, DOE estimates that 37 percent of households with non-weatherized gas furnaces would experience a net cost, and 27 percent of households with non-weatherized gas furnaces would experience a net gain, with the remaining 36 percent being unaffected. DOE estimated that 55 percent of households in the south with a non-weatherized gas furnace would experience a net life-cycle cost. The estimated average LCC increase to the southern consumer purchasing a non-weatherized gas furnace is $82. The mean payback period of non-weatherized gas furnaces in the south is projected to be substantially longer than the mean lifetime of these furnaces.

The projected change in INPV ranges between a loss of $39 million and a loss of $483 million. Just as with TSL 4, the projected impacts continue to be driven primarily by the assumptions regarding future product shipments and the ability to offer differentiated products. More specifically, most of these differences are attributable to the significant differences between the shipments forecast by the NES analysis and those anticipated by manufacturers. Furthermore, some manufacturers stated they would likely use a de-rating strategy to reduce the increased capital costs associated with TSL B. If manufacturers use such a strategy, it is anticipated that the variety of products offered by the manufacturers would be reduced by eliminating some of the higher-capacity models to reduce the negative impacts. At TSL B, consumers would experience an average increase in total installed cost of $700 for non-weatherized gas furnaces (compared to an 80-percent AFUE furnace). There is a potential risk at this level of consumers switching to electric heating systems, as further detailed in the shipments forecast discussion in Chapter 12 of the TSD. For the furnace industry alone, the industry value would decrease from 2.1 percent to 26.2 percent.

After carefully considering the analysis, comments on the October 2006 proposed rule, and the benefits versus burdens, the Secretary concludes after weighing the statutory criteria in total that TSL B would not be economically justifiable. In particular, the benefits of energy and cost savings and emissions impacts are likely to be outweighed by the economic burden on southern households and the capital conversion costs that are likely to result in a significant reduction in INPV for manufacturers.

Next, DOE considered TSL 2. Primary energy savings at this level would likely be 0.69 quad of energy through 2038, which DOE considers significant. Discounted at seven percent, the energy savings through 2038 is projected to be 0.15 quads. For the Nation as a whole, TSL 2 is projected to result in a net savings of $0.89 billion in NPV, discounted at seven percent. The emissions reductions are projected at 20 Mt of CO_2, 24 kt of NO_X, and 2 kt of SO_2. Total generating capacity in 2030 under TSL 2 would likely increase by 1.2 GW due to the projected switching from gas furnaces to electric heating equipment.

At TSL 2, purchasers of non-weatherized gas furnaces would save, on average, an estimated $15 over the life of the product and purchasers of gas-fired boilers would save, on average, an estimated $208. The mean payback period for non-weatherized gas furnaces at TSL 2 is estimated to be 22 years, which is longer than the mean lifetime.

TSL 2 includes a standard for non-weatherized gas furnaces at 81-percent AFUE. DOE is concerned that, at this level, there is likely an increased risk of safety concerns with this equipment due to venting issues. Most manufacturers and DOJ commented that the margin of safety is diminished in many instances at 81-percent AFUE. Some manufacturers commented that they would not be willing to accept the risk and/or cost involved in producing a full line or family of products at 81-percent AFUE. This potential safety concern is a factor that the Secretary considers relevant. Based on DOE's evaluation of all the information considered during the rulemaking, DOE believes that a standard at 81-percent AFUE for non-weatherized gas furnaces could pose a potential for safety problems for some consumers.

The projected change in industry value ranges from a loss of INPV of $136 to a loss of $179 million. TSL 2 potentially could result in up to a nine-percent loss in INPV for the furnace industry and up to a 15-percent loss in INPV for the boiler industry. However, DOE anticipates that manufacturers of non-weatherized gas furnaces would still be able to differentiate their premium products and retain profitability margins.

After carefully considering the results of the analysis, comments on the NOPR, and the benefits versus burdens, the Secretary concluded that at TSL 2, the benefits of energy savings and emissions impacts would be outweighed by the reduction in industry value for manufacturers and the safety concerns related to potential venting failure due to condensation with non-weatherized gas furnaces at 81 percent AFUE. Consequently, the Secretary has concluded that TSL 2 is not economically justified.

Next, DOE considered TSL A. Primary energy savings at this level is projected to be 0.25 quad of energy through 2038, which DOE considers significant. Discounted at seven percent, the energy savings through 2038 is calculated to be 0.06 quads. For the Nation as a whole, TSL A would likely result in a net savings of $0.69 billion in NPV, discounted at seven percent. The emissions reductions are projected at 7.8 Mt of CO_2, 9.2 kt of NO_X, and 1.8 kt of SO_2. Total generating capacity in 2030 under TSL A would likely increase by 0.5 GW due to the projected switching from gas furnaces to electric heating equipment.

At TSL A, purchasers of non-weatherized gas furnaces would save, on average, an estimated $2 over the life of the product and purchasers of gas-fired boilers would save, on average, an estimated $208. DOE's analysis indicates that no households purchasing non-weatherized gas furnaces would experience an increase in LCC at TSL A, including southern households. The calculated mean payback periods are less than the average equipment lifetime for all product classes at TSL A. For example, the mean payback period for non-weatherized gas furnaces at TSL A is calculated to be 1.7 years.

The projected change in industry value ranges from a loss of INPV of $48 million to a loss of $74 million. TSL A potentially could result in up to a four-percent loss in INPV for the furnace industry and up to a five-percent loss in INPV for the boiler industry. Furthermore, DOE anticipates that manufacturers of non-weatherized gas furnaces would still be able to differentiate their premium products and retain profitability margins.

TSL A includes an 83-percent AFUE standard level for oil-fired boilers. DOE notes that the joint stakeholder recommendation for boilers suggested an 84-percent AFUE standard level (in combination with a temperature reset design requirement) for oil-fired boilers, which is estimated to result in greater energy savings than the 83-percent level proposed in the NOPR and included in TSL A. DOE concluded that the 84-percent AFUE for oil-fired boilers was inconsistent with the other standard levels included in TSL A. TSL A was derived from TSL 2, which was described in the NOPR. As discussed in the NOPR, TSL 2 represents the set of efficiency levels, which yield the maximum NPV, and an 83-percent AFUE for oil boilers is consistent with this grouping of standard levels for analysis. 71 FR 59203.

After carefully considering the analysis, comments on the NOPR, and the benefits and burdens, the Secretary concludes that this standard saves a significant amount of energy and is technologically feasible and economically justified. DOE also believes the efficiency levels contained in TSL A do not pose a safety or health risk to consumers. Therefore, DOE is adopting the energy conservation standards for residential furnaces and boilers at TSL A.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This regulatory action has been determined to be a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). The Executive Order requires that each agency identify in writing the specific market failure or other specific problem that it intends to address that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. Executive Order 12866, § 1(b)(1).

In the context of furnaces and boilers, problems are expected to arise due to: (1) Lack of consumer information and/or information processing capability about energy efficiency opportunities; (2) misplaced incentives, which separate responsibility for buying new appliances and for paying their operating costs; (3) transactions costs, which prevent access to capital to finance energy efficiency investment; and (4) imperfect competition, which may prevent energy efficient appliances from reaching the market place. Furthermore, for renters in particular, there are split incentives for more energy efficient equipment. The owner of the home (landlord) may not invest in efficient equipment because the

landlord does not pay the energy bill, and the renter does not want to invest so as not to risk losing the capital investment if the renter moves. Furthermore, imperfect competition may prevent many efficient technologies from reaching the market. In this case, individual manufacturers may be limited by capital rationing or more concerned with competing under existing market conditions, than with offering a full range of energy efficient products to consumers.

Today's action also required a regulatory impact analysis (RIA) and, under the Executive Order, was subject to review by the Office of Information and Regulatory Affairs (OIRA) in OMB. DOE presented to OIRA for review the draft final rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. They are available for public review in the Resource Room of the Building Technologies Program at 950 L'Enfant Plaza Drive, SW., Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The RIA calculates the effects of feasible policy alternatives to residential furnace and boiler standards, and provides a quantitative comparison of the impacts of the alternatives. DOE evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and compared it to the effectiveness of the proposed rule. DOE analyzed these alternatives using a series of regulatory scenarios as input to the NES/Shipments Model for furnaces and boilers, which it modified to allow inputs for these measures. 71 FR 59253–59255. The complete RIA, ''Regulatory Impact Analysis for Proposed Energy Conservation Standards for Residential Furnaces and Boilers,'' is contained in the TSD prepared for today's rule. The RIA consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standards.

As explained in the NOPR, DOE determined that, with the exception of regional performance standards, which DOE has determined it lacks authority to adopt, none of the alternatives it examined would save as much energy or have an NPV as high as the proposed standards. 71 FR 59253. The same conclusions apply to the standards in this final rule. In addition, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not presently exist. Additional detail on the regulatory alternatives is found in the RIA report in the final rule TSD.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Small businesses, as defined by the Small Business Administration (SBA) for both furnace manufacturers and boiler manufacturers, are manufacturing enterprises with 750 employees or fewer. Prior to issuing the proposed rule in this rulemaking, DOE interviewed five such small businesses affected by the rulemaking.

As explained in the NOPR, DOE reviewed the proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 71 FR 59255–59256. On the basis of this review, DOE certified that the proposed rule, if promulgated, would ''have no significant economic impact on a substantial number of small entities.'' 71 FR 59256. Therefore, DOE did not prepare an initial regulatory flexibility analysis for the proposed rule. DOE transmitted its certification and a supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review.

DOE received no comments on the certification in response to the NOPR, and reaffirms the certification. Therefore, DOE has not prepared a final regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

DOE stated in the NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that, therefore, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 71 FR 59256. DOE received no comments on this in response to the NOPR, and, as with the proposed rule, today's rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment of the impacts of today's standards (DOE/EA–1530), which it published as a separate report within the TSD for this rule. DOE found the environmental effects associated with various standard efficiency levels for residential furnaces and boilers to be not significant, and therefore it is issuing a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined the proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 71 FR 59256. DOE received no comments on this issue in response to the NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore DOE is taking

no further action in today's final rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' 61 FR 4729 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

As described in the NOPR, Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local, and Tribal governments and the private sector. 71 FR 59256–59257. DOE concluded that, because the proposed rule would contain neither an intergovernmental mandate nor a mandate that would likely result in expenditures in the residential furnace and boiler industry of $100 million or more in any year, the requirements of UMRA do not apply to the rule. 71 FR 59257. DOE received no comments concerning the UMRA in response to the NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE is taking no further action in today's final rule with respect to the UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). 71 FR 59257. DOE received no comments concerning section 654 in response to the NOPR, and, therefore, is taking no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that today's rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution. 71 FR 59257. DOE received no comments concerning Executive Order 12630 in response to the NOPR, and, therefore, is taking no further action in today's final rule with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs of the OMB a Statement of Energy Effects for any significant energy action. DOE determined that the proposed rule was not a ''significant energy action'' within the meaning of Executive Order 13211. 71 FR 59257. Accordingly, it did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664, January 14, 2005. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information.

DOE's Office of Energy Efficiency and Renewable Energy, Building Technologies Program, held formal in-progress peer reviews covering the analyses (e.g., screening/engineering analysis, LCC analysis, MIA, and utility impact analysis) used in conducting the energy efficiency standards development process on June 28–29, 2005. The in-progress review is a rigorous, formal, and documented evaluation process using objective criteria and qualified and independent reviewers to make a judgment of the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The Building Technologies Program staff is preparing a peer review report which, upon completion, will be disseminated on the Office of Energy Efficiency and Renewable Energy's Web site and included in the administrative record for this rulemaking.

M. Review Under Executive Order 12898

DOE considers environmental justice under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' 59 FR 7629 (February 16, 1994). The Executive Order requires Federal agencies to assess whether a proposed Federal action causes any disproportionately high and adverse human health or environmental effects on low-income or minority populations. DOE evaluated the socioeconomic effects of standards on low-income households and found

that they are similar to the impacts on the rest of the population.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on November 8, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, part 430 of Title 10, Code of Federal Regulations, is amended to read as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising the section heading and paragraph (e) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(e) *Furnaces.* (1) Non-weatherized and weatherized gas furnaces, mobile home gas furnaces, oil-fired furnaces, and gas- and oil-fired boilers, manufactured before November 19, 2015 and all other types of furnaces, shall have an efficiency no less than:

Product class	AFUE [1] (percent)	Effective date
(i) Furnaces (excluding classes noted below) (percent)	78	01/01/92
(ii) Mobile Home Furnaces	75	09/01/90
(iii) Small furnaces (other than furnaces designed solely for installation in mobile homes) having an input rate of less than 45,000 Btu/hr:		
(A) Weatherized (outdoor)	78	01/01/92
(B) Non-weatherized (indoor)	78	01/01/92
(iv) Boilers (excluding gas steam) (percent)	80	01/01/92
(v) Gas steam boilers (percent)	75	01/01/92

[1] Annual Fuel Utilization Efficiency, as determined in § 430.22(n)(2) of this part.

(2) Non-weatherized and weatherized gas furnaces, mobile home gas furnaces, oil-fired furnaces, and gas- and oil-fired boilers, manufactured on or after November 19, 2015, shall have an efficiency no less than:

Product class	AFUE [1] (percent)
(i) Non-weatherized gas furnaces	80
(ii) Weatherized gas furnaces	81
(iii) Mobile home gas furnaces	80
(iv) Oil-fired furnaces	82
(v) Gas hot-water boilers	82
(vi) Oil-fired hot-water boilers	83

[1] Annual Fuel Utilization Efficiency, as determined in § 430.22(n)(2) of this part.

* * * * *

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

Department of Justice

Antitrust Division, Main Justice Building, 950 Pennsylvania Avenue, N.W., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645 (Fax), E-mail: *antitrust@usdoj.gov,* Web site: *http://www.usdoj.gov/atr.*

January 16, 2007.

Warren Belmar, Esq., Deputy General Counsel for Energy Policy, U.S. Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Belmar:

I am responding to your November 14, 2006 letters seeking the views of the Attorney General about the potential impact on competition of proposed energy efficiency standards relating to (1) liquid-immersed and medium-voltage, dry-type distribution transformers (''distribution transformers''), and (2) residential furnaces and boilers (''furnaces and boilers''). The Energy Policy and Conservation Act (''EPCA'') authorizes the Department of Energy (''DOE'') to establish energy conservation standards for a number of appliances where DOE determines that those standards would be technologically feasible, economically justified, and result in significant energy savings.

Your requests were submitted pursuant to Section 325(o)(2)(B)(I) of the Energy Policy and Conservation Act, 42 U.S.C. 6291, 6295 (''EPCA''), which states that, before the Secretary of Energy may prescribe a new or amended energy conservation standard, the Secretary shall ask the Attorney General to make a determination of ''the impact of any lessening of competition * * * that is likely to result from the imposition of the standard.'' The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g). In conducting its analysis the Antitrust Division examines whether a standard may lessen competition, for example, by placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products. In addition to harming consumers directly through higher prices, these effects could undercut the ultimate goals of the legislation.

Your requests included the Notices of Proposed Rulemaking (''NOPR'') that were published in the **Federal Register** and transcripts of public hearings relating to the proposed standards. The NOPR relating to distribution transformers proposed Trial Standard Level 2 and explained why DOE had decided not to propose higher trial standard levels. The NOPR relating to furnaces and boilers proposed the following standards: 80% annual fuel utilization efficiency (''AFUE'') for non-weatherized gas furnaces and mobile home gas furnaces; 82% AFUE for oil-fired furnaces; 83% AFUE for weatherized gas furnaces and oil-fired boilers; and 84% AFUE for gas boilers. Our review regarding distribution transformers and furnaces and boilers has focused upon the standards DOE has proposed adopting; we have not determined the impact on competition of more stringent standards than those set forth in the NOPRs.

In addition to the NOPRs and transcripts, your staff provided us comments that had

been submitted to DOE regarding the proposed standards. (We understand that the docket has not closed with respect to furnaces and that more comments may be forthcoming.) We have reviewed these materials and additionally conducted interviews with members of the industries.

Based on this inquiry, the Division is concerned that the distribution transformer Trial Standard Level 2 may adversely affect competition with respect to distribution transformers used in industries, such as underground coal mining, where physical conditions limit the size of equipment that can be effectively utilized. We understand manufacturers would not be able to satisfy the proposed standard without increasing the size (or decreasing the power) of each class of distribution transformer. Firms facing space constraints would incur significantly increased costs due to enlarging the required installation space (which, for example, could involve removal of solid rock around coal seams in underground mines) or reconfiguring the size and number of each class of distribution transformers at each site. The resulting cost increases could constitute production inefficiencies that could make certain products less competitive. For example, the rule could, by raising the costs of certain coal mines, adversely affect production decisions at those mines and potentially result in increased use of less efficient energy alternatives. We urge the DOE to consider these concerns carefully in its analysis, and to consider creating an exception for distribution transformers used in industries with space constraints.

The Division is also concerned that the standards for weatherized gas furnaces and gas boilers could adversely affect competition. We understand that manufacturers would have difficulty designing products that safely meet the proposed standards. For weatherized gas furnaces, meeting the standard would likely result in increased condensation, potentially resulting in significant deterioration that would jeopardize the safety of the product, and, for weatherized gas-fired water boilers, meeting the standard would make effective carbon dioxide venting more difficult. Any resulting costs incurred to solve these issues could adversely affect the competitiveness of these products in relation to electric heat pumps and water heaters. We urge the DOE to carefully consider its proposed standards in light of these concerns.

Aside from the discussion above, the Division does not otherwise believe the proposed standards would adversely impact competition.

Yours sincerely,

J. Bruce McDonald,

Acting Assistant Attorney General.

[FR Doc. E7–22216 Filed 11–16–07; 8:45 am]

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Federal Register

Monday,
November 19, 2007

Part III

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

Citrus Canker; Movement of Fruit From Quarantined Areas; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2007–0022]

RIN 0579–AC34

Citrus Canker; Movement of Fruit From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. We are eliminating the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead are requiring that every lot of fruit produced in the quarantined area be inspected by the Animal and Plant Health Inspection Service at a packinghouse operating under a compliance agreement and found to be free of visible symptoms of citrus canker. We are retaining the requirement that the fruit be treated with a surface disinfectant and the prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States. These changes will relieve some restrictions on the interstate movement of fresh citrus fruit from Florida while maintaining conditions that will help prevent the artificial spread of citrus canker.

DATES: *Effective Date:* November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas axonopodis* pv. *citri* (referred to below as *Xac*) that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus canker is only known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in §§ 301.75–1 through 301.75–14 of ''Subpart—Citrus Canker'' (7 CFR 301.75–1 through 301.75–17, referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. These regulations are promulgated pursuant to the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

On June 21, 2007, we published in the **Federal Register** (72 FR 34180–34191, Docket No. APHIS–2007–0022) a proposal [1] to amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. We proposed to eliminate the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead proposed to require that every lot of fruit produced in the quarantined area be inspected by the Animal and Plant Health Inspection Service (APHIS) at a packinghouse operating under a compliance agreement and found to be free of visible symptoms of citrus canker. We proposed to retain the requirement that the fruit be treated with a surface disinfectant and the prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States.

We solicited comments concerning our proposal for 30 days ending July 23, 2007. We subsequently reopened and extended the deadline for comments until August 7, 2007, in a document published in the **Federal Register** on July 27, 2007 (Docket No. APHIS–2007–0022, 72 FR 41239). We received 72 comments by the close of the comment period. They were from producers, exporters, researchers, and representatives of State governments. They are discussed below by topic.

[1] To view the proposed rule, the supporting analyses, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0022.*

Pest Risk Assessment and Risk Management Analysis

To inform the deliberations that led to the proposed rule, we prepared two documents that addressed the risk associated with the interstate movement of citrus fruit from a quarantined area: A pest risk assessment (PRA) and a risk management analysis (RMA). The PRA, which was titled ''Evaluation of asymptomatic citrus fruit (*Citrus* spp.) as a pathway for the introduction of citrus canker disease (*Xanthomonas axonopodis pv. citri*),'' considered all available evidence associated with asymptomatic citrus fruit as a pathway for the introduction of citrus canker. The PRA concluded that asymptomatic, commercially produced citrus fruit treated with a surface disinfectant and subject to other mitigations is not epidemiologically significant [2] as a pathway for the introduction and spread of citrus canker. We first made this document available for comment on April 6, 2006, when we published a notice in the **Federal Register** (71 FR 17434–17435, Docket No. APHIS–2006–0045), announcing its availability for comment for 60 days; the comment period was subsequently extended to 90 days. We also submitted it for peer review in accordance with the U.S. Department of Agriculture (USDA) guidelines for peer review developed in response to the Office of Management and Budget's peer review bulletin. We received 19 comments by the end of the comment period, which we also submitted to the peer review panel members for their consideration.[3] We carefully considered the comments of the public and peer reviewers, and made revisions to the analysis based on concerns they raised. The revisions did not change the conclusions of the PRA; the revised version of the PRA was provided with the proposed rule.

In light of the comments by the public and peer reviewers, it became clear that additional analysis was necessary to apply the conclusions of the PRA to the situation in Florida. In order to apply the conclusions of the PRA, we needed to extend its application to evaluate methods by which fruit [4] could be produced, treated, inspected, packaged, and shipped without resulting in the

[2] We use the term ''epidemiologically significant'' to refer to minimum conditions required for disease transmission.

[3] The original PRA and the comments we received on it can be viewed at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0045.*

[4] Given the practical difficulties in ensuring that only asymptomatic fruit enters interstate commerce under any regulatory strategy, we refer here to host fruit in general.

spread of citrus canker to commercial citrus-producing areas. (Commercial citrus-producing areas are listed in § 301.75–5 of the regulations and are referred to in this document as commercial citrus-producing States. Those States, listed in § 301.75–5(a), are: American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.)

To address the considerations described above, APHIS prepared the RMA, which was titled ''Movement of commercially packed fresh citrus fruit (*Citrus* spp.) from citrus canker (*Xanthomonas axonopodis* pv. *citri*) disease quarantine areas, March 2007.'' We made the RMA available for comment along with the proposed rule.[5] The RMA was also submitted for peer review, which occurred concurrently with the public comment period for the proposed rule.[6] The RMA analyzed the potential of fresh commercially packed citrus fruit and associated packing material to serve as a pathway for the introduction and spread of citrus canker into new areas. It also identified and evaluated options for regulating the interstate movement of citrus fruit from quarantined areas with the goal of reducing the potential for citrus canker introduction and spread. The recommendations in the RMA served as the basis for the proposed rule.

To develop the RMA, we reviewed available evidence regarding the biology and epidemiology of *Xac* and the management of citrus canker disease. The RMA concluded that the introduction and spread of *Xac* into other commercial citrus-producing States through the movement of commercially packed fresh citrus fruit from quarantined areas is unlikely because:

- Fresh citrus fruit is produced and harvested using techniques that reduce the prevalence of *Xac*-infected fruit;
- Citrus fruit is commercially packed using techniques that reduce the prevalence of infected or contaminated fruit, including disinfectant treatment for epiphytic contamination;
- For a successful *Xac* infection that results in disease outbreaks to occur, an unlikely sequence of events would have to occur;
- Reports of citrus canker disease outbreaks linked to fresh fruit are absent; and
- Large quantities of fresh citrus fruit shipped from regions with *Xac* have not resulted in any known outbreaks of citrus canker disease.

Nevertheless, the RMA concluded that the evidence is not currently sufficient to support a determination that fresh citrus fruit produced in a *Xac*-infested grove cannot serve as a pathway for the introduction of *Xac* into new areas. Therefore, the RMA evaluated several packinghouse-centered risk management options for the interstate movement of fresh commercially packed citrus fruit from regions infested with citrus canker to regions without the disease. These packinghouse-centered risk management options were evaluated to determine whether they provide an appropriate level of phytosanitary protection without the resource constraints and other practical considerations that make it difficult to maintain the grove-centered regulatory approach in Florida. The risk management options evaluated were:

- *Option 1:* Allow unrestricted distribution of all types and varieties of commercially packed citrus fruit to all U.S. States.
- *Option 2:* Allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, subject to packinghouse treatment with APHIS-approved disinfectant and APHIS inspection of finished fruit that has completed the packinghouse culling, washing, disinfection, and grading processes.
- *Option 3:* Allow distribution of all types and varieties of commercially packed citrus fruit (except tangerines) in U.S. States except commercial citrus-producing States. Allow distribution of commercially packed tangerines to all U.S. States, including commercial citrus-producing States. Require packinghouse treatment of all such citrus fruit with APHIS-approved disinfectant and APHIS inspection of finished fruit (all types and varieties) for citrus canker disease symptoms.
- *Option 4:* Allow distribution of all types and varieties of commercially packed citrus fruit in U.S. States except commercial citrus-producing States and require packinghouse treatment of citrus fruit with APHIS-approved disinfectant and APHIS inspection of finished fruit (all types and varieties) for citrus canker disease symptoms.
- *Option 5:* Leave the current regulations for the interstate movement of citrus fruit from citrus canker quarantined areas in place and unchanged.

We proposed to implement Option 4. This option would have limited distribution of all types and varieties of citrus fruit to States other than commercial citrus-producing States, with mitigations conducted at packinghouses operating under compliance agreements. Those mitigations are the use of an approved disinfectant for all fruit and APHIS phytosanitary inspection.

We received several comments on the overall level of risk associated with the movement of commercially packed citrus from a citrus canker quarantined area, as well as our selection of Option 4. These comments have not led us to change our determination that Option 4 is the most appropriate option to implement. The RMA that we are making available with this final rule contains revisions based on the comments we received on the proposed rule and the comments we received through the peer review process, but its overall conclusion is the same. Accordingly, this final rule implements Option 4. (We are making some changes to the regulatory requirements associated with the implementation of Option 4. These changes are discussed later in this document.)

Some commenters believed that the evidence presented in the RMA warranted the selection of Option 2, which would have allowed the distribution of citrus fruit to all States, subject to packinghouse treatment with APHIS-approved disinfectant and APHIS inspection of finished fruit. These commenters stated that it was extremely unlikely that the circumstances necessary for the movement of commercially packed fresh citrus fruit to result in the introduction and spread of *Xac* into other commercial citrus-producing States would ever occur.

One commenter stated that the decision to allow the movement of regulated fruit from a citrus canker quarantined area only into States other than commercial citrus-producing States, rather than into all States, was based on politics rather than on science.

One commenter stated that no Florida citrus fruit infected with citrus canker has ever been found in a commercial citrus-producing State under the current regulations and that, at the commenter's packinghouse, not a single piece of fruit with citrus canker had been found by any inspectors or employees during the last growing season.

One commenter noted more generally that citrus canker has not been found outside Florida since the disease was first detected there, and stated that more certainty than uncertainty exists regarding the risk of commercially

[5] The RMA is available on the Regulations.gov Web site and in our reading room (see **ADDRESSES** above) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

[6] The peer review materials for the RMA may be viewed at *http://www.aphis.usda.gov/peer_review/peer_review_agenda.shtml.*

packed citrus fruit as a viable pathway for citrus canker.

Another commenter noted that the PRA stated the following in its executive summary: ''The combination of conditions necessary for introduction are so difficult to achieve that the likelihood of such occurrence is greater than the baseline exposure represented by unregulated pathways. The conclusions of the evaluation are reinforced by a strong record of empirical data from experience and interceptions.''

We acknowledge the efforts of the Florida citrus industry to put safeguards in place against citrus canker infestation. The proposed rule recognized the effectiveness of those safeguards by providing for the interstate movement to States other than commercial citrus-producing States of any lot of citrus fruit that is commercially packed, treated with APHIS-approved disinfectant, and inspected by APHIS and found to be free of visible canker lesions.

The RMA concludes that commercially packed fresh citrus fruit is an unlikely pathway for the introduction and spread of *Xac* and that a phytosanitary inspection ensures, with high confidence, that few shipped fruit would have symptoms of citrus canker disease. However, the model in Appendix 1 to the RMA indicates the potential for some commercially packed fruit with visible canker lesions to be shipped to commercial citrus-producing States. That potential for such fruit to reach commercial citrus-producing States, coupled with the aforementioned uncertainty regarding fruit as a pathway, led to the determination that the additional mitigation of prohibiting distribution to commercial citrus-producing States was required. If, in the future, evidence is developed to support a determination that commercially packed citrus fruit (both symptomatic and asymptomatic) is not an epidemiologically significant pathway for the introduction and spread of citrus canker, we would undertake rulemaking to amend our regulations accordingly.

Under section 412(a) of the Plant Protection Act (7 U.S.C. 7712(a)), the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant pest or noxious weed within the United States. Based on information provided in the PRA and RMA, we have determined that it is not necessary to prohibit the interstate movement of citrus fruit from a quarantined area into States other than commercial citrus-producing States under the conditions described in the proposed rule. While APHIS has concluded that commercially packed citrus fruit is an unlikely pathway for the introduction and spread of citrus canker, the remaining uncertainty about the level of risk associated with the movement of citrus fruit from a quarantined area has led us to maintain the prohibition on the movement of citrus fruit into commercial citrus-producing States.

One commenter supplied a report that provided initial data demonstrating that transmission of *Xac* from infected fruit placed directly under highly susceptible grapefruit seedlings does not occur.

The research (which can be viewed at *http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS–2007–0022–0053*) is suggestive; when it is completed, it will help better determine whether citrus fruit can serve as a pathway for the introduction of citrus canker to commercial citrus-producing States outside the quarantined area. We encourage interested parties to make research on this issue available to us.

Two commenters stated that APHIS' treatment of the risk associated with citrus canker was inconsistent with its treatment of the risk associated with other plant pests. For example, one of the commenters stated, the evidence is clear that the interstate movement of nursery stock is a pathway for the long-distance spread of *P. ramorum*, but APHIS' regulations continue to allow high-risk nursery stock to move to all States, under specified conditions. The commenter cited APHIS' actions with respect to the light brown apple moth as another example.

The provisions governing the movement of regulated articles for each pest for which APHIS maintains quarantine requirements are the result of separate considerations of the available science and the risk posed by the plant pest in question. We make our determinations of risk based on, among other things, the likelihood that a pest will follow a specific pathway, the economic and environmental value of resources that could be damaged by the pest, and the likelihood of introduction of the pest into an unaffected area. Our choice of regulatory approach is based on, among other things, the likelihood that the mitigations available to us will be sufficient to prevent the introduction or spread of a plant pest. We have determined that the level of protection against the interstate spread of citrus canker that will be provided by the regulations as amended by this final rule is appropriate.

One commenter asked why APHIS allows fruit to be exported from the quarantined area into the citrus-producing areas of Europe, given that we proposed to prohibit the distribution of fruit from quarantined areas into commercial citrus-producing States. Other commenters asked that we allow the interstate movement of fruit from quarantined areas into commercial citrus-producing States under conditions similar to those required by the European Union (EU) for the importation of citrus fruit into the EU.

APHIS certifies U.S. plant products for export according to the conditions set by the importing country for the exportation of those products from the United States. The EU's requirements for the importation of citrus fruit apply to all areas where citrus canker is present, not just in the United States but in other countries whose citrus production areas are affected by citrus canker.

The EU import requirements involve certification of grove freedom from citrus canker and are similar to, but less restrictive than, the requirements that were in the regulations before the publication of this final rule. For reasons discussed in the RMA, we do not consider these requirements to be sufficient to allow the movement of fruit from citrus canker quarantined areas into commercial citrus-producing States at this time. We will continue to review the available science and will update the regulations if necessary.

Two commenters stated that Option 3, which would have allowed the unlimited distribution of tangerines subject to treatment and APHIS inspection, should be implemented. One commenter stated that canker finds have been few and far between, if the disease has been found at all, on some varieties of tangerine. Another stated that mandarin varieties are the least susceptible to citrus canker, and that the commercial citrus-producing States of California and Texas are important markets for producers of this fruit.

Tangerines are generally grouped in the species *Citrus reticulata* and are widely regarded as less susceptible to citrus canker disease than other commercially grown *Citrus* species. But many of the ''tangerine'' varieties grown in Florida are hybrids of *C. reticulata* with other more susceptible *Citrus* species. Clearly, tangerines in Florida are not immune to citrus canker, as APHIS records indicate that, during the 2005–2006 growing season grove surveys, *Xac* was detected on 274 samples from tangerine, tangor, and tangelo groves. APHIS pest interception data indicate that between 1985 and

2006, *Xac* was intercepted 632 times on *C. reticulata fruit*. The level of susceptibility was expressed as a continuum across ''tangerine'' varieties rather than as a discrete immunity for all varieties. This creates a regulatory problem when an overlap occurs in the level of susceptibility expressed by, for example, a more susceptible tangerine variety and a more resistant nontangerine citrus variety. Sufficient evidence does not exist to exclude tangerines from regulations applicable to other Florida citrus varieties. We are making no changes to the proposed rule in response to these comments.

Several commenters supported Option 4 but asked APHIS to continue to examine the scientific evidence with a view toward allowing unlimited distribution of fruit moved interstate from areas quarantined for citrus canker at some future time.

We will continue to examine scientific evidence regarding whether commercially packed citrus fruit (both with and without visible canker lesions) is an epidemiologically significant pathway for the introduction and spread of citrus canker. If, in the future, evidence is developed to support a determination that commercially packed citrus fruit is not an epidemiologically significant pathway for the introduction and spread of citrus canker, we would undertake rulemaking to amend our regulations accordingly.

Some commenters proposed other options to allow the movement of fruit from quarantined areas. One commenter stated that fruit from groves that are free of citrus canker and that are 1,500 feet or farther from an affected grove should be allowed to move fruit to commercial citrus-producing States.

It has been our experience in the State of Florida that citrus canker can spread more than 1,500 feet in stormy conditions. We recognize that citrus canker-free areas may exist adjacent to infected areas, but implementing the commenter's suggestion would require grove certification programs similar to those in place prior to the publication of this final rule. We have determined that certification of fruit for interstate movement at the packinghouse level rather than at the grove level will ensure an appropriate level of phytosanitary security; would be more reliable and less easily circumvented than the preharvest grove survey required by Option 5; would be consistent with the risk associated with citrus canker and commercially packed fruit from Florida; and would be easier and potentially less costly to implement and enforce than a grove-centered system of mitigations.

Some commenters disagreed with our determination that prohibiting the distribution of citrus fruit from a quarantined area into commercial citrus-producing States would be an effective mitigation. Commenters holding this view stated that the illegal movement of citrus fruit harboring citrus canker from a quarantined area to a commercial citrus-producing State may be expected through current commercial channels; they cited the movement of Spanish clementines from Georgia to Florida through retailer distribution when such movement was prohibited as one example of the potential for incorrect distribution. Another commenter cited the discovery of Florida fruit in commercial citrus-producing States as a result of distribution mistakes.

These commenters also stated that the potential for the movement of Florida citrus by tourists and visitors from nearby States into commercial citrus-producing States should also be taken into account, and that excluding shipments to buffer States would reduce the risk that this movement poses to commercial citrus-producing States. One commenter stated that the history of citrus disease movement such as citrus canker and citrus greening into Florida shows the high risk of movement by plant or by fruit from other citrus-growing countries. In these cases the initial infections were in urban areas, but movement to production areas was undetected until an epidemic was finally observed.

One commenter also stated that we had not addressed mail-order shipment or gift-pack movement of citrus from Florida.

These commenters proposed that we limit the distribution of fruit from citrus canker quarantined areas to other States in addition to the commercial citrus-producing States, thus creating a ''buffer zone'' around the commercial citrus-producing States. The buffer zones proposed by the commenters varied:

- One commenter suggested that only States east of the Mississippi River should be eligible to receive fruit moved interstate from quarantined areas.
- Two commenters suggested that only States in the northern tier of the United States and east of the Mississippi River should be eligible to receive such fruit.
- Two others suggested a buffer zone of all the States surrounding the commercial citrus-producing States.

We do not agree that a buffer zone, such as these commenters suggest, is appropriate or necessary. Due to the geographic separation between Florida and other commercial citrus-producing States, citrus canker is not likely to spread through natural means (such as through storms) from Florida to a State that is not a commercial citrus-producing State and then to a commercial citrus-producing State. While it is correct that the movement of plants for planting presents a high risk of spreading citrus canker from a quarantined area, the regulations already contain a prohibition on the movement of plants for planting; currently, only calamondin and kumquat plants are allowed to move interstate from the quarantined area, and those plants must be produced under conditions designed to prevent their infection with citrus canker. As mentioned earlier, we have determined that it is unlikely that the movement of commercially packed citrus fruit is an epidemiologically significant pathway for the spread of citrus canker.

The proposed rule included requirements that boxes or other containers of fruit moving interstate from a quarantined area include a limited permit mark as well as the statement indicating that the fruit is not to be distributed into a commercial citrus-producing State. This requirement (which applies to mail-order and gift-pack shipments as well as truck shipments) will help to prevent inadvertent movement of citrus from quarantined areas into a commercial citrus-producing State. To strengthen the protection provided by the limited permit requirement, we are also adding a requirement in this final rule that the limited permit mark and the distribution statement appear on any shipping documents accompanying boxes or other containers in which fruit is moved interstate.

To ensure that regulated parties comply with distribution restrictions, APHIS routinely monitors wholesalers and fresh fruit markets in commercial citrus-producing States and monitors distribution routes that are bound for commercial citrus-producing States to ensure that Florida citrus fruit does not unlawfully enter those States. This monitoring is conducted primarily by APHIS' Smuggling, Interdiction, and Trade Compliance program.

If we find Florida citrus in a commercial citrus-producing State, we will trace the product back to its distributor and its origin in Florida. We will investigate violations (through APHIS' Investigative and Enforcement Services) and may seek penalties against any distributor that moves Florida citrus to commercial citrus-producing States. We may seize the prohibited products and destroy them or ensure they are moved from the area of concern. We

will conduct surveillance on other methods of sale such as Internet sales and gift-pack shipments to ensure that the fruit is not advertised as being available for delivery to commercial citrus-producing States. We will also provide outreach to retailers and wholesalers who are moving products to help prevent any inadvertent movement of citrus from a quarantined area into a commercial citrus-producing State.

The packinghouse measures of disinfection and APHIS inspection ensure that even if a given shipment were illegally moved to a commercial citrus-producing State, the shipment would have a low likelihood of containing fruit with the potential to cause an outbreak of citrus canker disease.

As mentioned earlier, the RMA examined four options for allowing the interstate movement of citrus fruit from a citrus canker quarantined area under a packinghouse-centered approach. Of those four options, we determined that Option 4 was most appropriate, based on the available scientific evidence, which indicates that fruit subject to commercial packing, treatment, and APHIS inspection will be unlikely to serve as a pathway for the introduction or spread of citrus canker.

We recognize that individual consumers may move fruit from Florida into States other than commercial citrus-producing States and then subsequently move that fruit into commercial citrus-producing States. However, such movement could have occurred under the regulations in place before the publication of this final rule as well; APHIS does not have the regulatory infrastructure to monitor interstate movement of fruit by individual consumers. Additionally, even with a buffer zone in place, tourists and visitors would often travel across multiple States to reach their destinations, meaning that a buffer zone would not be highly effective at eliminating this consumer movement. For tourists and visitors, as well as for local residents who routinely move between commercial citrus-producing States and other States, the distance between the borders of commercial citrus-producing States and the citrus-producing areas within those States acts as a buffer as well, further decreasing the risk associated with such movement. Finally, the volume of such movement is extremely low when compared with the volume of commercial movement of fruit, making the risk of citrus canker establishment in commercial citrus-producing States through this scenario highly unlikely. These factors, combined with our determination that the introduction and spread of *Xac* into other commercial citrus-producing States through the movement of commercially packed fresh citrus fruit is unlikely and that the mitigations of treatment and APHIS inspection are highly effective, have led us to determine that a buffer zone to address such movement is unnecessary.

Scientific Evidence Used in the PRA and RMA

We received several general comments on the scientific evidence we used to make our determinations in the PRA and RMA. One commenter stated that the conclusion reached by the RMA is in part based on the lack of evidence that citrus fruit could play a role in the introduction of citrus canker in new areas, but that this lack of evidence is a consequence of the lack of scientific studies and is not based on scientific data; this commenter suggested that we evaluate the risks further using fruit produced subject to the regulations that were in place before the publication of this final rule. Another commenter suggested an extensive list of experimental data that the commenter believed were necessary to prove that the introduction and spread of *Xac* into other commercial citrus-producing States through the interstate movement of commercially packed fresh citrus fruit from a quarantined area is unlikely. One commenter stated that this program, which the commenter characterized as precedent-setting, requires a much more solid foundation of science and process affirmation than has been developed to date. Other commenters stated that not enough of the evidence we used in developing the RMA had been published in peer-reviewed scientific journals and that we had relied too much on preliminary research in making our determinations.

We used the best scientific evidence available to develop the PRA and the RMA, and we have detailed extensively how this evidence supports the conclusions we present in those documents. It is important to note that, based on the available evidence, we did not conclude that commercially packed citrus fruit could not serve as a pathway for the introduction and spread of *Xac*, but rather that it was unlikely that commercially packed citrus fruit serves as an epidemiologically significant pathway. That is why this final rule prohibits the distribution of such fruit to commercial citrus-producing States.

The Plant Protection Act charges us with ensuring that our decisions affecting imports, exports, and interstate movement of plants and plant products that we regulate under the Act are based on sound science. To fulfill this mission, we use all the scientific evidence that may be brought to bear on an issue, not just studies published in peer-reviewed journals. Observations based on APHIS' experience, survey and pest detection data, and preliminary experimental results can all provide valuable information to inform a regulatory decision, and we have used them in the PRA and RMA when appropriate. Having said that, the vast majority of the sources cited in the PRA and RMA have been peer-reviewed, as have both the PRA and RMA themselves.

Comments on specific studies we cited in the RMA and PRA are discussed later in this document.

The peer review for the RMA was conducted concurrently with the comment period for the proposed rule. One commenter stated that stakeholders should have the opportunity to review the peer reviewers' comments when submitting their own comments on this document.

We appreciate the commenter's concerns. APHIS had already provided for peer review of and public comment on the PRA, which informed the development of the RMA. In accordance with the Office of Management and Budget's bulletin on peer review, we are also making all the materials associated with the peer review, including the peer reviewers' comments, available at *http://www.aphis.usda.gov/peer_review/peer_review_agenda.shtml*. The conclusion of the RMA did not change as a result of the peer review, which was generally favorable.

One commenter included a late comment on the PRA as a reference, stating that APHIS had not made appropriate changes to the PRA based on the comment.

We reviewed the comment that the commenter included when we developed the revised version of the PRA. We addressed all the substantive points raised by that comment in the revised version of the PRA published with the proposed rule. Many of the points raised by that comment had been previously raised in other comments submitted on the PRA during the comment period.

As discussed earlier, the PRA concluded that asymptomatic, commercially produced citrus fruit treated with a surface disinfectant and subject to other mitigations is not epidemiologically significant as a pathway for the introduction and spread of citrus canker. However, in order to apply the conclusions of the PRA, we determined that we needed to extend its application to evaluate methods by

which fruit could be produced, treated, inspected, packaged, and shipped without resulting in the spread of citrus canker to commercial citrus-producing areas. Accordingly, the RMA addresses the risk associated with all commercially packed fruit; the RMA's recommendations have served as the basis for the Secretary's determination that it is not necessary to prohibit the interstate movement of citrus fruit from a quarantined area into States other than commercial citrus-producing States under the conditions described in the proposed rule. Therefore, specifically addressing comments on the PRA is unnecessary for the purposes of this rulemaking.

The Packinghouse-Centered Approach and the Current Regulations

In evaluating the risk associated with asymptomatic fruit, the PRA assumed that the citrus fruit in question was commercially produced under a specific set of pest management measures. The RMA, while recognizing that effective pest management measures for *Xac* are available to private and commercial growers and are normal production practices for many of these growers, does not assume that measures in the grove are mandatory. Instead, the RMA focuses on treatment with an APHIS-approved disinfectant at the packinghouse and APHIS inspection of fruit to be moved interstate. The recommendations in the RMA served as the basis for the proposed rule.

The regulations in place at the time the proposed rule was published required that fruit moved interstate originate in a grove that was found by an inspector to be free of citrus canker no more than 30 days before harvest (with additional requirements for limes), in addition to treatment of vehicles, equipment, and other articles that are used on the grove and treatment of the fruit itself.

Several commenters objected to APHIS moving away from the grove inspection approach and to the fact that we did not propose to require the use of the commercial production practices described in both the PRA and the RMA. These commenters stated that, under the proposed rule, measures such as copper sprays, designation and exclusion of infected trees, field culling of fruit, and packinghouse culling of fruit were all voluntary, and their effectiveness was unknown. The commenters expressed concern that not requiring these measures would increase the risk associated with citrus fruit moved interstate from a quarantined area.

One commenter stated that in other countries such as Argentina that ship fruit to citrus-producing countries in Europe, strict guidelines are followed that include field inspections and the planting of wind breaks between orchards that minimize wind velocity and subsequent dispersal of inoculum. The commenter stated that these countries realize that inspection of ''finished'' fruit in the packinghouse alone is not enough to guarantee the shipment of disease-free fruit.

One commenter stated that the objective of a rule addressing Florida's situation should be to prevent citrus canker from being introduced into disease-free areas in the United States; such a rule should not be designed with the primary objective of allowing shipments of fresh fruit from canker-affected areas. This commenter stated that the building blocks of premises and assumptions set forth in the proposed rule and the RMA create risk rather than develop protective barriers.

The regulations promulgated in this final rule include protective barriers against the introduction of citrus canker into other citrus-producing areas: Treatment with a surface disinfectant, APHIS inspection, and a prohibition of the movement of citrus fruit from a quarantined area into commercial citrus-producing States. We have determined that these barriers provide an appropriate level of protection with regard to the movement of citrus fruit from areas quarantined for citrus canker.

The grove certification requirement in place prior to the publication of this final rule and the APHIS packinghouse inspection required under this final rule are not dissimilar in their approach to preventing the interstate movement of fruit with visible canker lesions. Under the regulations in place before the publication of this final rule, none of the grove-centered measures cited by the commenters (copper sprays, designation and exclusion of infected trees, and field culling of fruit) were required. Rather, growers were required to demonstrate that their groves were free from citrus canker, on the basis of an inspection. In order to be found free from citrus canker, and thus have fruit from their groves be eligible for the interstate market, growers had incentives to employ the grove-centered measures described in the PRA and RMA and mentioned by the commenters.

Instead of a grove inspection, this final rule requires an inspection of the finished fruit at the packinghouse, which must operate under a compliance agreement and treat fruit with an approved surface disinfectant. Every lot of fruit must be inspected by an APHIS inspector for visible canker lesions. While growers are not required to practice measures that would reduce the prevalence of citrus canker in their fruit, and packinghouses are not required to perform their own culling process to remove fruit with visible canker lesions, the regulations promulgated in this final rule still provide them with a strong incentive to do so, since lots of fruit that fail APHIS inspection will not be eligible for interstate movement. Additionally, packinghouse culling for blemished fruit of any kind is already a standard business practice, and field management programs that include the use of copper sprays and field sanitation are already available to producers.

The purpose of the APHIS inspection at the packinghouses is to ensure that fruit moved interstate is free of visible canker lesions, and to prohibit the interstate movement of fruit that is not free of those lesions. From each lot of fruit intended for interstate movement, APHIS will inspect a quantity that is sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. Lots of fruit that fail inspection will not be allowed to enter interstate commerce.

A packinghouse-based inspection can ensure an appropriate level of phytosanitary security and will be easier to implement and enforce than the grove certification system in place before the publication of this final rule. Because it focuses on the end product, a packinghouse-based inspection will be more reliable and less easily circumvented than the preharvest grove survey that has been required in the regulations. A packinghouse-based inspection is also consistent with the risk associated with citrus canker and commercially packed fruit from Florida. In addition, a phytosanitary packinghouse inspection creates a performance standard for packed fruit that allows citrus producers greater flexibility to determine the most efficient and effective means of producing a compliant product.

Our choice of a packinghouse-based APHIS inspection as a means to prevent fruit with visible canker lesions from being moved interstate, rather than requiring specific grove and packinghouse practices to ensure the production of fruit free of visible canker lesions, is consistent with the recommendations of the 1997 Presidential/Congressional Commission on Risk Assessment and Risk Management. The commission recommended that agencies use alternatives to command-and-control

measures that dictate the use of specific technologies, where applicable (CRARM 1997), in order to encourage flexibility in the choice of risk management alternatives.

One commenter characterized the approach of the proposed rule as a control point approach, and stated that in the past APHIS has applied control point approaches only to quarantine treatments that are able to demonstrate a probit 9 level of effectiveness.

The probit 9 standard (99.997 percent mortality) applies to treatments for insect pests such as fruit flies, not to treatment of pathogens. In any case, the probit 9 standard is not applicable for the surface disinfectant treatment and packinghouse-based APHIS inspection that we are requiring. Scientific evidence indicates that both of these measures are highly effective.

One commenter stated that the PRA and RMA appeared to imply that packinghouse studies conducted to date were based upon fruit with known levels of contamination with *Xac.* The commenter asked how the packinghouse inspection process would achieve the results described in the RMA without grove inspections and without the ability to determine the infection pressure. The commenter also asked how the proposed measures can be effective without knowing the magnitude of the hazard, as expressed by the proportion of infected fruit.

Both of the packinghouse measures that we are requiring in this final rule are effective regardless of infection pressure. The surface disinfectant treatments approved by APHIS reduce numbers of *Xac* cells to low or undetectable levels. The APHIS packinghouse-based inspection is sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. In other words, if the infection pressure is higher than 0.38 percent of the fruit, it is 95 percent likely that the lot will be rejected from interstate commerce.

Two commenters cited findings of canker symptoms on fruit exported from Argentina and Uruguay to Spain in stating that symptomatic fruit will often pass through the packinghouse process. These commenters stated that the price growers and packers are receiving for citrus is what drives the quality of the citrus shipped, and that with low prices, low-quality fruit, such as those with canker, are more likely to be introduced into distribution channels.

We agree that, in general, price helps to determine the quality of fruit supplied. However, under the regulations established by this final rule, the fruit will be subject to an additional APHIS inspection separate from any field inspection and culling or packinghouse culling that may occur. Any lot that fails APHIS inspection will not be approved to move for interstate commerce. Given that, if there is a financial advantage to being able to supply fresh citrus to the interstate market, producers and packinghouses in quarantined areas are likely to employ measures and processes that will allow them to supply fruit free of visible canker lesions for APHIS inspection.

Treatments and Surface Contamination With Xac

The regulations require all fruit moved interstate from an area quarantined for citrus canker to be treated in accordance with § 301.75–11(a). This paragraph has included two treatments: Thorough wetting for at least 2 minutes with a solution containing 200 parts per million (ppm) sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5; or thorough wetting with a solution containing sodium-o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent of the total solution, for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.

One commenter noted that disinfectants are only effective if the active ingredient is not degraded. The commenter gave the example that sodium hypochlorite is degraded by sunlight and organic matter.

We agree with the commenter's point that it is important to ensure that the treatment is conducted properly. APHIS regularly monitors the treatment of fruit to ensure that the disinfectant agent is at the proper concentration and, in the case of sodium hypochlorite, pH, thus ensuring the effectiveness of the treatment. Under this final rule, we will conduct monitoring under conditions specified in the compliance agreements with packinghouses.

In this final rule, we are amending the treatment regulations to require fruit to be treated at a commercial packinghouse whose owner operates under a compliance agreement. Previously, the regulations had required that treatment be performed either in the presence of an inspector or at a facility whose owner operates under a compliance agreement under § 301.75–7(a)(2); this change will reflect the fact that all fruit intended for interstate movement must be treated at a commercial packinghouse under this final rule.

Several commenters stated that these surface disinfectant treatments may not be 100 percent effective, citing various reports that indicated that bacteria could be recovered from citrus fruit that had been treated with sodium hypochlorite or SOPP, including reports by Verdier (2006) and Golmohammadi (2007) and a newspaper article reporting on a lecture by Gottwald in which he presented unpublished preliminary results. With regard to the last of these, two commenters requested that we provide information about the followup studies mentioned in the article.

As stated in the RMA, the surface disinfectant treatments approved by APHIS reduce numbers of *Xac* cells to low or undetectable levels, but do not necessarily provide complete eradication. The evidence cited by the RMA does demonstrate that the treatments allowed under the rule substantially reduce bacterial populations, including *Xac*, found on the surface of citrus fruit to the extent practicable using surface disinfectant treatments currently registered for use in the United States on raw fruits and vegetables.

Recovery of *Xac* from fruit after surface disinfectant treatment does not demonstrate that the treatment is ineffective. Microbial detection or recovery tests simply measure the presence or absence of the organism in a sample and do not enumerate or measure the difference between the pre- and post-treatment bacteria population levels or infectivity. The treatments in the regulations are consistently reported as dramatically reducing *Xac* populations on the surface of fruit, if not eliminating them entirely. For example, Verdier (2006), cited by the commenters, measured the pre- and post-treatment levels in the wash solution and found that the bacteria population level was reduced 99.8 percent from an average of 39.4 colony-forming units (cfu)/mL on untreated controls to an average of 0.06 cfu/mL on treated fruit.

The information from Gottwald (2006) the commenters cite has not been published, and the followup studies referred to in news reports are currently being completed. We are not able to obtain the unpublished data that have been collected to this point. We will review the Gottwald information when it becomes available in final form. It is important to note again that the recovery of some bacteria after treatment is not inconsistent with treatment being highly effective at reducing *Xac* population levels, as described earlier.

Another commenter, referring to a study by Brown and Schubert (1987)

that the RMA cited, stated that the study's use of *Xanthomonas campestris* pv. *vesicatoria* as a proxy for *X. axonopodis* pv. *citri* in assessing the efficacy of SOPP was not appropriate, because the behavior of closely related bacteria may be very different.

The use of a proxy in efficacy testing is not unusual; for example, the Environmental Protection Agency (EPA) requirements for testing the efficacy of disinfectants allow the use of a proxy. A proxy organism was used in this study because the study was conducted in a model packinghouse. It is difficult to experiment with quarantine plant pathogens in the field because of the need to provide safeguards against their spread. While the bacteria in question are not identical, SOPP has a broad range of efficacy; there is no reason to believe that some feature of *Xac* would defeat the mechanism of SOPP. In addition, the RMA cited other studies establishing the efficacy of SOPP as a treatment against *Xac* itself.

The PRA contained the following statement regarding treatment effectiveness: ''Studies performed in Argentina on the effectiveness of sodium hypochlorite on mature symptomless fruit artificially contaminated with *Xac* showed that sodium hypochlorite levels as low as 8 ppm were effective in eliminating epiphytic or surface bacteria from the fruit (Canteros, undated).'' One commenter stated that there were no references about the viability of the bacteria, which is an important factor for risk assessment.

This particular study was one of many studies cited in the PRA and RMA establishing the effectiveness of sodium hypochlorite as a treatment. Other studies we cited included references about the viability of the bacteria.

Related to the presence of bacteria on the surface of treated fruit (also referred to as epiphytic bacteria or contamination), several commenters stated that fruit with such populations pose a risk of spreading citrus canker that was not addressed by the measures recommended in the RMA.

While surface populations of *Xac* undoubtedly exist on some citrus fruit that is packed in a quarantined area, and commenters cited scientific evidence establishing this point, substantial evidence indicates that surface bacterial populations do not infect mature fruit or survive on mature fruit long enough to infect other hosts. The evidence cited in the RMA regarding epiphytic survival indicates that epiphytic populations on harvested, mature fruit decline rapidly. For example, researchers in Brazil sprayed asymptomatic fruit, picked from trees, with a bacterial suspension of 10^6 cfu/mL; no bacteria were recovered after 5 days at room temperature under laboratory conditions (Belasque and Rodriguez Neto 2000). Epiphytic bacteria do not multiply in water on leaf surfaces or on dry leaves (Timmer *et al.* 1996). Graham *et al.* (2000) found that *Xac* survived for 48 to 72 hours on a variety of inanimate surfaces in sun or shade, respectively. Additionally, there is no authenticated record of movement of diseased fruit as the origin for a citrus canker disease outbreak, which is especially suggestive given the brisk global trade in such fruit and the likely presence of some level of epiphytic bacteria on many fruit that is exported from citrus canker-affected areas.

Commenting on the PRA, one commenter noted that a low concentration of 8 cfu/mL (cited as a result of treatment by one study) may mean very high numbers of bacteria in tons of fruit.

The commenter's assertion is correct. However, shipments of fruit are commercially packed in boxes or other approved containers and are dispersed through market channels all over the United States, greatly diluting the concentration of bacteria which are at the same time experiencing rapid mortality. Therefore, such bacterial concentrations would not occur in the real world. In any case, for the reasons stated above, we have determined that fruit with epiphytic bacterial populations is not an epidemiologically significant pathway for the spread of citrus canker.

Some commenters were also concerned about the possible presence of *Xac* on other materials, citing reports of *Xac* survival for various periods on media like clean microscopic slides; leaf surfaces, plastic, wood, and other materials; cloth, sawdust and shavings, dried herbarium tissue, and sterile soil; and non-host weeds.

While *Xac* undoubtedly persists on a number of surfaces, it does not multiply outside of hosts. Under the regulations, the interstate movement of any regulated article other than fruit, calamondin and kumquat plants, and seed is prohibited. Regulated articles include leaves and grass clippings. In addition, under paragraph (c) of § 301.75–3, an inspector may designate any other product, article, or means of conveyance, of any character whatsoever as a regulated article when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subpart. We do not typically regulate the movement of the other articles cited by the commenters under the current regulations because populations of *Xac* on such articles are very unlikely to infect mature citrus fruit.

Two commenters were concerned about the possibility that canker-infected fruit could contaminate packinghouse equipment with *Xac.* One commenter stated that packinghouse equipment needs to be disinfected if citrus canker is found in a lot run on that equipment. The other expressed a specific concern about contamination of existing wounds in fruit and stated that surface disinfestation cannot be continuously done during the commercial packing of fruit where both diseased and healthy fruit are being packed. This commenter suggested that we amend the regulations to exclude fruit from being packed from orchards or harvested fruit lots with an incidence of citrus canker above some established threshold, in order to minimize contamination of packing lines.

We acknowledge that infected fruit in a lot could contaminate the packing line with *Xac,* but, as stated above, substantial evidence indicates that the epiphytic bacterial populations that could be transferred from the packing line to the fruit do not infect mature fruit or survive on mature fruit long enough to infect other hosts. For that reason, we have determined that grove inspections are not necessary to mitigate the risk associated with such contamination, nor is disinfection of the packing line equipment necessary if canker is found during the inspection of a lot of fruit.

The RMA stated that ''Bacteria within lesions may be more protected from the detrimental effects of washing, disinfection and drying. Viable *Xac* has been recovered by APHIS pathologists from citrus canker lesions on fruit culled from packinghouse lines after postharvest treatments (Riley 2007).'' A few commenters expressed concern relating to this statement. One stated that chlorine is well known as a surface sanitizer but has no ability to penetrate beyond the surface—for example, into lesions. Another commenter noted that none of the experiments mentioned in the PRA or RMA evaluate the effect of disinfectants on *Xac* within the fruit, either in visible lesions (of any size) or in circumstances where the effects of *Xac* are not visible to the naked eye. The third, reacting to the statement about recovery of viable *Xac* by APHIS pathologists after postharvest treatments, asked what treatment had been performed, what level of recovery

had occurred, what preharvest management the fruits were subject to, why the fruits were not culled on the packing line before treatment, and whether the postharvest treatment included wax.

As stated earlier, the surface disinfectant treatments required in this final rule reduce numbers of *Xac* cells to low or undetectable levels. The RMA acknowledges that treatment with surface disinfectants is not effective on canker lesions, which is why this final rule also requires an APHIS inspection of each lot of fruit for canker lesions.

The canker lesions referred to in Riley (2007) occurred in fruit produced under the regulations that were in place before the publication of this final rule, i.e., with certification of grove freedom and with surface disinfectant treatment. As the regulations in place before the publication of this final rule did not require specific canker management measures, we do not have records of what canker management measures the fruit may have been subject to beyond the measures required by the regulations.

Addition of Peroxyacetic Acid Treatment

We proposed to add a new surface disinfectant treatment using peroxyacetic acid (PAA). The proposed rule would have required the regulated fruit to be thoroughly wetted for at least 1 minute with a solution containing 85 ppm peroxyacetic acid. At the request of growers in Florida, we evaluated the efficacy of this treatment and determined that the disinfectant is at least as efficacious as a surface disinfectant treatment as the currently approved disinfectants listed in the regulations. In the RMA, we described the tests that had been performed to confirm the efficacy of PAA. These tests were conducted on *X. axonopodis* pv. *citrumelo* (*Xa citrumelo)*, which was used as a surrogate for *X. axonopodis* pv. *citri* (i.e., *Xac*).

Two commenters stated that PAA should be tested on *Xac* itself rather than on a surrogate. One stated that *Xa citrumelo* does not infect fruit and does not survive in orchards, making it a poor surrogate, and asked that we make the data referred to in the RMA publicly available. Another stated that, while it seems highly likely that PAA may be effective against *Xac*, to allow its use without any testing against the particular organism of concern appears to be unnecessarily optimistic. The commenter recommended testing in field conditions for this application or at least to demand post-introduction testing to demonstrate efficacy in the field.

We are making the data on PAA testing available on the Regulations.gov Web site with this final rule (see footnote 1 at the beginning of this final rule) or from the person listed under **FOR FURTHER INFORMATION CONTACT**.

As noted earlier in this document, the use of a proxy or surrogate is not unusual when testing a treatment's efficacy on a quarantine pathogen. The EPA label for PAA, which states the approved instructions for use and applicability of the disinfectant, acknowledges that it was tested on *Xa citrumelo* as a surrogate for *Xac*.

X. axonopodis pv. *citrumelo* and *X. axonopodis* pv. *citri* differ primarily in the hosts they infect. (''pv.'' stands for ''pathovar,'' which distinguishes strains or subspecies of the same bacteria based on their ability to only infect specific hosts.) *X. axonopodis* pv. *citrumelo* is generally considered to be more resistant to disinfection than *X. axonopodis* pv. *citri*, making the former a suitable surrogate for the latter.

In addition, PAA is an oxidizing agent whose mode of action has been shown to be effective on many bacteria, including *Bacillus cereus, B. subtilis, B. stearothermophilus, Clostridium botulinum, C. butyricum, C. sporogenes, Ditylenchus dipsaci, Enterococcus faecium, Escherichia coli* (including *E. coli* O157:H7), *Fusarium oxysporum, Gluconobacter oxydans, Lactobacillus plantarum, L. thermophilus, Leuconostoc mesenteroides, Listeria monocytogenes, Pseudomonas aeruginosa, P. fluorescens, Saccharomyces cerevisiae, Salmonella typhimurium, Staphylococcus aureus, Streptococcus delbreuckii* subsp. *bulgaricus*, and *Yersinia enterocolitica*. Based on PAA's characteristics as a general disinfectant and the results of the testing on *Xa citrumelo*, we have determined that PAA will be effective on *Xac* as well, and we are adding PAA as a surface disinfectant treatment for fruit in this final rule.

We are making three other changes related to PAA. While paragraph (a) of § 301.75–11 sets out treatments for fruit, paragraph (d) of that section sets out requirements for treatment of vehicles, equipment, and other articles. A solution of 85 ppm of PAA is also effective when used on vehicles, equipment, and other articles, and the availability of PAA as a treatment for packing line equipment would be useful for packinghouses in the quarantined area to fulfill the requirements in § 301.75–7(c)(2)(iv) for disinfection of packing equipment between packing lots of regulated fruit produced in a quarantined area and packing lots of fruit not produced in a quarantined area. Therefore, this final rule also adds PAA, when used indoors, as an approved treatment for vehicles, equipment, and other articles in paragraph (d) of § 301.75–11. We may decide to add PAA as a treatment for outdoor use in a separate rulemaking if we receive requests to do so.

The proposed rule would have added PAA as a fruit treatment in a new paragraph (a)(4) in § 301.75–11. Paragraphs (a)(1) and (a)(2) authorize the use of sodium hypochlorite and SOPP, respectively, as treatments for fruit; paragraph (a)(3) requires that these two surface disinfectants be applied in accordance with label directions. Instead of adding PAA in a new paragraph (a)(4), we have redesignated paragraph (a)(3) as (a)(4), added PAA in paragraph (a)(3), and amended paragraph (a)(4) to indicate that PAA must be applied in accordance with label directions as well.

The regulations in 7 CFR part 305 set out the requirements for phytosanitary treatments. Section 305.11 contains the two treatments that have been authorized for citrus fruit moved from a citrus canker quarantined area. Accordingly, in this final rule, we are amending that section to add PAA as a treatment for fruit.

Inspection and Potential for Mature Fruit Without Visible Lesions To Serve as Pathway for Infection

As mentioned earlier in this document, the PRA examined the risks associated with asymptomatic fruit. The PRA used the term ''asymptomatic'' to refer to the lack of visible signs or symptoms of citrus canker. The RMA examined the risks associated with all fruit that has been commercially packed, regardless of its disease status. We also prepared a quantitative model (Appendix 1 to the RMA) based on Florida production and shipping data to evaluate the efficacy of three levels of phytosanitary inspection in ensuring that symptomatic fruit does not enter commercial citrus-producing States. In the qualitative model, we defined ''symptomatic'' as meaning that the fruit have visible *Xac* lesions 1 millimeter (mm) in diameter and greater. One commenter pointed out that these terms were used inconsistently in the PRA and the RMA.

We appreciate the comment. In the version of the RMA that accompanies this final rule, Appendix 1 refers to fruit that have visible canker lesions and fruit that do not, rather than to symptomatic and asymptomatic fruit.

This commenter further stated that the proposed APHIS inspections of fruit target only relatively large symptoms readily visible to the naked eye, not whether any bacteria are present on the fruit. While the APHIS inspection is probably fairly effective at limiting the occurrence of larger *Xac* lesions in marketed fruit, the commenter stated, inspection is totally ineffective at detecting and limiting lesions smaller than 1 mm or at detecting *Xac*-infected fruit that have no visible lesions at the time of inspection. This commenter and other commenters also addressed surface populations of bacteria, stating that focusing inspection efforts on visible lesions ignores risk associated with bacteria.

We addressed the risk associated with epiphytic bacterial populations earlier in this document. We have determined that the other situations described by these commenters are unlikely to occur outside of an experimental setting. The reasoning behind this determination is discussed below.

Small lesions (less than 1 mm). Commenters cited Koizumi (1972), in which Satsuma mandarin were either prick inoculated with *Xac* or naturally infected. The experimenter found that, in addition to lesions greater than 1 mm, lesions referred to as ''late detection (small)'' of a size of 0.1 to 0.15 mm also occurred. This would be below what we have determined to be the size threshold for a detectable lesion, as defined in Appendix 1 to the RMA. Besides stating that the existence of such lesions indicates that fresh fruit could be a pathway for the introduction or spread of citrus canker, the commenter also stated that it is possible that disinfecting the surface of the fruit might exacerbate the subsequent infectivity of *Xac* exuding from small lesions, by removing other (e.g., rot-provoking) organisms that might directly or indirectly accelerate the decline of *Xac* after harvesting.

As discussed in the RMA, in the field, immature citrus is most susceptible to infection with *Xac* and lesion development. Mature citrus fruit have natural wax layers on their surface, decreasing susceptibility by reducing access to natural openings, such as stomata. In addition, mature (not expanding) asymptomatic fruit without injuries or blemishes are not known to develop symptoms in the field. In the Koizumi (1972) study, mature fruit were experimentally inoculated while the fruit was still attached to the tree; equivalent conditions are extremely unlikely to occur naturally.

The lesions Koizumi observed resulted from a combination of artificial (prick) inoculations and natural infections and therefore provide little information about how the ratio of typical to atypical lesions on fruit varies under natural conditions. Koizumi's results varied greatly over the several years he conducted these experiments; the commenters cite results from the year with the highest incidence of infection, which coincided with unusually high temperatures and two typhoons (hurricanes). Koizumi speculated that the atypical lesions were the result of restricted expansion brought on by physiological changes in the maturing fruit and lower ambient temperatures. As noted by Graham *et al.* (1992b), the small late season lesions were characterized by a ''lack of bacterial proliferation.'' Lesions without proliferation would not provide an epidemiologically significant source of inoculum for *Xac* infections.

While other studies have conducted similar inoculation tests on fruit before (Fulton and Bowman 1929) and after (Graham *et al.* 1992b; Verniere *et al.* 2003), Koizumi (1972) remains the only paper to describe this type of lesion. Fulton and Bowman noted that if one was not careful to avoid oil glands when making puncture inoculations, the released oils cause injuries to the adjacent tissue. One could speculate that at least some of Koizumi's atypical lesions might, in fact, be injuries. We have no evidence that the lesions described by Koizumi (1972) occur in nature and therefore cannot agree that they would occur at the rates cited by the commenters.

Nevertheless, conditions could exist in which small *Xac* lesions occur. However, as noted above, immature fruit are most susceptible to *Xac* infection, and *Xac* lesions grow as the fruit matures; the growth of the lesions slows as the fruit reaches maturity. Picking mature fruit from the tree causes senescence of the fruit and further inhibits lesion development. Therefore, while small lesions might occur on immature fruit, they would typically grow into larger lesions as the fruit matures; if there were small lesions present on such fruit, it would be likely that lesions larger than 1 mm would be present as well. In general, APHIS inspectors do not see fruit with only lesions smaller than 1 mm; small lesions occur in association with larger lesions (Riley 2007).

The packinghouse culling and grading procedures are designed to remove fruit with visible lesions and would result in removal of the fruits likely to harbor the highest pathogen loads, and therefore present the greatest risk of disease transmission. The APHIS inspection after the packing process is completed will result in the rejection of any lot of fruit that has visible canker lesions and will prevent that lot from moving in interstate commerce.

Wounded fruit. One commenter cited Fulton and Bowman (1929), who inoculated a mature grapefruit from the market and 75 days later tested the grapefruit. The test indicated that there were ''something like 32,000 bacteria per puncture,'' although the fruit had not developed external lesions. Another commenter stated that a general principle of postharvest pathology is that surface disinfestation of fruit with standard oxidizing chlorine washes will inactivate most microorganisms from the surface of non-wounded fruit, but not from fruit wounds.

The grapefruit described in Fulton and Bowman (1929) was one of a number of market fruit that were inoculated in this way, the rest of which either rotted after inoculation or supported bacterial populations that did not multiply. All these fruits were kept in moist laboratory conditions designed to facilitate the development of *Xac* bacteria.

Regarding the grapefruit, Fulton and Bowman stated the following in their 1929 study: ''There is apparently a very marked difference in the behavior of the canker organism following inoculations in the peel of mature fruit after removal from the tree as compared with its behavior in the peel of mature fruit still on the tree. Possibly changes in the physiological condition of the fruit resulting from its removal from the tree are responsible for the difference * * * senescent changes in the peel favor the development of fungi having saprophytic tendencies; it is not inconsistent to presume these changes would in equal degree hinder the development of an organism having definitely parasitic habits like *Pseudomonas citri* [*Xac*].'' This is consistent with a determination that infected wounds would occur extremely rarely in real-world conditions.

Fulton and Bowman also reported that infection only occurred if the wound stayed moist until the time of inoculation. Wounds that were allowed to dry and were inoculated after 26 hours did not result in infection. That is, infections occurred only when oil glands were avoided and inoculum was applied within 26 hours of wounding (Fulton and Bowman 1929). Verniere *et al.* (2003) reported a disease incidence of zero when inoculating mature fruit either by pin prick or spray inoculation.

As noted above, the conditions that would allow citrus canker to develop in wounds in the field are unlikely to

occur. In addition, any fruit with wounds would likely be culled in the field or by the packinghouse before it could be submitted for APHIS inspection.

Based on this evidence, we have determined that fruit with small lesions or infected wounds would occur extremely rarely and are not likely to be epidemiologically significant when they do appear. Therefore, it is appropriate to focus our inspection efforts on detecting lesions 1 mm or greater.

The RMA stated that APHIS plant pathologists have intercepted fruit in final packed cartons with lesions in the 2–3 mm range and have observed that the majority of the symptomatic fruit that APHIS inspectors intercepted after passing through the packing line undetected by graders have only one lesion (Riley 2007). Two commenters addressed this statement. Both asked for data on interceptions in Florida fruit, with one asking for information on how many fruit were detected and what varieties were found to be infected.

These data are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

One commenter stated that the fact that APHIS inspectors intercepted fruit with lesions did not substantiate the statement made later in the RMA that grading and inspection procedures are effective in removing fruit with visible lesions. Another commenter stated that all canker infections cannot be detected in packinghouses without knowing whether the fruit originates from a canker-free grove, or at least a grove with a very low level of canker infection. The commenter stated that it is very difficult, if not impossible, to distinguish canker blemishes from numerous other blemishes, especially in the growing conditions that prevail in Florida, where many blemishes appear on fruit.

One commenter cited the example of citrus affected by septoria, a fungus, that are exported to Korea. This commenter stated that the California citrus industry conducts vigorous training programs for line employees to identify and eliminate fruit with distinguishable symptoms and that this culling is then augmented by laboratory analysis. The commenter stated that lab analysis has always detected symptoms on a small percentage of fruit missed by highly trained employees.

We appreciate the opportunity to clarify this point. Various evidence, as cited in the RMA, indicates that packinghouse grading and inspection procedures are effective in removing fruit with visible lesions. Packinghouse graders and inspectors in Florida also receive training provided by the State in identifying canker lesions. The phytosanitary inspection that will be performed by APHIS in this final rule will provide another layer of inspection protection. We provided evidence supporting these points in the RMA, including detailed evidence about the efficacy of APHIS' inspection process. Scientific evidence indicates that these measures are highly effective, but since uncertainty remains about the epidemiological significance of symptomatic fruit, we are prohibiting the distribution of fruit moved interstate to commercial citrus-producing States.

As discussed earlier in this document, the APHIS packinghouse-based inspection is sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. In other words, if the infection pressure is higher than 0.38 percent of the fruit, it is extremely likely that the lot will be rejected from interstate commerce. APHIS inspection is thus effective regardless of infection pressure.

One commenter, responding to both the evidence presented for APHIS inspectors' detection efficacy in the qualitative portion of the RMA and in the model in Appendix 1, stated that none of the evidence provided for APHIS inspectors' detection efficacy corresponds to field conditions for detection of lesions. The commenter noted that the cited figures for refresher training correspond to identification within 40 seconds of a lesion presented to the inspector, which the commenter stated was inconsistent with location of a rare lesion on a fruit in a continuous search of 1,000 fruit samples within an average of 5 seconds, an estimate we presented in the Regulatory Impact Analysis for the proposed rule in the context of describing the proposal's potential impact on packinghouse operations. The commenter stated that evaluation of enzyme-linked immunosorbent assay (ELISA) Dip Stick tools and the evaluation of a diagnostic tool (if that is a separate exercise from the ELISA Dip Stick tool) also corresponded to classification of already-detected lesions.

We appreciate the opportunity to clarify the evidence presented in the RMA on the APHIS phytosanitary inspection. The evidence provided in the RMA is consistent with the proposed rule's approach of using inspection to detect lesions in the packinghouse. The training for phytosanitary inspectors was done in packinghouse conditions, using culled fruit for the test sample. Both in training and testing and in the packinghouse, inspection is performed on fruit that has been removed from the packing line.

Under packinghouse conditions, there is no time limit for fruit inspection once the fruit is randomly sampled. This can be accomplished because the fruit is inspected individually, away from the packing line. The 40-second time limit during training is a performance requirement for training, not a packinghouse inspection requirement. The estimate that the packinghouse inspection would require 5 seconds per fruit is also not an APHIS packinghouse inspection requirement; rather, this figure was cited in the context of the potential economic impact of the lot inspection on the packinghouse, and specifically in discussing possible delays associated with inspection. Inspectors who see questionable lesions will be able to take whatever time is necessary to determine whether those lesions are canker lesions.

The ELISA Dip Stick test did correspond to already detected lesions. The results of the ELISA Dip Stick test were cited in the RMA to provide empirical data on the size of lesions that can be detected by inspectors. The ELISA Dip Stick test is not part of the detection system that will be used in commercial packinghouses under this final rule; it will be used only for confirmation of lesions found by inspectors.

One commenter disagreed with the idea that only ''finished'' fruit would be inspected for citrus canker in the packinghouse. The commenter stated that citrus canker is more easily detected on fruit that has not been through the packing process. Brushing of fruit on the packing line may remove diseased tissue, the commenter stated, and waxing of the fruit will make the disease harder to diagnose.

Inspection of fruit before they go through the packing process would not allow the packinghouses themselves to cull canker-infected fruit prior to packing. In the RMA, we described in detail the efficacy of inspection of finished fruit for citrus canker, as discussed earlier.

Our experience indicates that washing fruit will make it easier to detect citrus canker lesions. Citrus fruit that comes directly from the field is often covered in dirt, sooty mold, and other debris and material that could obscure citrus canker lesions. Washing the fruit removes some of this material. Because citrus canker lesions occur within the peel of the fruit, they would not be brushed off during finishing. Additionally, the wax used on fruit is transparent, which means it would not impede disease detection.

Potential Pathways for Spread of Citrus Canker Through Movement of Fruit

As mentioned earlier, the RMA that was made available with the proposed rule concluded that the introduction and spread of *Xac* into other commercial citrus-producing States through the movement of commercially packed fresh citrus fruit is unlikely because:

- Fresh citrus fruit is produced and harvested using techniques that reduce the prevalence of *Xac*-infected fruit;
- Citrus fruit is commercially packed using techniques that reduce the prevalence of infected or contaminated fruit, including disinfectant treatment for epiphytic contamination;
- For a successful *Xac* infection that results in disease outbreaks to occur an unlikely sequence of events would have to occur;
- Reports of citrus canker disease outbreaks linked to fresh fruit are absent; and
- Large quantities of fresh citrus fruit shipped from regions with *Xac* have not resulted in any known outbreaks of citrus canker disease.

One commenter stated that we did not enumerate any complete pathways for transmission and so did not evaluate the scientific evidence in such a way as to evaluate the possibility or likelihood for transmission along such pathways. The commenter also stated that there are pathways (including illegal diversion of fruit and perfectly legal amateur grower activities) from every part of the country that may lead to infection of commercial citrus areas and that have not been evaluated. This commenter and another commenter suggested several potential pathways that we had not addressed in the RMA.

In general, it is difficult to examine quantitatively the pathways by which infected fruit could theoretically spread citrus canker. Those pathways are dependent on consumer behaviors and biological events for which we lack data that we could use to quantify them, and no such data were provided by the commenters. This lack of data is one reason we have determined that it is appropriate to prohibit distribution of fruit moved interstate from a quarantined area to commercial citrus-producing States. As discussed earlier, such a prohibition, combined with the monitoring and enforcement efforts APHIS will use to ensure that the prohibition is adhered to, is effective at preventing the illegal movement of fruit.

We discuss the specific pathways brought up by the commenters below.

One commenter suggested that citrus canker could be spread through long-distance movement due to storm or cyclone activity.

The available evidence indicates that the maximum range for spread of citrus canker through storm activity would not be sufficient to spread citrus canker from Florida to another commercial citrus-producing State.

One commenter suggested that citrus canker could be spread through movement on workers' clothes and picking bags.

As discussed earlier, while *Xac* can persist on a number of surfaces, its infectivity outside lesions is unknown. We do not agree that it is likely that workers will move between Florida and other commercial citrus-producing States without laundering their clothes and while carrying their own picking bags. The commenter provides no evidence that could be used to empirically estimate the frequency of such behavior, and APHIS is unaware of any such evidence.

Two commenters suggested that citrus canker could be spread if fruit or peel from citrus fruit infected with *Xac* is placed in or around susceptible host plants, after which a water event moves the bacterium from the fruit or peel to the host plant. One commenter cited Koizumi (1972) as evidence that *Xac* could be recovered from fruit peel for months if the peel was placed in physiological solution for 2 hours. This commenter stated that only one bacterium is required to cause infection. Another commenter cited fruit with live *Xac* cells that are thrown into a compost pile or bin under a backyard citrus tree, after which a splash or water movement occurs. Once a backyard citrus plant was infected, these commenters stated, rain or storm events could spread the bacterium to commercial citrus groves.

The Koizumi (1972) study recovered bacteria using physiological solution, a buffered saline solution that ensures optimal conditions for bacterial recovery. Analogous conditions do not occur in nature. Additionally, for this scenario to occur, citrus fruit that is infected would have to have been moved from a quarantined area into a commercial citrus-producing State—movement that is prohibited by the regulations. As discussed earlier, we are increasing monitoring and disease surveillance activities and making changes to the regulations in order to help prevent the illegal or inadvertent movement of fruit from quarantined areas into commercial citrus-producing States. If an infected fruit was illegally moved into a commercial citrus-producing State, it would have to be exposed to susceptible plants under very specific physical and environmental conditions for infection to occur.

While it is true that one bacterium is sufficient to cause infection, that one bacterium would have to encounter conditions that were appropriate for infection. There is a very low likelihood that any one bacterium will encounter conditions sufficient to cause infection; it is difficult to create these conditions even in a laboratory setting. Under natural conditions, it would require thousands if not millions of tries for one bacterium to cause infection. Gottwald and Graham (1992) estimated that as few as 2.4 *Xac* bacteria forced into a water congested stomatal cavity of a susceptible plant were sufficient to cause a lesion. However, they also determined that the minimum concentration of bacteria in the inoculum needed to produce an infection, and presumably to place the estimated 2.4 bacteria in a stomatal cavity, was 10^5 cfu/mL. Thus, although it may take only 2.4 infective bacteria in the right place to cause infection, it takes exponentially greater numbers of bacteria in the inoculum for those 2.4 bacteria to occur in the right place at the right time.

The data submitted by one commenter (see *http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2007-0022-0053*), in which infected fruit were placed next to grapefruit seedlings in natural conditions for 2 months without infection of the seedlings, suggests that the likelihood of such an occurrence may be low.

Finally, for this pathway to occur, rain or storm conditions would have to prevail that could spread the bacterium over long distances, but Borchert *et al.* (2007) concluded that such conditions are unlikely to prevail outside Florida, the State that is currently quarantined for citrus canker.

We acknowledge that it is possible that all of these circumstances could prevail, but such a ''perfect risk'' scenario would be an extremely rare event. The commenter provides no evidence that could be used to empirically estimate the frequency of this behavior, and APHIS is unaware of any such evidence.

One commenter suggested a fruit-to-human-to-plant pathway for the introduction of citrus canker into a commercial citrus-producing State. A hobbyist who cultivates citrus in a State other than a commercial citrus-producing State could handle infective citrus from the quarantined area, then infect the plants the hobbyist is cultivating. The hobbyist might not notice the canker infection and could

subsequently move the infected plants into a commercial citrus-producing State.

We acknowledge that such an occurrence is possible, but such a ''perfect risk'' scenario would be an extremely rare event. The commenter provides no evidence that could be used to empirically estimate the frequency of such amateur citrus grower behavior, and APHIS is unaware of any such evidence.

None of the pathway scenarios suggested by the commenters have changed the RMA's conclusion that an unlikely sequence of epidemiological events would have to occur for a successful *Xac* infection that results in disease outbreaks to occur as a result of the movement of commercially packed, treated, and APHIS-inspected fruit to States other than commercial citrus-producing States.

Potential for Citrus Canker Establishment in Commercial Citrus-Producing Areas

The RMA included a discussion of the susceptibility of commercial citrus-producing areas that are not currently quarantined for citrus canker to the spread of the disease. This discussion included a reference to a study by Borchert *et al.* (2007) that developed a citrus canker spread model using the North Carolina State University APHIS Plant Pest Forecast System to identify areas where citrus canker could become established in the major citrus-producing regions of the United States.

Two commenters stated that modeling of pathogen establishment, infection, and disease severity should be an essential component of the risk assessment for each citrus-producing State and region within the State, adding that the Borchert project results should be made publicly available.

We disagree that modeling of pathogen establishment, infection, and disease severity in commercial citrus-producing States is a necessary component of the risk assessment. The RMA concluded that the introduction and spread of *Xac* into other commercial citrus-producing States through the movement of commercially packed fresh citrus fruit from quarantined areas is unlikely. Nevertheless, because the RMA concluded that the evidence is not currently sufficient to support a determination that fresh citrus fruit produced in a *Xac*-infested grove cannot serve as a pathway for the introduction of *Xac* into new areas, we are prohibiting the interstate movement of fruit from a quarantined area into commercial citrus-producing States. This measure makes modeling of pathogen establishment, infection, and disease severity in commercial citrus-producing States unnecessary.

The Borchert *et al.* (2007) study is an internal APHIS document. We made the study available to commenters who requested it during the comment period, and it is available from the person listed under **FOR FURTHER INFORMATION CONTACT**. The Borchert *et al.* (2007) study provides the modeling requested by the commenters.

Some commenters addressed the risk citrus canker posed to specific States. One commenter stated that California is a fresh citrus State with more than 200,000 acres dedicated to the fresh market production of oranges, lemons, grapefruit, mandarins, and other citrus varieties. Although the majority of the oranges are grown in arid areas, many of the lemons and some of the grapefruit are produced in climates with higher humidity and rainfall. The commenter stated that the survival of canker in these areas would be expected; the survival of canker in the more arid areas is less certain, but canker's potential impact cannot be ignored based on survival reports from other arid lands. Another commenter, addressing the suitability of California's climate for development of citrus canker, stated that Dalla Pria *et al.* (2006) stated that the greatest severity of canker occurred at 24 hours of leaf wetness, with 4 hours of wetness being the minimum duration sufficient to cause 100 percent incidence at optimal temperatures of 25 °C to 35 °C.

Another commenter stated that when Texas had citrus canker, it was in southeast Texas, which has higher rainfall than the Rio Grande Valley. The Rio Grande Valley generally has high relative humidity, although the commenter stated that there is tremendous variability in Texas' weather patterns; for example, July 2007 has been very wet. The commenter stated that canker would be able to thrive in the conditions present in the commercial growing area of South Texas. Surveys for citrus greening, the commenter stated, have revealed that Texas has substantial amounts of citrus in an area approximately 100 miles north of the Gulf of Mexico from Brownsville to Houston. The commenter noted that the challenges of eradicating canker in the urban areas of Florida contributed to the failure of the eradication program and anticipated that many of those same difficulties would be experienced in Texas if citrus canker appeared in urban areas.

We agree with these commenters that citrus canker could be introduced to California and Texas. The RMA cited Peltier and Frederich (1926) as indicating that the disease ''could develop in all of the citrus regions of the world *sometime* over the growing season.'' These facts do not change our conclusions that (1) only a small portion of each commercial citrus-producing State actually produces citrus, and an even smaller portion has a climate suitable for canker disease development; and (2) the climate in Florida is the most favorable of any State for the development of citrus canker, and it would be more difficult for citrus canker to be introduced into and subsequently become established in any other State. Regardless, the remaining uncertainty about the level of risk associated with the movement of citrus fruit from a quarantined area has led us to maintain the current prohibition on the movement of citrus fruit into commercial citrus-producing States.

Two commenters urged APHIS to address the risk of spreading citrus canker to other potential host areas, which may not be areas where citrus is commercially produced. One commenter stated that citrus (not just fruit-bearing trees) can be and is grown in other areas of the United States, and those areas are also at risk of citrus canker. The commenter noted that during the initial outbreak of citrus canker in the mainland United States, disease outbreaks were also recorded in Alabama, Mississippi, South Carolina, and Georgia. The commenter also noted that Borchert *et al.* (2007) were tasked ''to identify areas where citrus canker could become established in the major citrus producing regions of the United States,'' rather than all the areas in the United States in which citrus canker could become established.

These commenters recommended that the RMA and the proposed rule take account not only of current commercial citrus-producing areas, but also areas where citrus currently grows (even if it is not commercially grown) and areas where citrus could grow, but does not currently. These commenters stated that establishment of citrus canker in any such area might subsequently lead to establishment in commercial areas, since many of these areas are contiguous with commercial areas, and long-distance transport now appears to be more likely than historically, presumably due to the presence of the Asian leafminer (*Phyllocnistis citrella* Stainton) in Florida. These commenters also stated that citrus canker establishment in areas where citrus is not commercially produced would lead to other pathways for establishment in areas where it is.

The focus of the citrus canker program has been on commercial citrus-producing States because these States present the highest likelihood for introduction of the disease, due to the density of citrus plantings in those States. Prohibiting the movement of fruit from areas quarantined for citrus canker to States other than commercial citrus-producing States would be overly restrictive.

We acknowledge that dooryard plantings of citrus exist outside of commercial citrus-producing States. However, while canker infection in a State other than a commercial citrus-producing State could serve as a pathway for introduction into a commercial citrus-producing State, as discussed earlier under the heading ''Potential Pathways for Spread of Citrus Canker Through Movement of Fruit,'' an unlikely sequence of epidemiological events would have to occur in order for citrus canker to be introduced and established through the movement of citrus fruit from a quarantined area.

If, in the future, commercial quantities of citrus are planted in a State that is not currently designated as a commercial citrus-producing State, we will designate that State as a commercial citrus-producing State in § 301.75–5.

As discussed in the RMA, injuries caused by the Asian leafminer can produce wounds that serve as infection courts in leaves and, to a lesser extent, fruit, but the leafminer itself is not a vector for the spread of citrus canker.

Potential Application of the Packinghouse-Based APHIS Inspection System to Imported Citrus

The regulations in 7 CFR 319.28 prohibit the importation of citrus fruit from areas where citrus canker is present, except for Unshu oranges from Japan and Cheju Island, Republic of Korea, that are produced in accordance with the systems approach described in paragraph (b) of that section. The systems approach for Unshu oranges from Japan and Korea requires measures to ensure that the oranges are produced in an area free from citrus canker; for Unshu oranges from Japan, the systems approach requirements also address the citrus fruit fly.

Several commenters expressed concern that the proposed regulations, if implemented, could lead to requests from other citrus-producing countries to export citrus fruit under conditions similar to those we proposed for the interstate movement of fruit from citrus canker quarantined areas. The commenters noted that, under international trade agreements, APHIS has agreed not to impose conditions on the importation of commodities that are more restrictive than those we impose on the domestic movement of similar commodities. These commenters stated that the RMA should consider the risk associated not only with the interstate movement of citrus fruit from domestic quarantined areas but also the risk associated with potential imports from foreign citrus-producing areas affected with citrus canker.

One commenter who had expressed concern about illegal movement of Florida citrus into commercial citrus-producing States stated that this potential problem would only increase if citrus fruit was allowed to be imported from foreign areas affected with citrus canker.

Our analysis of the risk associated with the importation of citrus fruit from other countries where citrus canker exists under conditions similar to those in this final rule would be conducted separately from the analysis we conducted for this rulemaking. Before we would consider using an approach similar to that promulgated in this final rule to allow the importation of citrus fruit from canker-affected areas in another country, the national plant protection organization of such a country would need to submit a request that we do so. A country requesting to be able to use this framework to export citrus to us would have to demonstrate the ability to perform the required treatments and phytosanitary inspections; it would also be required to have a bilateral workplan in place with APHIS. Depending on the circumstances, we may allow imports only through a preclearance program staffed by APHIS inspectors whose salaries are funded by the exporting country. In addition, there may be other citrus pests in foreign citrus production areas whose risk would need to be mitigated separately from the risk posed by citrus canker. For these reasons, we have not amended the RMA that accompanies this final rule to discuss potential imports from other countries.

One commenter specifically noted that the requirements for Unshu oranges from Japan are not in harmony with the proposed rule.

The proposed rule and the risk management analysis are based on the most recent science and our determination of the appropriate level of protection for the citrus canker pathogen. We may reassess the risk associated with the importation of Unshu oranges from Japan in the future if Japan requests that we do so. If we reassess the risk associated with Unshu oranges from Japan, as discussed earlier, the assessment will take into account all relevant local conditions and all pests that are present in Japanese citrus production areas.

It is important to note that Unshu oranges from Japan, if they are fumigated for arthropod pests, are allowed to be imported into commercial citrus-producing States, because they are produced under a systems approach. Fruit moved interstate from citrus canker quarantined areas is not allowed to be moved into those States under this final rule.

One commenter noted that the term ''commercially packed'' can be interpreted in different ways. In South Korea, the commenter stated, one group of growers used a ''commercial'' packing shed that was no more than 75 meters by 50 meters and in which the post-harvest treatment with sodium hypochlorite was performed in a small bath. The commenter stated that it is important to recognize that different circumstances prevail in different countries when harmonizing domestic regulations with import regulations.

We fully agree with the commenter that the circumstances in a country would need to be assessed before we could allow the importation of citrus from a citrus canker-affected area under conditions similar to those under which we are allowing the movement of citrus from a citrus canker quarantined area.

With regard to the specific circumstance cited by the commenter, we have determined that it is necessary to define the term ''commercial packinghouse'' in this final rule, given that the PRA and RMA analyzed the risk associated with the interstate movement of commercially packed fruit. In this final rule, we are adding a definition of *commercial packinghouse* to the regulations. This definition reads: ''An establishment in which space and equipment are maintained for the primary purpose of packing citrus fruit for commercial sale. A commercial packinghouse must be registered as a packinghouse with the State in which it operates or hold a business license for treating and packing fruit.'' This definition will help to ensure that the packinghouses that pack fruit for interstate movement under this final rule have equipment and operating procedures that are consistent with those described in the PRA and RMA.

Because the PRA and RMA referred specifically to the risks associated with commercially packed fruit, we are amending the proposed regulations in § 301.75–7 to refer specifically to commercial packinghouses.

One commenter stated that implementation of the proposed rule

may also result in foreign countries requesting APHIS to consider a similar approach for fresh commodities other than citrus. The commenter stated that the approach described in the proposed rule could be applied in any number of other situations in which a systems approach is not operationally or financially feasible.

It is important to note in response to this comment that we determine what phytosanitary mitigations are appropriate for the importation or interstate movement of commodities based on our assessment of the risk their importation or interstate movement poses and the appropriate level of phytosanitary protection against that risk. If we determined that a set of mitigations was necessary to provide the appropriate level of protection for a commodity proposed for importation, but that set of mitigations was determined not to be operationally or financially feasible by the national plant protection organization of the exporting country, we would not allow the importation of that commodity.

We would only allow the importation of a commodity under an approach similar to the approach used in this final rule if we determined that this approach could provide the appropriate level of phytosanitary protection. In past cases where we have determined that inspection, treatment, and limited distribution mitigations similar to those implemented in this final rule can provide an appropriate level of protection against the introduction of plant pests by imported commodities, we have employed such mitigations. For example, litchi imported from Thailand are inspected for a fungal pathogen, irradiated for arthropod pests, and prohibited from being imported or moved into Florida due to the litchi rust mite.

In order for us to determine that a packinghouse-centered approach provided an appropriate level of phytosanitary protection, we would have to determine that the biology of the pest supported such an approach and that the pest in question could be effectively detected by inspection of the commodity. In addition, other considerations may apply based on the level of risk we determine importation of the commodity to pose.

Miscellaneous Comments on the RMA

One commenter noted that, since viable *Xac* have been found in fruits with canker lesions that are imported into Europe, it is clear that the importation of symptomless fruits from canker-infected areas has a risk of introducing the disease if all the control steps, carried out by many people at different times, are not always perfectly implemented.

The RMA concluded that the introduction and spread of *Xac* into other commercial citrus-producing States through the movement of commercially packed fresh citrus fruit from quarantined areas is unlikely. While fruit with visible canker lesions has likely been imported into the EU, the importation of citrus fruit from areas where citrus canker is present has not resulted in the introduction of the disease in the EU, despite the fact that all fruit imported into the EU is allowed to move to citrus-producing areas within the EU. (This is discussed in more detail in the RMA in Section 5.6.2, ''International and Interstate Movement of Citrus Fruit.'') In addition, treatment and inspection will both serve as effective mitigations against the potential of fruit moved interstate to introduce citrus canker to other States. Nevertheless, the RMA concluded that the evidence is not currently sufficient to support a determination that fresh citrus fruit produced in a *Xac*-infested grove cannot serve as a pathway for the introduction of *Xac* into new areas. That is why this final rule prohibits the distribution of fruit moved interstate from quarantined areas to commercial citrus-producing States.

In the RMA, we stated that there is no authenticated record of the movement of fresh fruit infected with *Xac* being related to the epidemiology of citrus canker disease. One commenter stated that pest-free areas are now established on the basis of a pest being ''known (as demonstrated by scientific evidence) not to occur'' rather than ''not known to occur,'' and the same standard of evidence should apply to this statement; research should be conducted to establish this statement as fact.

We agree with the commenter's characterization of the process by which pest-free areas are established. Our statement was not meant to imply that we had positively established that fresh fruit infected with *Xac* has never served as a pathway for the transmission of citrus canker. Rather, it reflects the fact that no outbreaks of citrus canker have ever been attributed to the movement of infected fruit, despite the brisk global trade in such fruit. (The majority of outbreaks of citrus canker whose cause is known were caused by the movement of infected citrus nursery stock, rather than fruit.)

The RMA noted the Asian leafminer interacts with *Xac* by providing wounds that serve as infection courts in leaves and, to a lesser extent, fruit. Leafminer wounds create suitable microclimates for *Xac* development, and leafminer-damaged leaves have more and larger lesions. One commenter asked whether injuries from the peel miner, an insect present in California, could result in higher infection of fruits.

Injuries from the peel miner would be likely to increase the susceptibility of fruit to infection, and increase the severity of the infection if they became infected. In terms of overall spread of citrus canker, the peel miner would not likely be as epidemiologically significant as the Asian leafminer, since leaves of citrus trees and plants are more susceptible to citrus canker infection than the peels of citrus fruit.

One section of the RMA discussed the effect of shipping and storage temperatures on *Xac* populations, concluding that typical shipping and storage temperatures reduce such populations. One commenter noted that pathologists are able to keep *Xac*-infected samples in refrigerators at 2 °C to 4 °C and still isolate the bacterium. The commenter stated that the emphasis of this section should be on the survival of the bacterium.

We agree with the commenter that cool temperatures do not necessarily cause mortality for *Xac*, and the RMA noted accordingly that such temperatures influence survival rather than stating that they inactivate the bacteria. However, in the context of an analysis of the likelihood of citrus fruit serving as a pathway for the introduction or spread of citrus canker, it is important to note that shipping and storage temperatures reduce *Xac* populations. In addition, commercial refrigeration is also quite dry, and *Xac* is highly influenced by humidity, so the dryness of refrigeration is more likely to have mortality effects than the cold.

The RMA stated that fruit are susceptible to citrus canker infection from petal fall until they are around 6 cm in diameter, and are most susceptible at a fruit diameter of about 2–4 cm. One commenter stated that fruit size cannot be related to susceptibility unless the variety is indicated, as some varieties (such as grapefruit) are bigger than others (such as mandarins).

We agree with the commenter, and we have amended the discussion in the RMA to state that fruit are susceptible to natural (stomatal) infection from petal fall until they are fully expanded (around 6 cm in diameter for some varieties), and are most susceptible after stomata form and fruit is in a stage of rapid expansion, a period of about 90 to 120 days (at a fruit diameter of about 2–6 cm for some varieties).

In discussing the international and interstate movement of citrus fruit, the

RMA noted that in 2004, India (where *Xac* is reported) shipped 8 metric tons of citrus to Ghana and 2 metric tons to South Africa, and that no outbreaks of *Xac* have been reported in any of the recipient countries. One commenter stated that the shipment of citrus from India to South Africa seems a dubious record.

These data were drawn from the Food and Agriculture Organization's ''World trade and crop production statistics'' database at *http://faostat.fao.org*. The commenter provided no further information establishing these records as dubious.

We also discussed the movement of fresh citrus from Florida during *Xac* outbreaks. One commenter asked whether the earlier shipments of Florida fruit were from canker-free areas, or at least canker-free areas of production under official control.

We noted in the RMA that these shipments of Florida citrus may have originated in areas of low prevalence or free of *Xac*. These shipments were required to originate in groves that had been certified to be free of *Xac* based on an inspection.

Comments on the Model in Appendix 1 to the RMA

As mentioned earlier, to assist in evaluating the options we identified for packinghouse-centered risk management, we prepared a quantitative model (Appendix 1 to the RMA) based on Florida production and shipping data to evaluate the efficacy of three levels of phytosanitary inspection in ensuring that fruit with visible canker lesions does not enter commercial citrus-producing States. The three inspection levels were determined by preliminary estimates of the Plant Protection and Quarantine program's Citrus Health Response Program staff of inspection levels that might be operationally feasible. The three inspection levels evaluated were 500 fruit per lot, 1,000 fruit per lot, and 2,000 fruit per lot. Statistically, randomized inspection of 500, 1,000 fruit, or 2,000 fruit per lot will ensure, with 95 percent confidence, that the proportion of undetected fruit with visible canker lesions in a cleared lot is no more than 0.75, 0.38, and 0.19 percent, respectively.

The outputs of the quantitative model were probability distributions. The model determined, with 95 percent confidence, that the total number of citrus fruit shipped from Florida to 5 citrus-producing States (Arizona, California, Hawaii, Louisiana and Texas) over a single shipping season would be 181,283,744 or less if unlimited distribution is permitted. The model determined, with 95 percent confidence, that the number of *Xac*-symptomatic fruit reaching those 5 States in a single shipping season would be 633,152 or less at the 1,000 randomly sampled fruit inspection level. We anticipate that about double that number (approximately 1,266,304 or less) of *Xac*-symptomatic fruit would reach those States at the 500 fruit inspectional level. About half that number (approximately 316,576 or less) would reach those States at the 2,000 fruit inspectional level. The model further determined with 95 percent confidence that the number of symptomatic fruit reaching citrus-producing areas within those States in a single shipping season would be 2,135 or less at the 1,000 fruit inspectional level, about double that number (approximately 4,270 or less) at the 500 fruit inspectional level, and about half that number (approximately 1,067 or less) at the 2,000 fruit inspectional level. (As discussed in Section 9.3.3.4 of Appendix 1 to the RMA, the actual acreage on which citrus is produced within a citrus-producing State is a small fraction of the total acreage of that State.) The base level inspection of 1,000 randomly sampled fruit per lot was adopted because it is operationally feasible with small adjustments to the current phytosanitary inspection process in Florida.

The potential for fruit with visible canker lesions to reach commercial citrus-producing States, coupled with the aforementioned uncertainty regarding fruit as a pathway, led to the determination that additional mitigations were required.

We received several comments from one commenter addressing the model in Appendix 1 to the RMA.

The commenter stated that the model failed to take into account the increased numbers of fruit that would be moved interstate from Florida and imported from citrus canker-affected areas in other countries, and thus underestimated the number of potentially infected fruit that could reach commercial citrus-producing States. The commenter cited another comment that estimated that the spread of canker has resulted in an additional 20 percent of Florida's total fresh citrus groves becoming ineligible for interstate movement under the regulations that were in place before the publication of this final rule. That 20 percent, that commenter stated, represents approximately 8 million 4/5-bushel cartons or an approximately $80 million potential business opportunity under the proposal.

The comment estimating the potential increase in fruit moved interstate under this final rule is dealt with in more detail under the heading ''Comments on the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis'' later in this document. We have concluded that the increase in the number of fruit that will be moved interstate under this final rule is likely much less than the commenter estimates, although we have been unable to quantify the probable increase.

This final rule does not change our requirements for the importation of citrus fruit from areas in other countries where citrus canker is present. Therefore, this final rule will not increase the amount of fruit imported from such areas. As stated earlier in this document under the heading ''Potential Application of the Packinghouse-Based APHIS Inspection System to Imported Citrus,'' our analysis of the risk associated with the importation of citrus fruit from other countries where citrus canker exists under conditions similar to those in this final rule would be conducted separately from the analysis we conducted for the proposal and this final rule.

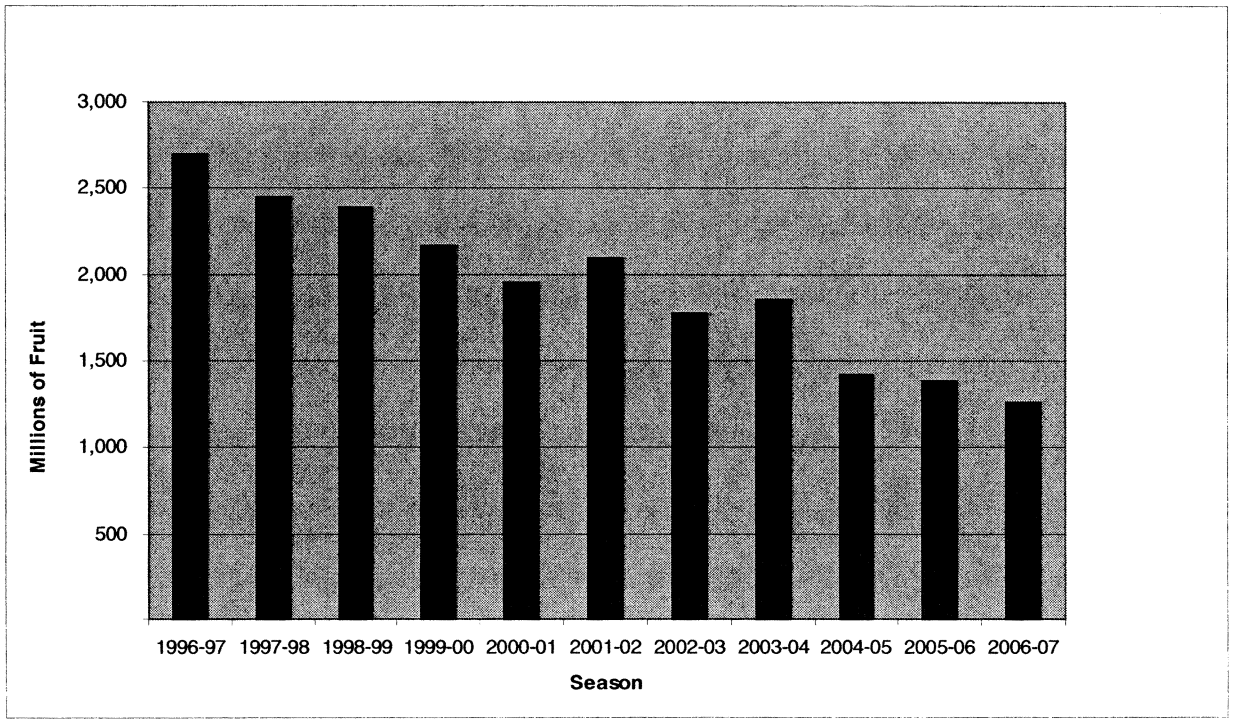
In Section 9.3.3.1 of Appendix 1, we determined probability distributions for the number of 4/5-bushel cartons shipped per growing season for each commercial citrus-producing State destination and variety of fruit. To determine the probability distributions, we used the minimum, average, and maximum values of the last 4 years (2003 through 2006) of historical data on citrus fruit shipping from Florida to other commercial citrus-producing States.

One commenter stated that the last 4 seasons of data have been strongly affected by both natural events (damage caused by hurricanes, tree destruction in an attempt to eradicate the canker outbreak) and imposed movement restrictions (due to the canker outbreak). The commenter noted that over the 10 years preceding the 2003 through 2006 data, the average domestic shipping quantity was 1.6 times higher than it was during those years. The commenter stated that the uncertainty in the expected average number of fruit that will be shipped from Florida is therefore considerably higher than would be expected from examination of just the last four seasons, unless APHIS considers that the decline in numbers is a permanent feature of the Florida industry and the last four seasons are typical.

The amount of citrus moved interstate has declined steadily since the 1996–97

season, with a larger decline in 2004–05, when fruit production was affected by hurricanes. (See figure 1.)

Figure 1.—Amount of fruit moved interstate from Florida by year, 1996-97 through 2006-07 seasons



The trends and changes occurring in the Florida citrus industry suggest that the last four seasons are typical. The 2006 Commercial Citrus Inventory for Florida (USDA–NASS 2007) states the following about the 2-year trend for Florida citrus fruit production: ''Florida's citrus acreage peaked again at 857,687 in 1996 but has been declining ever since. The 2006 total is 621,373, down 17.0 percent in a 2-year period noted for hurricanes, diseases, and urban development. The net change, a loss of 127,182 acres, is the greatest in any non-freeze period and 2nd overall. The Indian River District bore one-third of this loss. Removals out-numbered new plantings by a ratio of more than 5:1. The 23,623 acres of new plantings are the least recorded in any two-year period since 1970–71.'' The last two sentences are especially germane to this discussion, as any rebound in Florida fresh citrus production would depend on new plantings. The Commercial Citrus Inventory also states that acreage decreases were reported for all 30 counties included in the survey, and that ''only 197,027 acres (28.2 percent) remain from the 697,929 reported in the 1988 census.'' This evidence indicates a continued trend toward a decline in Florida citrus production. Therefore, we are making no changes in response to this comment. However, as shipping data for the 2006–07 season are now available, we use those data in Appendix 1 of the RMA that accompanies this final rule.

In Section 9.3.3.2 of Appendix 1 of the RMA, we presented a determination of the number of fruit shipped per 4/5-bushel carton. We used USDA-National Agricultural Statistics Service (NASS) forecasts of fruit sizes to determine percentage distributions for the number of fruit that would be contained in each 4/5-bushel carton, and then used the minimum, mean, and maximum from each of these distributions as parameters in a Pert distribution to define the number of fruit of each variety per 4/5-bushel carton.

The commenter made several comments about this technique, stating that:

- The USDA–NASS forecasts of fruit sizes are properly represented by a discrete, rather than a continuous, distribution;
- No basis was given for the use of Pert distributions to account for the uncertainties in annual shipments;
- The Pert distributions generated have mean values that differ from the mean values of the data, because the mean values of the data were improperly used as the modes for the Pert distributions;
- The actual use of Pert distributions, which is accomplished by fitting the discrete data to a Pert distribution and then finding the mean and standard deviation of the Pert distribution, is inefficient, not well defined, and has an unknown error rate; and
- The Florida Department of Citrus has data on the actual average numbers of fruit per 4/5-bushel carton, which we should have used.

The commenter stated that these flaws had an impact on a later section of the analysis as well, Section 9.3.4, in which our evaluation of the uncertainty associated with the number of fruit that will move interstate from Florida relies on the uncertainty in the Pert distributions that the commenter stated were incorrectly employed.

We agree that the analysis would have been improved by the use of the actual average numbers of fruit per 4/5-bushel carton. To improve the model in Appendix 1 for this final rule, we have obtained from the Florida Department of

Citrus the total number of 4/5-bushel cartons of fruit for each type and size of fruit that was shipped to commercial citrus-producing States and the average number of fruit per bushel for each fruit size. Our use of these data makes using the USDA–NASS fruit size forecasts and the resulting Pert distributions unnecessary, thus addressing the commenter's concerns.

For some varieties, using real data increases the number of fruit moved interstate; for other varieties, using real data decreases that number. A summary is provided in Table 1.

TABLE 1.—Q1: ANNUAL AMOUNT OF FLORIDA CITRUS BY VARIETY SHIPPED TO COMMERCIAL CITRUS-PRODUCING STATES

Variety	June 2007 approach	Current approach	Percentage change
Grapefruit:			
5th percentile	4.523,165	3,137,949	−31
Mean	6,169,582	5,386,794	−13
95th percentile	7,893,953	7,637,299	−3
Oranges:			
5th percentile	20,948,908	13,525,400	−35
Mean	25,081,498	19,351,870	−23
95th percentile	29,425,176	25,158,470	−15
Temples:			
5th percentile	91,786	103,295	13
Mean	242,332	438,078	81
95th percentile	392,884	773,018	97
Tangelos:			
5th percentile	241,718	395,323	64
Mean	406,334	804,408	98
95th percentile	575,434	1,210,151	110
Honey tangerines:			
5th percentile	78,052,912	58,535,060	−25
Mean	88,549,976	68,711,030	−22
95th percentile	99,601,208	78,917,320	−21
Other tangerines:			
5th percentile	43,050,856	34,651,600	−20
Mean	47,975,284	42,753,630	−11
95th percentile	52,948,348	50,701,440	−4

Taken together, these changes do not result in significant changes in the outputs of the model.

In Section 9.3.3.3 of Appendix 1 to the RMA, we estimated the true prevalence of symptomatic fruit in lots that are inspected, found to be free of visible canker lesions, and approved to enter interstate commerce. The true prevalence was based on the apparent prevalence (papparent), which was adjusted to account for inspection sensitivity. We used the beta distribution to estimate the apparent prevalence assuming a sample size of n fruit that are examined by inspectors. Since we are estimating the true prevalence in the lots of fruit that have been inspected and found to be free of visible canker lesions, x = 0, which means that the equation for the beta distribution we used was:

$$p_{apparent} = \text{Beta}(x+1, n-x+1) = \text{Beta}(1, n+1)$$

One commenter stated that such an estimate applies only to an isolated single lot, with no further information available, and does not apply to the system we proposed, in which many lots would be evaluated. The commenter stated that what is required is the average over many lots, where lots are either accepted or rejected, and takes no account of the known fact of infected fruit being present.

The commenter suggested considering the issue in the following way: Suppose that the fruit entering the inspection process is infected at an incidence rate r, and this rate is the same for all fruit lots inspected. The inspection of n fruit will then fail to detect any infected fruit with probability $(1-r)^n$, and detect at least one infected fruit with probability $1-(1-r)^n$. The lot rejection rate for such fruit will thus be $1-(1-r)^n$, independent of the size of the lot. Accepted lots will be passed to market (still with infection rate r), and rejected lots will be dealt with in some other way. The commenter stated that this meant that any infection rate whatever can occur in the accepted lots; the controlling factor is likely to be the economically acceptable rejection rate. The commenter also raised issues related to the disposition of lots that are not approved to enter interstate commerce.

The approach suggested by the commenter provides results that are equivalent to the procedure that we used. Under the assumption used by the commenter, the Beta distribution method we used indicates that while any prevalence can theoretically occur in accepted lots, 97 percent of lots approved for shipment would have a true prevalence of fruit with visible canker lesions of less than 0.004 (0.4 percent). The method presented by the commenter indicates that a lot with a true prevalence of fruit with visible canker lesions of 0.004 has a 97 percent probability of being rejected.

We do not consider the prevalence of fruit with visible canker lesions in rejected lots because those fruit are not approved for shipment outside the quarantined area; this final rule explicitly prohibits reconditioning and resubmitting fruit for inspection (see the discussion under the heading ''Reconditioning'' later in this document). Furthermore, it is not necessary to know the prevalence of symptomatic fruit produced in the quarantined area in order for APHIS inspection to ensure that fruit shipped outside the quarantined area has a high probability of containing a low prevalence of symptomatic fruit. If the prevalence were to increase (or decrease), APHIS inspection would result in a higher (or lower) rate of lot rejection.

The commenter stated that the analysis was flawed because it did not address fruit contaminated with surface bacteria, fruit with wounds that could be infected with citrus canker, and fruit with lesions smaller than 1 mm.

For the reasons we discussed earlier in this document under the headings ''Treatments and Surface Contamination With *Xac*'' and ''Inspection and Potential for Mature Fruit Without Visible Lesions to Serve as Pathway for Infection,'' we have determined that these fruit are not likely to be an epidemiologically significant pathway for the introduction or spread of citrus canker; in the case of wounded fruit or fruit with lesions smaller than 1 mm, we have also determined that such fruit are unlikely to occur in real-world conditions. Therefore, we do not consider them in the model in Appendix 1 to the RMA that accompanies this final rule.

In Section 9.3.3.4 of Appendix 1 to the RMA, we used a model to determine the proportion of fruit with visible canker lesions shipped to citrus-growing areas within commercial citrus-growing States, based on the amount of citrus-bearing acreage (including acreage for backyard trees) in each citrus-producing county, the human population in each citrus-producing county and commercial citrus-producing State, and the area of each citrus-producing county.

The commenter stated that we had only considered in our analysis those counties for which the production acreage is reported in the NASS statistics, and that those counties or parishes with commercial production that are listed in the NASS statistics, but for which production acreage is not reported to prevent inferences about individual farms, should have been included in the model.

We agree with the commenter. While acreage is not available for these counties, NASS does report the number of farms in the counties. We have multiplied the number of farms by the mean farm size in the State in each of the counties in which farms were reported to estimate the citrus-producing acreage within each of those counties. We then added that acreage to the model. This results in an approximately 10 percent increase in the total citrus-producing acreage included in the model.

We attempted to model backyard citrus acreage in order to determine what proportion of fruit is consumed in reasonably close proximity to *Xac* host trees outside of commercial citrus production areas. Having estimated the backyard citrus acreage, we added it to commercial citrus production acreage data in order to determine the total citrus-bearing acreage in the county. We then used the proportion of citrus-bearing acreage in a county to the total acreage in a county to estimate how much of the citrus that is moved to a county is consumed in the citrus-bearing acreage.

The commenter stated that, rather than using acreage to determine how much citrus is consumed in reasonably close proximity to *Xac* host trees, we should use population. The commenter stated that consumption of citrus is definitely not uniform over the area of the county, but rather is concentrated where the population is. The commenter stated that the approach of prorating consumption by area fails entirely to account for the proximity of a large fraction of the population to citrus plant material (including backyard trees). The commenter suggested using data from the RMA and data on average household size for owner-occupied houses to estimate the fraction of the population living in owner-occupied houses with backyard citrus trees within counties containing commercial citrus groves.

The model used in the RMA makes a simplifying assumption that fruit consumption occurs randomly throughout the area of each county in which citrus is produced. Admittedly, this is an imperfect estimate. However, the alternate simplifying assumptions presented by the commenter—that all fruit consumed by residents of households where citrus trees are present is consumed in residential dooryards—would result in a great overestimate of the proportion of citrus consumed in reasonably close proximity to *Xac* host trees. Such an assumption would imply that residents of households in citrus-producing counties do not consume fruit indoors (at work, at school, in restaurants, or inside their homes), and that they do not discard the peel of the consumed fruit in a trash can. For example, the commenter's assumption results in an estimate that 13.6 percent of fruit consumed in Arizona would be consumed and disposed in reasonably close proximity to *Xac* host trees.

The commenter's suggested methodology thus assumes the maximum possible exposure. The Presidential/Congressional Commission on Risk Assessment and Risk Management observed that the use of unrealistic maximum exposure scenarios impairs the scientific credibility of risk assessment (CRARM 1997b).

We are making no changes to the model in Appendix 1 of the RMA in response to this comment. We believe the assumptions we used are reasonable, if imperfect. However, it is important to note that the model was used to evaluate Option 2, which would have provided for unlimited distribution of fruit from the quarantined are, subject to treatment and APHIS inspection. If we were able to determine that the assumption we used to determine how much fruit is consumed in reasonably close proximity to *Xac* host trees resulted in an underestimate, the conclusions drawn from the model would not change: Some fruit with visible canker lesions would be consumed in reasonably close proximity to *Xac* host trees.

With the modifications described here, the model in Appendix 1 of the RMA that accompanies this final rule has determined, with 95 percent confidence, that the total number of citrus fruit shipped from Florida to 5 citrus-producing States (Arizona, California, Hawaii, Louisiana and Texas) over a single shipping season would be 152,358,900 or less if unlimited distribution is permitted. The model determined, with 95 percent confidence, that the number of fruit with visible *Xac* lesions reaching those 5 States in a single shipping season would be 514,229 or less at the 1,000 fruit inspectional level. The model further determined with 95 percent confidence that the number of fruit with visible *Xac* lesions reaching citrus-producing areas within those States in a single shipping season would be 1,747 or less at the 1,000 fruit inspectional level.

As the original model did, the revised model indicates that, under unlimited distribution, fruit with visible canker lesions would be moved interstate from Florida into citrus-producing areas within commercial citrus-producing States. Given that the evidence is not currently sufficient to support a determination that fresh citrus fruit produced in a *Xac*-infested grove cannot serve as a pathway for the introduction of *Xac* into new areas, the model in Appendix 1 to the RMA continues to support our selection of Option 4.

Comments on the Proposed Regulatory Provisions and Other Comments

Program Monitoring and Review

Four commenters requested that APHIS put in place some type of program review if the provisions of the proposed rule were implemented. Three requested that the program allowing the interstate movement of fruit from a quarantined area under the conditions described in the proposal be a pilot program that would last for 2 years, after which a comprehensive performance review could be conducted to determine whether to extend the program. One commenter requested that a program

review be conducted after each of the first two shipping seasons under the program.

APHIS recognizes the value of periodic program reviews to assess performance and effectiveness. As discussed earlier, although the safeguards we proposed will be highly effective at preventing the interstate spread of citrus canker, we are planning monitoring and disease surveillance activities to ensure that the program is indeed effective. If we determine that part or all of the program is not meeting our expectations, we have the option to amend the regulations accordingly. Given this, we do not agree that it is necessary to limit the amount of time the program will be in place through the regulations.

One commenter recommended that APHIS provide funding for additional surveys for citrus canker in commercial citrus-producing States to provide those States with evidence allowing them to declare freedom from citrus canker and to quickly detect the disease if it spreads. The commenter stated that, in the event that citrus canker spreads to other States, there will be a need for similar regulations to protect those States where the disease is not present.

We are providing funding for citrus canker surveys in susceptible States. We have also worked with commercial citrus-producing States to develop emergency response guidelines should citrus canker be found in those States, and we will continue to review and refine those guidelines to ensure that they will be effective in the event of a detection.

The regulations presently in place provide standards and requirements sufficient to prevent the spread of citrus canker from any area in the United States that might be quarantined for citrus canker, not just for the State of Florida.

One commenter stated that, before implementing the packinghouse-centered approach for regulating fruit described in the proposed rule, APHIS should propose and seek review for the approach through the North American Plant Protection Organization (NAPPO) and the International Plant Protection Convention (IPPC).

NAPPO facilitates cooperation and the development of standards among the national plant protection organizations of Canada, the United States, and Mexico, and the IPPC performs a similar function for the wider international community. Neither body has the authority to set regulatory policy for the United States. We conducted our risk analyses and developed the proposed rule on the basis of the available science and the conditions prevailing in areas quarantined for citrus canker within the United States.

Reconditioning

In the proposed rule, we asked for comments on reconditioning (i.e., treating and culling fruit again after its initial treatment and culling). The proposed regulations left open the issue of allowing a lot of fruit that was initially found to be ineligible for interstate movement to be reconditioned and resubmitted for inspection. Because we had not thoroughly examined all operational aspects of the reconditioning of fruit, we invited comments on this topic.

We received five comments on the issue, all of which supported allowing the reconditioning of fruit. None of the commenters provided guidance on any specific circumstances in which reconditioning should be allowed.

After careful consideration of the issues involved in reconditioning, we have decided not to provide for reconditioning of rejected fruit in this final rule. One of the purposes of the APHIS inspection requirement is to give growers and commercial packinghouses an incentive to supply fruit free of visible canker lesions for interstate movement. If we allow a lot of fruit that has been rejected to be reconditioned and resubmitted for inspection, the incentive to provide fruit free of visible canker lesions substantially diminishes. Reconditioning could also provide the packinghouse with a greater incentive to ''take its chances'' in submitting a lot of fruit that may contain visible canker lesions for inspection. Therefore, allowing reconditioning could weaken the protection provided by the APHIS inspection. Additionally, if fruit undergo surface disinfectant treatment multiple times, residues of the disinfectant may exceed EPA tolerances; it would be difficult to control how many times fruit came into contact with surface disinfectants if we allowed reconditioning. For these reasons, we are not allowing reconditioning in this final rule.

Definition of Lot

We proposed to define the term *lot* as ''The inspectional unit for fruit composed of a single variety of fruit that has passed through the entire packing process in a single continuous run not to exceed a single workday (i.e., a run started one day and completed the next is considered two lots).''

One commenter asked that the rule allow commercial packinghouses flexibility and discretion in working with APHIS to define specific lot and sample sizes and define the inspection process, as different operational issues exist in each packinghouse.

We appreciate this commenter's concern. The compliance agreement under which a commercial packinghouse must operate in order to be eligible to pack fruit for interstate movement under this final rule will provide a great deal of flexibility in defining lot size and meeting the inspection requirements.

One commenter asked whether the definition would mean that fruit from several growers will be considered one lot by APHIS if the fruit is of the same variety and packed on the same day. The commenter also asked whether the definition would mean that, if symptomatic fruit is found packed in a lot, then fruit from all the growers for that variety packed on that day will be ineligible for interstate commerce, even if the fruit from the groves of some growers did not have detectable lesions.

Packinghouses are free to define their lots as less than the amount of each variety of fruit that is packed in 1 day if they wish. Under the compliance agreement that packinghouses will be required to have in place, packinghouses must provide notice to APHIS about the estimated sizes of the lots they are running; APHIS will not set lot sizes itself. Regardless of the size of a lot, APHIS will inspect the lot at a rate sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions.

If any symptomatic fruit are found in a lot, as the lot has been defined by the packinghouse in accordance with the definition of *lot* in § 301.75–1 and the provisions of the compliance agreement, then all fruit in that lot will be ineligible for interstate commerce, regardless of whether the lot is composed of fruit from one or from several sources. This provides an incentive for growers and packinghouses to ensure that each lot contains no fruit with detectable lesions.

One commenter stated that the proposed definition of *lot* is vague and not consistent with the definition of lot in the IPPC's Glossary of Phytosanitary Terms.[7] The commenter recommended that the definition be clarified, by variety, in the final rule.

While APHIS always considers the IPPC Glossary when determining how to

[7] See the International Glossary of Phytosanitary Terms (2007), which is International Standard for Phytosanitary Measures (ISPM) Number 5. To view this ISPM on the Internet, go to *http://www.ippc.int/IPP/En/default.jsp* and click on the ''Approved standards'' link under the ''Standards (ISPMs)'' heading.

define a term, our use of the term ''lot'' in the proposal is consistent with U.S. citrus industry practices; using another term would likely provoke unnecessary confusion. There is no phytosanitary or statistical reason to set lot sizes by variety.

We stated in the proposal that we intend to inspect fruit at a rate of inspection sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. This is equivalent to randomly sampling 1,000 fruit per lot.

One commenter stated that it is essential that APHIS establish the maximum lot size that could be run with only 1,000 fruit inspected. The commenter stated that leaving the establishment of a lot size to packinghouse discretion creates the potential for a wide variation in the number of fruit actually cleared by APHIS inspectors. The commenters stated that it is obvious that a lot size of 200,000 pieces of fruit is considerably different than one of 50,000, because the potential for infected pieces of fruit to slip through the treatment and inspection steps is four times as great in the latter case.

It may seem counterintuitive that randomly sampling the same number of fruit for a lot composed of 50,000 fruit and a lot composed of 200,000 pieces of fruit provides the same confidence of detecting fruit with visible canker lesions at the 0.38 percent prevalence level. However, as discussed in Section 9.3.3.3 of Appendix 1 to the RMA, the hypergeometric sampling algorithm (which assumes that the fruit is sampled without being returned to the lot, thus ensuring that the same piece of fruit is not inspected twice) indicates that randomly sampling 1,000 fruit is adequate to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions for any lot of 100,000 fruit or more. For lot sizes less than 100,000 fruit, randomly sampling 1,000 fruit actually gives better than 95 percent confidence of detecting the prevalence of 0.38 percent.

The reason this is true can be seen by imagining a large barrel and a small keg, both of which are filled with marbles. The barrel holds a million marbles, while the keg only holds 10,000 marbles. In both the barrel and the keg, though, 99.9 percent of the marbles are white and 0.1 percent are black. If one randomly samples the same number of marbles from both the barrel and the keg, one has the same chance of drawing a black marble from either the barrel or the keg. Even though there are 100 times more total marbles in the barrel, the proportion of white marbles to black marbles is the same in both the barrel and the keg. Similarly, we have designed the sampling procedure to detect fruit with visible canker lesions at a targeted prevalence of 0.38 percent; while we do not know the prevalence of fruit with visible canker lesions in any lot, the prevalence at which our sampling protocol will detect fruit with visible canker lesions is fixed. Thus, randomly sampling 1,000 fruit from a lot is appropriate for both lots composed of 50,000 fruit and lots composed of 200,000 fruit, because the targeted prevalence of 0.38 percent or more fruit with visible canker lesions is the same for each lot.

It should be noted that, in cases where fruit cannot be randomly sampled (for example, when fruit has already been packed in boxes for shipping), inspection of more than 1,000 pieces of fruit may be necessary in order to inspect the lot at a rate sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. We will communicate inspection requirements to packinghouses as part of the implementation of the compliance agreements.

One commenter stated that the statistical sampling procedure described in the proposed rule was not appropriate for lots packed by gift fruit packers, as such lots are very different from large-scale commercial lots.

We intend to inspect fruit at a rate of inspection sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. This is equivalent to randomly sampling 1,000 fruit per lot for most lots. However, for smaller lots, the number of fruit that must be randomly sampled to detect, with a 95 percent level of confidence, a lot of fruit containing 0.38 percent or more fruit with visible canker lesions could be less than 1,000, as discussed in Section 9.3.3.3 of Appendix 1 to the RMA. This principle may be applicable to gift fruit lots, which are sometimes smaller than 1,000 fruit. For lots larger than 1,000 fruit, the statistical principles behind determination of how many fruit must be inspected to achieve this detection level apply regardless of whether the fruit is from a gift packer or a larger packinghouse.

We are making one change to clarify the requirement for the inspection level. The proposed rule stated that we would require the number of fruit to be inspected to be the quantity that is sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. This is the level of inspection that we will be conducting as of the publication of this final rule. However, we also included provisions allowing the inspection of another quantity that gives a statistically significant confidence of detecting the disease at a level of infection to be determined by the Administrator. In the preamble to the proposed rule, we stated that ''If at some time in the future conditions warrant changing this rate of inspection, APHIS would provide for public participation in that process through the publication of a notice in the **Federal Register**.'' To make our process for changing the inspection level clear in the regulations, this final rule adds a footnote to the regulations that includes the information regarding the other sampling level and the information that appeared in the preamble to the proposed rule.

Dooryard Fruit

We stated in the proposal that our proposed provisions would allow any Florida citrus growers, including commercial, gift fruit, and dooryard growers, to move their fruit interstate to States other than commercial citrus-producing States provided they comply with the conditions discussed in the proposed rule. Dooryard growers are typically homeowners who have citrus trees in their yards and wish to ship the fruit from those trees interstate to friends or family. The regulations in place before the publication of this final rule required fruit moved interstate to originate from a grove that had been inspected and found to be free of citrus canker and required vehicles, equipment, and other articles used in the grove to be treated upon leaving the grove. Since dooryard growers could not comply with these requirements, the interstate movement of dooryard fruit was effectively halted.

One commenter submitted comments on the regulations in place before the publication of this final rule, stating that dooryard growers should be allowed to ship fruit interstate under these conditions:

- Inspectors could certify dooryard trees as free of citrus canker upon request.
- Surface disinfectant treatment would not be required if the tree was certified as free of citrus canker.
- Dooryard fruit would be permitted to be moved only to States other than commercial citrus-producing States.
- The number of boxes a dooryard grower could ship in a season would be restricted to 20.

The regulations promulgated in this final rule do not distinguish between dooryard growers and commercial growers for the purposes of moving fruit interstate. Anyone can move fruit interstate if he or she has the fruit packed at a commercial packinghouse and treated and inspected as described in the amended regulations.

The approved disinfectants listed in the regulations in § 301.75–11(a) reduce numbers of *Xac* cells to low or undetectable levels on citrus fruit moving interstate from citrus canker quarantined areas. The APHIS inspection can detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions. These restrictions are necessary to address the risk associated with the interstate movement of fresh citrus fruit from a quarantined area. We expect that some commercial packinghouses will establish processes under which dooryard fruit can be treated and inspected to allow it to move interstate.

Two commenters objected to allowing dooryard fruit to be moved interstate from a quarantined area. One noted that the RMA considered the risk associated with commercially packed fruit, but we proposed to allow the movement of dooryard fruit under the same conditions. The other commenter stated that there is nothing in the proposed rule that provides any degree of confidence that dooryard fruit will not be shipped from Florida and that in all likelihood dooryard fruit will not be treated with an approved surface disinfectant in a packinghouse.

The RMA addressed the risks associated with commercially packed fruit; accordingly, we are only allowing the movement of dooryard fruit if it is commercially packed, treated, and inspected by APHIS. Like commercial fruit growers, dooryard fruit growers have an incentive to supply fruit that is free of visible canker lesions, as any lot of fruit that is found through inspection to contain fruit with visible canker lesions will be ineligible for interstate movement. We will conduct outreach efforts to ensure that dooryard growers are aware of the new requirements.

Gift Fruit Packers and Compliance Agreements

One commenter, a gift fruit packer, stated that the proposed regulations were written primarily for the 50 large citrus packing operations registered with the State of Florida rather than the 92 small citrus packinghouses that are also registered with the State. The commenter specifically stated that several of the provisions of the compliance agreement described in the proposal would pose difficulties for smaller packinghouses, including the requirements for:

- Notice of estimated lot size and run times;
- Need for notice when APHIS inspectors are not present on a regular basis;
- Need for notice when there are significant changes in the amount of fruit being packed;
- Provisions for holding fruit when packing is done at a time when an APHIS inspector is not present; and
- Hours of coverage for APHIS packinghouse inspections.

The commenter noted that packages of gift fruit often incorporate citrus of multiple varieties, and that random sampling of packed boxes is not an option at gift fruit packinghouses, since once the fruit is boxed, the boxes are glued and labeled for shipping.

The commenter expressed specific concerns about the sporadic nature of operations for many smaller packinghouses, which run fruit when there are orders to be filled for most of the year and then run constantly during the busy season in December. Since we proposed to require that an APHIS inspector would have to be present whenever a packinghouse was operating, the commenter was concerned that the gift fruit packinghouses might not be able to provide notice of the need for an inspector during the slow times and then might be left without the services of an inspector during busy times. Another commenter also expressed general concerns about the availability of inspectors.

We appreciate the commenter bringing these issues to our attention. It has always been our intention to design a system suitable for both large and small commercial packinghouses. We are aware of the packing patterns of the smaller packinghouses and are planning our inspection staffing accordingly. We can address all the issues raised by the commenter in the context of the compliance agreement, which will provide a great deal of flexibility in how an individual operation can fulfill this final rule's treatment and inspection requirements.

As discussed in the proposed rule, in the compliance agreement, the owner or operator of the packinghouse will agree to treat fruit to be moved interstate with one of the approved treatments according to the procedures specified in § 301.75–11, and to see that this fruit is packed only in boxes marked in accordance with the requirements in § 301.75–7(a)(6). The compliance agreement will also contain (but not to be limited to) specific provisions pertaining to:

- Access to the facility, and to necessary records and documents by APHIS inspectors;
- Means by which lots are designated and notice of estimated lot sizes and run times;
- Need for notice when APHIS inspectors are not present on a regular basis;
- Need for notice when there are significant changes in the amount of fruit being packed;
- Conditions (access to fruit, lighting, safety, etc.) that must be met in order for APHIS inspectors to carry out the required inspections;
- Provisions for handling and storage of fruit, including provisions not allowing the movement of any part of a lot from the packinghouse until APHIS inspection is complete;
- Hazard-free access to treatment areas so that APHIS inspectors can monitor the concentrations of chemicals used for fruit treatment;
- Provisions for holding fruit when packing is done at a time when an APHIS inspector is not present; and
- Hours of coverage for APHIS packinghouse inspections.

Using the compliance agreement to provide conditions for implementing the regulations will give APHIS some flexibility to accommodate packinghouse procedures. For example, in the compliance agreement, we will allow commercial packinghouses to work with APHIS to determine methods for sampling the fruit. For gift fruit packers, we would sample each lot of fruit before it is packed into boxes. Once a lot is inspected by APHIS and approved to enter interstate commerce, fruit from the lot can be combined with fruit from other lots that have been inspected and approved, in any way that is convenient for the packer; all that is required is that all the fruit so combined be from lots that have been inspected by APHIS and approved to enter interstate commerce.

Boxes or Other Containers

We proposed that, in order to be moved interstate, regulated fruit would have to be packaged in boxes or other containers that are approved by APHIS and that are used exclusively for regulated fruit to be moved interstate.

One commenter, a gift fruit packer, was concerned that the boxes used by such packers are not similar to the boxes used by large packinghouses. The commenter recommended that the issue be worked out somehow, perhaps by

exempting gift fruit from the requirement.

APHIS has the option to approve any boxes or containers. We are not aware of any boxes used by gift fruit packers that would not be approved. The use of the limited permit statement on boxes or other containers will indicate that the container has been approved by APHIS.

Limited Permits and Marking of Boxes or Other Containers

We proposed to require that the boxes or other containers in which regulated fruit is packaged for interstate movement would have to be clearly marked with the statement ''Limited Permit: USDA–APHIS–PPQ. Not for distribution in AZ, CA, HI, LA, TX, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States.'' (The regulations in place before the publication of this final rule did not include the ''Limited Permit: USDA–APHIS–PPQ'' portion of that statement.) The proposed provisions also stated that only fruit that meets all of the requirements of the section may be packed in boxes or other containers that are marked with the above statement. We proposed these additional provisions in order to help ensure that only fruit that has been handled in accordance with all of the requirements described in § 301.75–7 would be packaged in boxes or other containers bearing the limited permit statement.

One commenter stated that the use of the term ''Limited Permit'' on shipments of gift fruit would be unnecessarily legalistic in the context of gift fruit shipments, which are addressed to specific people in States other than commercial citrus-producing States. The commenter suggested that we either retain the language that had been in place at the time the proposed rule was published or allow gift fruit shipments to use language like ''Please don't take any of your fruit to citrus-producing areas in the United States, which are AZ, CA, HI, LA, TX, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.''

We appreciate the commenter's concerns and agree that the risk of gift fruit shipments being sent to a commercial citrus-producing State is likely to be extremely low. However, adding the ''Limited Permit: USDA–APHIS–PPQ'' statement to the boxes or other containers in which regulated fruit is moved interstate allows us to ensure that the statement appears only on boxes or other containers filled with fruit that is eligible for interstate movement. Therefore, we consider this statement to be an essential part of our efforts to ensure that fruit that is moved interstate meets all the requirements in the regulations.

Nine commenters did not object to the labeling change, but stated that the fact that their current inventory of boxes and other containers does not include the ''Limited Permit: USDA–APHIS–PPQ'' statement would pose a problem for them in complying with the new regulations. One of the commenters, a representative of Florida commercial packinghouses, stated that the current inventory of boxes and other containers with the old markings is worth $2 to $2.5 million. These commenters requested that we allow them to use up their current inventory of containers while box and container manufacturers retool their equipment to produce containers with the new statement.

We appreciate the concerns of these commenters as well. We note that this final rule requires only that the boxes or other containers approved by APHIS be marked with the statement, not that the statement be printed directly on the boxes or other containers; if commercial packinghouses have inventories of boxes or other containers without the ''Limited Permit: USDA–APHIS–PPQ'' statement, they can add that statement through means such as a sticker or stamp, as long as the statement is clearly marked.

However, it is not practical to modify bags of fruit in this manner, as the distribution statement printed on bags is often small or attached to the bag, and the limited permit statement often cannot be added to it. For this reason, we are temporarily allowing fruit to be packed for interstate movement in bags if those bags are clearly marked with the distribution statement and if those bags are then packed in a box that is marked with both the limited permit statement and the distribution statement. Fruit will only be allowed to be packed in bags that are marked with the distribution statement if that fruit is eligible for interstate movement. Because the bags must be packed in boxes that are marked with both the limited permit and the distribution statements, and because bagged fruit is not unloaded from the boxes in which it is shipped until it reaches the point of sale, we believe that this requirement will provide the same level of protection against illegal movement of fruit from the quarantined area as the requirement in the proposed rule, while allowing some flexibility for regulated parties.

As the commenters requested, this exemption is temporary; it will expire on August 1, 2008. After that date, all fruit intended for interstate movement will be required to be packed in boxes or other containers that are clearly marked with both the limited permit and distribution statements.

In this final rule, we are also providing that fruit that is not eligible for a limited permit may not be packed in boxes that are marked with only the distribution statement. This means that either fruit are eligible for a limited permit, in which case they must be packed in boxes that are marked with the limited permit and distribution statements, or ineligible, in which case neither of these statements may appear on the boxes. Fruit that is not eligible for a limited permit and is moved for intrastate sale or for export can be packed in the same boxes or other containers, including bags, as fruit that is eligible for interstate movement, as long as the limited permit and distribution statements are removed or obscured (through means such as opaque ink or a sticker) before the fruit is shipped.

As mentioned earlier in this document under the heading ''Pest Risk Assessment and Risk Management Analysis,'' this final rule also requires the limited permit and distribution statements to be printed on any shipping documents accompanying the fruit.

Movement of Regulated Fruit Through Commercial Citrus-Producing States

The regulations do not currently provide for the movement of regulated fruit through commercial citrus-producing States for ultimate shipment to other States (i.e., transshipments). We did not propose to provide for such movement in the proposed rule.

One commenter requested that the final rule provide for such movement. The commenter stated that, while the concerns of commercial citrus-producing States should be addressed through safeguards, the commenter believed allowing transshipments with suitable safeguards is consistent with the National Plant Board's Principles of Plant Quarantine. Another commenter stated that the proposal and RMA did not address transshipments via consumer modes.

We did not consider the risk associated with transshipment in the proposed rule. We would need to determine the risk associated with transshipment and how it could be mitigated before adding provisions for transshipment to the regulations. Therefore, it is not appropriate to provide for transshipment in this final rule. We plan to examine the risks associated with transshipment and, if our examination indicates that transshipment can be accomplished

safely under certain conditions, propose to provide for it in a future rulemaking.

Kumquats With Foliage

The regulations require regulated fruit moved interstate from a quarantined area to be free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the fruit. We did not propose to change this requirement.

One commenter requested that the final rule allow the interstate movement of kumquat fruit with decorative foliage to States other than commercial citrus-producing States under a limited permit and with product inspection. The commenter stated that such movement would pose no appreciable risk, as this foliage is resistant to citrus canker and not used for propagation.

Foliage is subject to infection by citrus canker, and thus the risk posed by foliage would need to be evaluated before we could determine whether to allow its movement from the quarantined area. We did not address the risk posed by citrus foliage in any of the documentation accompanying this proposed rule. Therefore, it would be inappropriate to provide for the movement of citrus foliage in this final rule.

In response to the comment, we plan to examine the risks associated with the interstate movement of citrus foliage from quarantined areas. If we decide that the movement of citrus foliage can be accomplished safely under certain conditions, we would propose to provide for it in a future rulemaking.

Citrus Greening

One commenter stated that we should not put in place any rule allowing the interstate movement of fruit from Florida until we have a program in place to address the risk posed by citrus greening.

Restrictions on the movement of certain articles due to the presence of citrus greening have been put in place under separate Federal orders; the initial order was issued on September 16, 2005, and was updated on May 3, 2006. We further updated our restrictions relating to citrus greening through a Federal order issued on November 2, 2007, to expand the areas under quarantine due to the presence of citrus greening and the areas under quarantine due to the presence of the Asian citrus psyllid, a vector for the spread of citrus greening.

We have received reports of preliminary scientific evidence indicating that, when seedlings are generated from seed that is taken from plants infected with citrus greening, a small percentage of those seedlings are themselves infected with citrus greening. In response to this evidence, we have also amended the Federal order to prohibit the movement of seed for planting from areas quarantined for citrus greening.

We are currently evaluating the preliminary evidence to determine whether seed contained in fruit may serve as a pathway for the transmission of citrus greening disease, and, if so, what restrictions may be appropriate for the movement of fruit from areas quarantined for citrus greening. Any regulatory action we may take in response to this evidence would be taken separately from this rulemaking, which addresses the risk posed by the interstate movement of citrus fruit from areas quarantined for citrus canker.

Miscellaneous Change

The regulations in § 301.75–7(a)(5) have required that all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in a grove in which regulated fruit are produced for interstate movement must be treated in accordance with § 301.75–11(d) upon leaving the grove. This paragraph has also provided that all personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75–11(c) upon leaving the grove. We did not propose to change these requirements in the proposal. However, these requirements are inappropriate for the packinghouse-centered approach that we are adopting in this final rule. Accordingly, this final rule removes paragraph (a)(5) from § 301.75–7. It should be noted that growers will still have an incentive to perform such treatments, as they would help ensure that fruit produced in the grove remains free of visible canker lesions and thus eligible for interstate movement.

Comments on the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis

In accordance with the requirements of Executive Order 12866 and the Regulatory Flexibility Act, we prepared a preliminary regulatory impact analysis and initial regulatory flexibility act analysis for the proposed rule.

Two commenters stated that this analysis was incomplete as it did not analyze the potential effects of the introduction of citrus canker into commercial citrus-producing States other than Florida. One commenter stated that costs involved with copper sprays, isolation fencing, and spraying for disinfection could take away the current narrow margins that citrus producers enjoy, and that monitoring and surveying utilizing very high-cost labor would be very expensive. One commenter stated that the current canker-free status of California gives that State an advantage in the fresh citrus marketplace for exports.

We do not expect that the conditions in this final rule will result in the introduction of citrus canker into other commercial citrus-producing States, as the final rule retains the prohibition of the shipment of regulated fruit from a quarantined area to other commercial citrus-producing States. For that reason, we have not analyzed the possible effects of a citrus canker introduction on California citrus, including on California citrus producers' ability to export their fruit.

The use of copper sprays is already an industry practice to control other pests of citrus fruit. Further, copper sprays, isolation fences, and spraying for disinfection, while not required by APHIS, are considered to be best industry practices that help to prevent infestation by other pests. Incorporating best management practices into production practices benefits both the individual producer and the industry as a whole.

Grove surveys should be conducted regardless of the citrus canker status of any grove because early detection of any disease (such as citrus canker, citrus greening, citrus variegated chlorosis, and other diseases) is key to successful eradication of the disease.

One commenter, from Florida, estimated that the spread of canker has resulted in an additional 20 percent of Florida's total fresh citrus groves being declared ineligible to ship fruit interstate under the regulations that were in place before the publication of this final rule. That 20 percent, the commenter stated, represents approximately 8 million 4/5-bushel cartons or an approximately $80 million potential business opportunity under the proposal.

Another commenter cited this figure and compared it to what the commenter stated was the billion-dollar California fresh citrus industry, indicating that the latter should not be risked for the benefit of the former. This commenter also noted that we characterized as small the changes to the supply of Florida fresh citrus in States other than commercial citrus-producing States resulting from additional shipments that would be newly eligible to move interstate under the proposed rule. The commenter asked why the rule was being rushed into place given the precedent the rule sets and the fact that

stakeholders would not be able to review the peer review comments before the publication of the final rule.

While the change from grove inspections to APHIS packinghouse inspections of finished fruit will allow Florida growers to maintain the quantity of fresh citrus that is eligible for interstate movement, and may result in an increase in that quantity, we do not expect that interstate shipments of fresh citrus will increase by a proportion equivalent to the potential production for the fresh market from groves previously prohibited from shipping interstate due to citrus canker. Rather, APHIS expects the quantities of fresh citrus shipped interstate from Florida to reflect historic demand for Florida fresh citrus. Over the last decade, the proportions of Florida fresh citrus shipped within Florida, to other States, and internationally have remained fairly constant. Based on historical data from 1997–98 to 2006–07, an average of 10 percent of Florida's commercially packed fresh citrus was shipped intrastate (within Florida) each season, 52 percent was shipped to other States each season, and 39 percent was exported to other countries each season.

Based on the commenter's estimation of an additional 20 percent of Florida's fresh citrus groves regaining interstate shipment eligibility under this final rule, and given historic distribution patterns, we project as an upper bound that the shipment of fresh citrus to States other than commercial citrus-producing States is likely to be closer to 4.3 million 4/5-bushel cartons per season.

Additionally, groves that have been ineligible to produce fruit for interstate movement under the regulations in place before the publication of this final rule have been ineligible due to the presence of citrus canker. It is reasonable to assume that some proportion of the fruit produced in those groves will have visible canker lesions and thus be ineligible for interstate movement, further lowering the potential increase in interstate shipments. Florida fresh citrus shipments are also still subject to the market demand for fresh citrus in States other than commercial citrus-producing States.

The commenter also suggests that the potential increase in revenues could be $80 million. However, the $80 million figure assumes that fruit produced from these same groves during past seasons were considered to be unmarketable. Some of that fruit would have been diverted to the processing sector or shipped both intrastate and internationally. The increase in revenue would have to take the revenue gained by these means into account.

With regard to the second commenter's point, the comparison given is between the incremental benefit to the Florida fresh citrus industry and the total value of the California fresh citrus industry. The commenter did not quantify what costs the commenter expected the California fresh citrus industry to incur as a result of the proposed rule, which is the salient point. We do not expect the regulations promulgated in this final rule to allow the spread of citrus canker to California, and thus we expect the final rule's effect on the California fresh citrus industry to be small as well.

In addition, while the benefits to Florida growers and packers are expected to be small in the short term, the RMA indicates that it will be very hard to certify citrus groves as canker-free in Florida in the future. In the long run, promulgating this rule may be expected to provide additional benefits over the existing regulations, while continuing to prevent the interstate spread of citrus canker.

One commenter, noting that we stated that currently underutilized packing equipment may be utilized for dooryard fruit under the proposed rule, stated that no data are given regarding how much idle capacity exists.

As the volume of fruit moved interstate has declined, approximately 21 citrus packinghouses have shut down in Florida since the 2001–02 season; we do not have data on how many of them could still be used for packing citrus fruit. Our reference to underutilized packing equipment refers mainly to smaller operations, such as gift packers, which are better suited to treating and packing small quantities of citrus. Growers of dooryard fruit who wish to ship their fruit interstate are required to have this citrus treated and inspected under the same provisions required by commercial citrus producers. As such, these growers will turn to facilities equipped to comply with the regulations, such as gift packers. While the cost of shipping citrus under these provisions could be substantial, evidence indicates that dooryard shipments are made purely for the intrinsic value of sharing the fruit with family and friends. As noted earlier in this document, the interstate movement of dooryard citrus from a quarantined area was effectively prohibited under the regulations in place before the publication of this final rule.

Environmental Assessment

We prepared an environmental assessment (EA) documenting the proposed rule's potential effects on the human environment.

One commenter stated that the EA should examine the potential environmental impacts of the introduction of citrus canker into another commercial citrus-producing State, should APHIS be incorrect in its assessment of the potential for canker to be established in citrus-producing States outside of Florida under the proposed regulations.

Because this final rule prohibits the interstate movement of regulated fruit to commercial citrus-producing States, we do not expect the final rule to result in the introduction or establishment of citrus canker in those States. Therefore, we did not assess the environmental impact that would be associated with such an introduction.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Florida citrus fruit is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are amending the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. We are eliminating the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead requiring that every lot of fruit produced in the quarantined area be inspected by APHIS at a packinghouse operating under a compliance agreement and found to be free of visible symptoms of citrus canker. We are retaining the requirement that the fruit be treated with a surface disinfectant and the prohibition on the movement of fruit

from a quarantined area into commercial citrus-producing States. These changes will relieve some restrictions on the interstate movement of fresh citrus fruit from Florida while maintaining conditions that will help prevent the artificial spread of citrus canker.

For this final rule, we have prepared an economic analysis. The analysis, which is summarized below, addresses economic impacts of the proposed new protocol for treatment and inspection of citrus fruit intended for the fresh market. Expected benefits and costs are examined in accordance with Executive Order 12866. Possible impacts on small entities are considered in accordance with the Regulatory Flexibility Act. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 at the beginning of this final rule).

Section 301.75–5 of the regulations lists the designated commercial citrus-producing States as American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands. Of these 11 commercial citrus-producing States, only 6 States received fresh citrus interstate shipments from Florida during the 2004–05 and 2005–06 seasons: Arizona, California, Louisiana, Puerto Rico, the U.S. Virgin Islands, and Texas. As of August 1, 2006, these 6 States no longer receive fresh citrus shipments from Florida. In this analysis, U.S. commercial citrus-producing States other than Florida are referred to as other commercial citrus-producing States.

The overall objective of this final rule is to continue to prevent the spread of citrus canker to other commercial citrus-producing States, while relieving restrictions on Florida citrus producers, namely, the requirement for interstate movement of citrus fruit that every tree in the grove in which the fruit is grown be inspected, and that the grove be found to be free of citrus canker not more than 30 days before the beginning of harvest. Under the final rule, the citrus fruit will be treated and inspected at the packinghouse prior to interstate movement. Based on the qualitative findings of this economic analysis, we expect the net economic impact of the final rule to be positive.

While citrus produced in Florida is primarily intended for the processed market, citrus produced in California, Texas, Arizona, and Louisiana is largely intended for the fresh market. Approximately 89 percent of Florida citrus production is produced for the juice market, which is not regulated by the final rule. In contrast, fresh utilization in California accounts for 73 percent of total citrus production. In Texas and Arizona, fresh utilization accounts for approximately 66 and 58 percent of total production, respectively. It is assumed that nearly all Louisiana citrus production is primarily utilized on the fresh market. This final rule continues to prohibit the movement of fresh citrus fruit from Florida to other commercial citrus-producing States. The measures in this final rule are designed to ensure protection of the citrus industries in these States from the introduction of citrus canker and the increased production costs and loss of fresh fruit markets that would result if citrus canker were to be introduced in those States.

Overview of the U.S. Citrus Industry

The total value of U.S. citrus production increased by 16 percent during the 2005–06 season over the previous season from $2.3 billion to nearly $2.7 billion. These gains in value reflect increased values for processed utilization for most varieties of citrus in the United States with the exception of grapefruit, which declined in overall value by 4 percent.

Florida is the largest citrus producer in the United States, accounting for approximately 68 percent of U.S. production during the 2005–06 season. California produced approximately 28 percent of the citrus in the United States during the same period, and production in Texas and Arizona comprised the remaining 4 percent. The tumultuous hurricane season of 2004, which included four hurricanes that crossed Florida within a 2-month period, caused significant production losses to Florida's citrus industry and was largely to blame for the 42 percent decline of total utilized production in the United States between the 2003–04 and 2004–05 seasons. Total value of production in Florida citrus fruits showed signs of improvement during the 2005–06 season with a 30 percent increase over the previous season; the increase was largely attributable to higher on-tree prices for both processed and fresh utilization rather than an increase in production.

Evidence suggests a continued trend toward a decline in Florida citrus production. The recent 2006 Commercial Citrus Inventory for Florida reported a 17 percent decline in 2006 over the previous year with the total commercial citrus acreage in Florida at 621,373; the decline is largely attributable to hurricanes, diseases, and urban development. With removals of citrus trees outnumbering new plantings by a ratio of more than 5:1, there is little indication that production will rebound within the next few years.

The major citrus varieties produced in Florida are early-, mid-, and late-season orange varieties, red and white seedless grapefruit, early tangerines, honey tangerines, temples, and tangelos. Although approximately 89 percent of all Florida citrus is intended for the processed market, the share of production that is processed is highly dependent upon the variety. Approximately 95 percent of all Florida orange production is intended for the processing sector; whereas, nearly 68 percent of Florida tangerine production is utilized on the fresh market. During the 2005–06 season, nearly 36 percent of Florida grapefruit production was utilized on the fresh market. During the previous season, the proportion of Florida grapefruit utilized on the fresh market was approximately 58 percent, suggesting that the post-hurricane higher prices for fresh grapefruit led to a diversion of Florida grapefruit from the processing sector to the fresh market. The reduced rate for fresh market share during the 2005–06 season may suggest a return to a more normal fresh market share of about 40 percent.

The major citrus varieties produced in California are navel and Valencia oranges, grapefruit, tangerines, and lemons. Approximately 73 percent of California citrus was utilized on the fresh market during the 2005–06 season, including nearly 72 percent of California's oranges (making California the largest U.S. producer of fresh-market oranges), 88 percent of the State's grapefruit, 75 percent of its tangerines, and 72 percent of its lemons.

The citrus varieties produced in Texas during the 2005–06 season were grapefruit, Valencia oranges, and midseason oranges. Fresh production accounted for approximately 67 percent of total production. Valencia and midseason orange production was destined primarily for the fresh market, accounting for 79 percent of total production. Also, 62 percent of grapefruit production in that State was utilized on the fresh market.

Arizona produces Valencia and navel oranges, grapefruit, tangerines, and lemons. Approximately 58 percent of Arizona citrus was utilized on the fresh market during the 2005–06 season, including 52 percent of the State's orange production, 65 percent of its tangerine production, 55 percent of its lemon production, and all of its grapefruit production.

Total and domestic shipments of Florida fresh citrus demonstrated a

discernible improvement during the 2006–07 seasons with shipments increasing by 26 percent and 7 percent, respectively, over the previous season. Total and domestic shipments of Florida fresh citrus remained virtually unchanged during the 2005–06 season over the previous season, showing few signs of recovery from the dramatic decline between the 2003–04 and 2004–05 seasons, when total and domestic shipments declined by 42 percent and 29 percent, respectively. Florida total and domestic fresh citrus shipments are 30 percent and 24 percent less, respectively, than they were prior to the 2004–05 season. While fresh grapefruit continues to have the largest share of total shipments of fresh Florida citrus including exports, oranges still account for the State's largest share of domestic shipments. During the 2006–07 season, Florida domestic shipments marginally increased to most geographical U.S. regions, with the noted exception of a 4 percent decline in shipments to the western U.S. region, which was chiefly attributable to the loss of market access to other citrus-producing States.

Expected Costs and Benefits

The changes in the regulations described in this document are likely to primarily affect citrus producers and packinghouses in Florida whose operations rely on the interstate shipment of fresh citrus. The changes will also affect the way resources are allocated for citrus canker mitigation activities at both Federal and State levels.

Effects on Florida Fresh Citrus Shipments

We expect the final rule to have little economic effect on the production of fresh citrus in Florida, but the shift from inspection for citrus canker in the citrus groves, tree by tree, to the inspection of fresh citrus samples at the packinghouse will likely result in increased shipments of fresh citrus to States other than commercial citrus-producing States. As such, the marketing effects of increased quantities of fresh citrus fruit on the domestic market may include changes in fresh market prices, processed market prices, and increased competition. Under this final rule, Florida citrus is still prohibited from distribution to other commercial citrus-producing States.

APHIS expects the quantities of fresh citrus shipped interstate from Florida to reflect historic demand for Florida fresh citrus. We do not expect that interstate shipments of fresh citrus will increase by a proportion equivalent to the potential production for the fresh market from groves previously prohibited from shipping interstate due to citrus canker. Over the last decade, the proportions of Florida fresh citrus shipped within Florida, to other States, and internationally have remained fairly constant. Based on historical data from 1997–98 to 2006–07, an average of 10 percent of Florida's commercially packed fresh citrus was shipped intrastate (within Florida) each season, 52 percent was shipped to other States each season, and 39 percent was exported to other countries each season.

The average proportion of Florida fresh citrus shipments to the domestic market (intrastate and interstate) over the last decade was approximately 61 percent of total shipments. The average deviation in the proportion of fruit shipped to the domestic market was approximately 3 percent (or approximately 982,000 4/5-bushel cartons).[8] The proportion of Florida fresh citrus shipments to the domestic market over the last 5 seasons was approximately 62 percent of total shipments, with an average deviation of approximately 5 percent (or roughly 1.2 million 4/5-bushel cartons).

Citrus production in Florida has been in decline in recent years due in part to declining citrus tree inventories and harsh weather conditions. Although the total quantity of Florida fresh citrus shipped has declined in recent years, the allocation between the various markets (e.g. interstate, intrastate, and export) has remained fairly consistent despite this downward trend in production. The proportion of Florida fresh citrus shipments to the domestic market prior to the 2004 hurricane season was approximately 60 percent of total shipments, with an average deviation of approximately 2 percent (or approximately 663,000 4/5-bushel cartons each season).

The proportion of Florida fresh citrus shipments to the domestic market for the past three seasons was approximately 65 percent of total shipments, with an average deviation of approximately 4 percent (or approximately 841,000 4/5-bushel cartons each season) The increased variability in the proportion of Florida fresh citrus shipped to the domestic market over the last three seasons is reflective of an industry recovering in the wake of the 2004 and 2005 hurricane seasons. The average quantity of Florida fresh citrus shipped on the domestic market prior to 2004 was approximately 34.1 million 4/5-bushel cartons each season compared to an average of 20.8 million 4/5-bushel cartons over the last three seasons.

The Florida Citrus Packers, a nonprofit cooperative association, commented during the public comment period that the spread of citrus canker had resulted in an estimated additional 20 percent of total fresh citrus groves in Florida declared ineligible for interstate shipment under the regulations in place before this final rule because of the presence of citrus canker. The commenter did not report a baseline for this ''additional 20 percent.'' The Florida Citrus Packers further estimated that the fresh citrus fruit produced in these groves represents approximately 8 million cartons of potential business opportunity under the revised regulations. Based on the commenter's estimation of an additional 20 percent of Florida's fresh citrus groves regaining interstate shipment eligibility under this final rule, and given historic distribution patterns, we project as an upper bound that the shipment of fresh citrus to States other than commercial citrus-producing States is likely to be closer to 4.3 million 4/5-bushel cartons per season. However, based on the preceding discussion of the small variability in the proportion of fruit shipped to various markets, it is not likely that interstate shipments will increase by this projected upper bound. We also note that a portion of fruit from these groves is expected to fail to meet quality standards for the fresh market and will be diverted to other channels, including the processed market. This issue is discussed in more detail earlier in this document under the heading ''Comments on the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis.''

In addition, while any benefits to Florida growers and packers are expected to be small in the short term, the RMA indicates that it will be very hard to certify citrus groves as canker-free in Florida in the future. In the long run, this rule is expected to provide increased benefits in comparison to the regulations in place before the publication of this final rule, while continuing to prevent the interstate spread of citrus canker.

Effects on Consumers

Consumers in States other than commercial citrus-producing States will benefit from any increases in shipments of Florida fresh citrus. The increase in interstate shipments may lead to lower prices, depending on the magnitude of the change and the price elasticity of

[8] The average deviation is a measure of variability. It is computed for a series of data points by finding the absolute difference between each point and the average (mean) for the series, summing these differences, and dividing by the total number of data points.

demand. If the regulations in place before the publication of this final rule had been maintained, Florida fresh citrus shipments to the domestic market would have been expected to decline, because the number of groves eligible for certification as free of citrus canker would decline as a result of the spread of citrus canker. In the long run, under this final rule, these consumers will benefit from a sustained supply of Florida fresh citrus.

In the short run, consumers within Florida may experience increased supplies associated with rejected lots that have been diverted intrastate. Florida consumers may benefit from near-term price declines, again, depending on the quantities diverted to the fresh market within Florida and the price elasticity of demand. However, in the long run, any increase in intrastate shipments is expected to be less than would occur under the regulations that had been in place before the publication of this final rule. Under those regulations, the number of groves eligible for certification as free of citrus canker would have declined, along with the quantity of fresh citrus approved for interstate movement.

Effects on Florida Packinghouses and Citrus Growers

In terms of operational adjustments, Florida packinghouses are the segment of the citrus industry likely to be the most affected by the change in regulations since the focus of the new protocol for treatments and APHIS inspections will be shifted away from the citrus groves to the packinghouse facilities. The final rule will require citrus packinghouses that move regulated citrus fruit interstate to operate under an APHIS compliance agreement wherein the packinghouse operator agrees to meet all requirements of the regulations. The provisions in § 301.75–7 pertaining to the inspection of groves for citrus canker as a prerequisite for the interstate movement of citrus are being removed.

Citrus producers, however, will still retain the same incentives that currently exist to employ best management practices when producing citrus for the fresh market. A packinghouse charge to the grower for citrus that does not meet the quality requirements is known as an elimination charge, and is an existing industry measure for ensuring high quality, symptom-free fruit. With quality standards in place for fresh citrus, as outlined as part of the U.S. Standards in the Agricultural Marketing Service's regulations in 7 CFR part 51, growers already employ the practice of surveying for fresh citrus fruit that are not considered of fresh market quality. The high cost of inputs and production practices employed in producing citrus fruit intended for the fresh market yields a relatively low return to citrus growers if the fruit is diverted to the processed market because it is determined to be unsuitable for the fresh market. Production costs associated with citrus fruit intended for the processed market are less than costs associated with citrus fruit produced for the fresh market because the physical appearance of the fruit produced for the processed market is not important; consequently, the value of citrus on the processed market is relatively low compared to the value of citrus sold on the fresh market. In the long run, citrus growers will maintain self-surveys and best management practices as long as the costs of these practices are less than the elimination charges and the price discount that is incurred when their fruit diverted from the fresh to the processed market. Table 2 outlines the average packinghouse charges for Florida fresh citrus during the 2005–06 season.

TABLE 2.—ESTIMATED AVERAGE TOTAL PACKING CHARGES PAID BY GROWERS, AND ELIMINATION CHARGES PAID BY GROWERS FOR LOTS THAT DO NOT MEET QUALITY REQUIREMENTS, 2005–06 [a]

	Domestic grapefruit	Export grapefruit	Oranges	Temples/ tangelos	Tangerines
	$/Carton [c]				
Total packing charge [b]	$4.016	$4.395	$4.347	$4.614	$5.469
	$/Box [c]				
Drenching charge	0.181	0.189	0.181	0.184	0.188
Packinghouse elimination charges	0.545	0.553	0.548	0.548	0.552
Hauling charges for eliminations	0.505	0.534	0.515	0.531	0.534

Source: Ronald P. Muraro, University of Florida-Institute of Food and Agricultural Sciences, Citrus Research and Education Center, Lake Alfred, FL, August 2006.

[a] These packing charges are based on charges at four citrus packinghouses in the Interior production region and 13 citrus packinghouses in the Indian River production region.

[b] Total packing charge refers to the charge to the grower for packed fruit, and is based upon packinghouse operational costs. Total packing charges are discussed in detail in the report "Average Packinghouse Charges for Florida Fresh Citrus—2005–06 Season," (*http://edis.ifas.ufl.edu*).

[c] One box is equivalent to two 4/5-bushel cartons.

Focusing regulatory enforcement in the packinghouse via required treatments and inspection of fruit intended for interstate movement is expected to be a more economically efficient means of ensuring a high level of confidence that even a small percentage of infected fruit will be detected than the system in place before the publication of this final rule. Both packinghouses operating under compliance agreements with APHIS and growers seeking to minimize elimination charges and price discounts have incentives to ensure that only fruit free of visible canker lesions enter a packing facility. Packinghouse operations with fully integrated groves also seek to minimize the costs associated with fruit rejected due to low quality in general, especially since these operations have more control over production practices. (The purpose of the APHIS inspection is to ensure that fruit is free from visible canker lesions. Packinghouses are responsible for all other quality inspections.) Minimizing the charges back to the grower associated the drenching, elimination, and hauling of fruit unsuitable for the fresh market through the practice of grove surveys is commonly employed by growers as part of their operations. Tree inspections, which were previously conducted by APHIS and the Florida Department of Agriculture and

Consumer Services (FDACS), will, we believe, be conducted as self-surveys by the industry. Given the possibility of elimination charges and price discounts, growers will apply the additional resources needed to conduct these self-surveys as long as the benefits outweigh the costs.

The inspection process will be largely dependent on the physical layout of each particular packinghouse. Conditions that must be met in order for APHIS inspectors to successfully conduct the required inspections would translate into additional costs to the packinghouse. Inspections will either occur at the roll board prior to the fruit being packed or after the fruit is packed. In either case, adequate lighting will be a necessary component for the fruit inspection process. If the inspection occurs after fruit is packed, the packinghouse will be required to provide a table and personnel to repack the boxes after inspection. The APHIS inspection process will be designed with every effort to maintain the efficiency of the packinghouse operation.

If a lot is rejected due to citrus canker detection, the lot will not be approved for interstate movement. Alternative markets for this fruit are the intrastate market, some international markets, or the processed market. The grower or packinghouse will divert the fruit to the market that yields the maximum return. Assuming the fruit is diverted to the intrastate or an international market, the grower may incur repacking charges associated with fruit that was packed before the lot was rejected in boxes or other containers approved only for interstate movement. These charges will likely be in addition to drenching and elimination charges. Since the average price that growers receive on the processed market is less than prices received on the fresh market, growers will likely suffer a loss by diverting rejected lots to the processed market. Growers are more likely to maximize returns by diverting the fruit to available fresh markets, either intrastate or international, depending on demand, even though they will likely incur repacking charges into cartons approved for intrastate or international movement.

Lot size is determined by the packinghouse, and varies according to the size of the packinghouse, the number of packing lines per facility, and the varieties of fresh citrus packed. Additionally, packinghouses generally identify each lot run through the packinghouse with a lot number that can be traced back to the origin of the lot. APHIS field personnel estimate that under ideal circumstances, the inspection of 1,000 pieces of fruit will take approximately 1 hour and 23 minutes (approximately 5 seconds per fruit). If the lot takes longer than that to run, the inspection is not expected to result in a delay. However, a base inspection level of 1,000 pieces of fruit may delay a lot that would require less time than 1 hour and 23 minutes to run the line. Packing would essentially have to halt while the inspection is completed before the next lot can be run. In addition, if an inspector finds a suspect lesion on a piece of fruit and the packer does not wish to immediately divert to an alternative market (such as the intrastate or foreign market), the movement of that lot will be delayed while APHIS makes a final determination on whether the lesion is a citrus canker lesion.

The time it takes to run a lot of fruit varies by packinghouse, and is determined by numerous factors. It is reasonable to assume that an average time to run a lot of fruit is about 3 hours. On the average, then, the inspection of 1,000 pieces of fruit will not result in delays. If a packinghouse has its own groves and packs its own fruit, lot sizes are generally larger, and no delays should be expected. Packinghouses that do not pack their own fruit tend to run multiple smaller lots whose identity must be maintained to ensure proper payment to the respective growers. These packinghouses are more likely to experience delays caused by the inspection of 1,000 pieces of fruit.

The treatment of fruit with a surface disinfectant, as reflected in the drenching charges in table 1, occurs under the existing regulations and is conducted as a standard practice to extend shelf life. It also is a requirement in the FDACS/Division of Plant Industry (DPI) compliance agreement with packers. Therefore, there is no additional cost associated with the change in regulations.

The APHIS compliance agreements are not expected to present an entirely new situation for the packinghouses. Current compliance agreements with the State of Florida issued by the FDACS/DPI are required of all packinghouses that ship fresh citrus interstate. They require the packinghouses to adhere to inspection requirements prior to the movement of fresh citrus. According to section III.A of the FDACS packinghouse compliance agreement:

> Inspection of fruit for citrus canker lesions will take place during the washing/grading process, and a designated number of packed boxes will be required to be pulled, opened and made available for inspection by Federal or State regulatory officials.

(As stated earlier in this document, we intend to provide for sampling of fruit before it is packed into boxes in our compliance agreements with gift packing operations.)

Effects on Public Sector Resources

According to APHIS, 10 additional inspectors will be needed to implement the final rule at a cost of $450,000 per year. The added cost for increased inspection at the packinghouse is expected to be offset by a reduction in certain operational expenses in other program areas. For example, pre-harvest grove surveys will be reduced to only those required for phytosanitary certification to certain countries. The FDACS anticipates a reduction in field staff by 65 percent from 340 to 120 field staff members, for a cost savings of approximately $38,000 per inspector (or $8.4 million). Florida appropriates funds to the FDACS from the Citrus Inspection Trust Fund to pay the costs associated with the salary and benefits of employees of the Bureau of Citrus Inspection.[9]

The State of Florida allocated approximately $10 million in funds from the Agricultural Emergency Eradication Trust Fund to the Citrus Health Plan line item for the 2007–08 fiscal year to be utilized for grove inspections (generally pre-harvest surveys), regulatory oversight, and nursery surveys. Approximately $11.3 million in funds from the Agricultural Emergency Eradication Trust Fund were allocated to the Citrus Canker Eradication line item the previous fiscal year, thus reducing emergency eradication program activities by approximately $1.3 million and allowing for the management of other citrus diseases and pests. Trust funds may be made available upon certification by the Commissioner that an agricultural emergency exists and that funds specifically appropriated for the emergency's purpose are exhausted or insufficient to eliminate the agricultural emergency.[10]

The final rule will ensure resource savings associated with inspectors and equipment for the State of Florida of approximately $9.7 million per annum.

Concluding Statement on Benefits and Costs

Before the publication of this final rule, the regulations for the interstate movement for regulated fruit from quarantined areas placed several

[9] Title XXXV Section 601.28 of the Florida Statutes.

[10] Title XXXV Section 570.191 of the Florida Statutes.

restrictions on the interstate movement of citrus fruit from Florida, including inspections of citrus groves to ensure that they are free of citrus canker, pre-harvest inspections, treatments, and movement under limited permit.

The new regulations replace the existing protocol for the movement of citrus fruit from citrus canker quarantined areas. A packinghouse that ships fresh citrus interstate is required to operate under an APHIS compliance agreement wherein the packinghouse operator agrees to meet the requirements of the regulations. APHIS inspections of fresh citrus will occur at the packinghouse level. This final rule also specifies treatment requirements for all commercially packed fresh citrus. The required treatment, however, is already performed at the 50 largest commercial packinghouses, as well as at any smaller packinghouses that pack fruit for interstate movement under the regulations in place before the publication of this final rule. We believe packinghouses will adjust to the new regulations with little to no economic hardship in the long run. Packinghouses currently face similar regulations as required by the Florida compliance agreements for packinghouses. Although the final rule adds a definition of *commercial packinghouse* for the purposes of implementing the rule, all currently operating Florida packinghouses qualify as commercial packinghouses under this definition; APHIS thus does not anticipate that commercial citrus packinghouses will incur any costs as a result of adding this new definition.

Packinghouse charges to growers for eliminations and price discounts for fruit diverted from the fresh to the processed market are incentives to growers to ensure fruit sent to the packinghouse for packing is free of symptoms of citrus canker. Growers will self-survey groves as long as the benefits outweigh the cost of the procedure. The provisions will provide the added benefit to growers of being able to ship symptom-free fresh citrus from groves previously prohibited from interstate movement due to the presence of citrus canker in the grove.

The final rule will also provide opportunities for commercial packinghouses to treat and pack interstate shipments of dooryard plantings of citrus fruit. Such shipments will also be inspected by APHIS.

Benefits of this final rule may include the possibility of gains from a larger volume of Florida shipments to consumers in States other than commercial citrus-producing States. Producers would no longer be prohibited from sending to the packinghouses for interstate shipment fruit from citrus groves in which citrus canker has been detected. As long as a lot of citrus fruit is found to be symptom-free upon APHIS inspection, the lot will be eligible for shipment to States other than commercial citrus-producing States. Growers with citrus groves in which citrus canker has been detected will have an additional marketing option for their fruit. Consumers on the domestic market may benefit from increased market quantities and lower prices of fresh citrus if a greater market demand exists than is met by the current supply. We expect that Florida packinghouses that wish to ship interstate will continue to do so as long as the financial benefits to them of operating under these provisions exceed their costs.

Finally, the costs to the public sector associated with the final regulations are expected to be marginal in comparison to the benefits of a more efficient system for fresh citrus fruit movement.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Section 604 of the Act requires agencies to prepare and make available to the public a final regulatory flexibility analysis (FRFA) describing any changes made to the rule as a result of comments received and the steps the agency has taken to minimize any significant economic impacts on small entities. Section 604(a) of the Act specifies the content of a FRFA. In this section, we address these FRFA requirements.

Need for and Objective of the Rule

Based on our evaluation of production and processing procedures and their impact on removal of citrus canker from the fresh fruit pathway, along with our review of the operational feasibility of enforcing various mitigation measures, APHIS has concluded that the mandatory packinghouse inspection of processed fruit provides an effective safeguard to prevent the spread of citrus canker via the movement of commercial citrus fruit. Since regulations that were in place before the publication of this final rule required groves to be free of citrus canker in order for fruit to be eligible for interstate movement, the changes in this final rule are necessary in order for the packinghouse-based treatment and inspection protocol to be implemented.

Summary of Significant Issues Raised During Comment Period on the Initial Regulatory Flexibility Analysis

There were no significant issues raised in public comment on the initial regulatory flexibility analysis (IRFA) for this rulemaking. One commenter from California, however, expressed concerns that the impact of citrus canker on the production costs in other citrus-producing States would be devastating should the disease spread as a result of this rule. The commenter further defined these costs as the costs involved with copper sprays, isolation fencing, and spraying for disinfection. The commenter went on to declare that monitoring and surveying would be very expensive given the high cost of labor. The majority of citrus producers in California would be considered small entities according to the Small Business Administration (SBA) guidelines.

We have addressed this comment earlier in this document under the heading ''Comments on the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis.''

Description and Estimated Number of Small Entities Regulated

Florida's citrus packinghouses and fresh citrus producers comprise the industries that we expect to be directly affected by the final rule. The small business size standards for citrus fruit packing, as identified by the SBA based upon the North American Industry Classification System (NAICS) code 115114 (Postharvest Crop Activities), is $6.5 million or less in annual receipts. According to the County Business Patterns report for Florida published by the U.S. Census Bureau, there were 71 post-harvest operations in Florida in 2004. Although this publication reports the number of employees, the number of firms by employment size and the annual payroll for firms included in NAICS 115114, it does not report the distribution of annual sales for firms in this category. Neither is information on annual sales published in the Census of Agriculture or the Economic Census. There are at least 142 packinghouses currently registered in Florida.[11] While the classification of these establishments by sales volume is not available, it is estimated that approximately 50 of the 142 registered commercial packinghouses are large citrus packinghouses with the remainder being small establishments, many known as gift packers, in Florida. The Fresh Shippers Report, as reported

[11] Florida Department of Agriculture and Consumer Services, Division of Fruit & Vegetable Inspection. *http://www.doacs.state.fl.us/fruits.*

by the Citrus Administrative Committee, details quantities of fresh citrus shipments of the top 40 to 50 shippers of each season.[12] At least 98 percent of Florida fresh citrus shipments are packed through the top 40 to 50 packinghouses in the State.[13] During the 2005–06 citrus season, annual sales for 21 of the top 40 shippers (52.5 percent) were below the SBA size standard of $6.5 million. It is estimated that at least 85 percent of citrus packers, including small gift packers, are considered small according to the SBA size standards.

The final rule will implement a new protocol for inspections and treatments that will likely result in additional costs to packinghouses. Examples of additional costs include providing adequate lighting and space for fruit inspection and labor to repack boxes which have been unpacked during inspection. Essentially, the inspection and treatment process is an additional quality control measure. In the short run, it is likely that commercial packinghouses will increase packing charges to cover any additional costs associated with the final rule, passing some of the cost of the rule onto the growers. However, packinghouse average costs may rise with the imposition of this quality control measure due to increases in the average variable costs associated with maintaining a consistent level of output. Examples of expected increases in average variable costs include higher labor costs associated with repacking of 4/5-bushel cartons or an inspection process that slows or shuts down the packing line for any period of time. The inspection process will add one more layer to the production process. As the base level for inspection increases, so does inspection time. Therefore, as inspection sample size increases, the efficiency and productivity of the packinghouse, especially the smaller packinghouses and gift packers, could become hindered. Overall, the industry will benefit; inspection for citrus canker lesions at the packinghouse will maintain sales to interstate markets more efficiently than would be possible under the current grove inspections.

The final rule will also affect producers of fresh citrus in Florida. Most, if not all, of the Florida citrus producers that will be affected by the final rule are small, based on 2002 Census of Agriculture data and SBA guidelines for entities classified within the farm categories Orange Groves (NAICS 111310) and Citrus (except Orange) Groves (NAICS 111320). SBA classifies producers in these categories with total annual sales of not more than $750,000 as small entities. According to 2002 Census data, there were a total of 7,653 citrus farms in Florida in 2002. Of this number, approximately 94 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small entity threshold of $750,000.[14] While it is likely this final rule will result in higher packinghouse charges to the grower, costs associated with the final rule are expected to be minimal. Citrus growers previously prohibited from interstate shipment of fresh citrus due to citrus canker detection in their groves will have an additional marketing opportunity for their fruit provided the fruit meets the requirements to pass APHIS inspection.

Description and Estimate of Compliance Requirements

Florida's packinghouses that ship fresh citrus interstate would be subject to compliance agreements with APHIS, as described in section IV of the full final regulatory impact analysis.

Description of Steps Taken To Minimize Significant Economic Impacts on Small Entities

APHIS does not believe small entities will suffer significant economic losses as a result of this final rule. APHIS intends to devise a compliance agreement that is suitable for both large and small commercial packinghouses, especially with respect to the inspection process. Citrus growers will continue to have the same incentives to employ best management practices that will yield citrus fruit meeting the quality standards required at the packinghouse.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the interstate movement of citrus fruit under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[15] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0325.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to

[12] "Fresh Shippers Report: 2005–06 Season Through July 31, 2006," Citrus Administrative Committee, August 18, 2006. *http://www.citrusadministrativecommittee.org/.*

[13] Ibid.

[14] Source: SBA and *2002 Census of Agriculture.*

[15] Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0022.* The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

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List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.75–1 is amended as follows:

■ a. In the definitions for ''*certificate*'' and ''*limited permit*'', by adding the words ''stamp, form, or other'' after the words ''An official''.

■ b. By adding new definitions of ''*commercial packinghouse*'' and ''*lot*'' to read as set forth below.

§ 301.75–1 Definitions.

* * * * *

Commercial packinghouse. An establishment in which space and equipment are maintained for the primary purpose of packing citrus fruit for commercial sale. A commercial packinghouse must be registered as a packinghouse with the State in which it operates or hold a business license for treating and packing fruit.

* * * * *

Lot. The inspectional unit for fruit composed of a single variety of fruit that has passed through the entire packing process in a single continuous run not to exceed a single workday (i.e., a run started one day and completed the next is considered two lots).

* * * * *

■ 3. Section 301.75–7 is amended as follows:

■ a. Paragraphs (a)(1), (a)(2), (a)(5), and (a)(6) are revised to read as set forth below.

■ b. An OMB citation is added at the end of the section to read as set forth below.

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

(a) * * *

(1) Every lot of regulated fruit to be moved interstate must be inspected by an APHIS employee at a commercial packinghouse for symptoms of citrus canker. Any lot found to contain fruit with visible symptoms of citrus canker will be ineligible for interstate movement from the quarantined area. The number of fruit to be inspected will be the quantity that is sufficient to detect, with a 95 percent level of confidence, any lot of fruit containing 0.38 percent or more fruit with visible canker lesions.[1]

(2) The owner or operator of any commercial packinghouse that wishes to move citrus fruit interstate from the quarantined area must enter into a compliance agreement with APHIS in accordance with § 301.75–13.

* * * * *

[1] If conditions warrant changing the number of fruit to a quantity that gives a statistically significant level of confidence of detecting lots containing a different percentage, determined by the Administrator, of fruit with visible canker lesions, APHIS will provide for public participation in that process through the publication of a notice in the **Federal Register**.

(5)(i) Each lot of regulated fruit found to be eligible for interstate movement must be accompanied by a limited permit issued in accordance with § 301.75–12. Regulated fruit to be moved interstate must be packaged in boxes or other containers that are approved by APHIS and that are used exclusively for regulated fruit that is eligible for interstate movement. The boxes or other containers in which the fruit is packaged, and any shipping documents accompanying the boxes or other containers, must be clearly marked with the statement ''Limited Permit: USDA–APHIS–PPQ. Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States.'' Only fruit that meets all of the requirements of this section may be packed in boxes or other containers that are marked with this statement;

(ii) *Provided,* that until August 1, 2008, fruit that meets all the requirements of this section may be packed in bags that are clearly marked with the statement ''Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States,'' as long as the bags of fruit are packed in boxes that are marked as required by paragraph (a)(5)(i) of this section. Fruit that does not meet all the requirements of this section may not be packed in either bags or boxes that are marked with this statement.

(6) A lot of fruit that is determined to be ineligible for interstate movement under paragraph (a)(1) of this section may not be reconditioned and submitted for reinspection.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0325)

■ 4. Section 301.75–11 is amended as follows:

■ a. In paragraph (a), by revising the introductory text to read as set forth below.

■ b. By redesignating paragraph (a)(3) as paragraph (a)(4) and adding a new paragraph (a)(3) to read as set out below.

■ c. In newly redesignated paragraph (a)(4) by adding the words '', peroxyacetic acid,'' after the word ''hypochlorite''.

■ d. In paragraph (d)(3), by removing the word ''or''.

■ e. In paragraph (d)(4), by removing the period at the end of the paragraph and adding the word ''; or'' in its place.

■ f. By adding a new paragraph (d)(5) to read as set forth below.

§ 301.75–11 Treatments.

(a) *Regulated fruit.* Regulated fruit for which treatment is required by this subpart must be treated in at least one of the following ways at a commercial packinghouse whose owner operates under a compliance agreement under § 301.75–7(a)(2):

* * * * *

(3) *Peroxyacetic acid.* The regulated fruit must be thoroughly wetted for at least 1 minute with a solution containing 85 parts per million peroxyacetic acid.

* * * * *

(d) * * *

(5) A solution containing 85 parts per million peroxyacetic acid (indoor use only).

PART 305—PHYTOSANITARY TREATMENTS

■ 5. The authority citation for part 305 continues to read as follows:

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

■ 6. Section 305.11 is amended by adding a new paragraph (c) to read as follows:

§ 305.11 Miscellaneous chemical treatments.

* * * * *

(c) *CC3 for citrus canker.* The fruit must be thoroughly wetted for at least 1 minute with a solution containing 85 parts per million peroxyacetic acid.

Done in Washington, DC, this 14th day of November 2007.

J. Burton Eller,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E7–22549 Filed 11–16–07; 8:45 am]

BILLING CODE 3410–34–P

Federal Register

Monday,
November 19, 2007

Part IV

Department of Housing and Urban Development

24 CFR Part 983

Project-Based Voucher Rents for Units Receiving Low-Income Housing Tax Credits; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 983

[Docket No. FR–5034–F–02]

RIN 2577–AC62

Project-Based Voucher Rents for Units Receiving Low-Income Housing Tax Credits

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule revises the low-income housing tax credit (LIHTC) rent provisions of HUD's Project-Based Voucher (PBV) program regulations. This rule reinstates the regulatory provision where the LIHTC rent does not serve as a cap on rents in PBV projects receiving LIHTCs. The rule also re-emphasizes that public housing authorities (PHAs) may not enter into assistance contracts until HUD or an independent entity approved by HUD has conducted the required subsidy layering review and determined that the assistance is in accordance with HUD requirements. This final rule follows a May 1, 2007, proposed rule and takes into consideration public comments received on the proposed rule. HUD carefully considered the public comments, but adopts the proposed rule without change.

DATES: *Effective Date:* December 19, 2007.

FOR FURTHER INFORMATION CONTACT: David Vargas, Director, Office of Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone number (202) 708–2815 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 1, 2007, HUD published a proposed rule titled ''Project-Based Voucher Rents for Units Receiving Low-Income Housing Tax Credits'' (72 FR 24080–24081). This publication proposed to remove a regulatory cap on rents in PBV projects with units receiving LIHTCs. The regulatory cap limited the rent to owners on all units in projects receiving LIHTCs to the allowed LIHTC rent, which, in high fair market rent areas, could be less than the allowed project-based Section 8 program rents. This cap had been instituted in a comprehensive revision of the project-based Section 8 program regulations by a final rule published on October 13, 2005 (70 FR 59892 *et seq.*).

Once the cap was established by the October 2005 final rule, HUD received additional comments from PHAs and housing industry representatives expressing concern that this change would impede rather than promote HUD's goal of increasing and preserving affordable housing (see 72 FR 24080). HUD determined, therefore, that the cap would reduce the supply of needed low-income housing and issued the May 1, 2007, proposed rule to remedy the situation.

II. Public Comments

The public comment period for the proposed rule closed on July 2, 2007. HUD received 13 public comments from individuals, industry trade groups, PHAs, and low-income tenant interest groups. All of the comments supported the change that the May 2007 rule proposed to make to the PBV program regulations. A few commenters made suggestions for additional provisions to be added to the rule or for clarification to the regulatory text proposed by HUD in the May 2007 rule.

Comment: One commenter expressed concern that merely removing the reference to LIHTC from the list of program rent caps in § 983.304(c)(1) would still leave open the possibility, which the commenter thought remote, to restore the cap at some future time through application of § 983.304(c)(1)(v). Therefore, the commenter suggested that § 983.304(c)(1)(v) be revised to read ''Any other type of federally subsidized project specified by HUD, except for projects receiving low-income housing tax credits.''

Response: HUD has considered this suggestion, but declines to adopt it because, while HUD does not plan to re-institute the LIHTC program caps in the foreseeable future, the suggested language would excessively limit HUD's discretion to respond to changing economic and programmatic conditions in the future.

Comment: Some commenters suggested that HUD delegate subsidy layering review to local government agencies.

Response: While changes to subsidy layering review, which extends to programs beyond LIHTC and Section 8 housing, are beyond the scope of this rulemaking, HUD will consider this suggestion for a future issuance.

III. This Final Rule

For the reasons provided in Section I of this preamble, this final rule adopts the proposed rule without change. This final rule revises § 983.304(c) to eliminate the requirement that the PBV rent to owner is capped at the tax-credit rent in projects receiving LIHTCs. The rule re-emphasizes that these projects are subject to HUD's subsidy layering review requirements, which ensure that excess subsidy is not provided.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, as with the prior rulemaking that led to the October 13, 2005, final rule, remains exclusively concerned with PHAs that have chosen to ''project-base'' 20 percent of their Housing Choice Voucher program assistance. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. There are very few small PHAs in that category. In addition, this rule would cover only an even smaller category of PHAs—those with PBV Housing Assistance Payments contracts for units also receiving LIHTCs. The number of entities potentially affected by this rule is, therefore, not substantial.

Environmental Impact

This final rule involves establishment of external administrative or fiscal requirements related to a rate or cost determination, which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local

governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this proposed rule is 14.871.

List of Subjects in 24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 983 as follows.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 1. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 2. Revise § 983.304(c) to read as follows:

§ 983.304 Other subsidy: effect on rent to owner.

* * * * *

(c) *Subsidized projects.* (1) This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

(i) An insured or non-insured Section 236 project;

(ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

(iii) A Section 221(d)(3) below market interest rate (BMIR) project;

(iv) A Section 515 project of the Rural Housing Service;

(v) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

* * * * *

Dated: November 6, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–22526 Filed 11–16–07; 8:45 am]

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Federal Register

Monday,
November 19, 2007

Part V

The President

Proclamation 8203—America Recycles Day, 2007

Proclamation 8204—Thanksgiving Day, 2007

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8203 of November 15, 2007

America Recycles Day, 2007

By the President of the United States of America

A Proclamation

As citizens of this great Nation, we have a responsibility to practice good environmental stewardship. On America Recycles Day, we underscore our commitment to conserving our resources by recycling.

Through curbside collections and drop-off facilities, we are turning waste materials—including plastic, glass, aluminum cans, paper, tires, batteries, and building materials—into valuable resources. Recycling is one of our Nation's most successful environmental initiatives, and my Administration is working to increase opportunities for our citizens, communities, and businesses to recycle. The Resource Conservation Challenge, created by the Environmental Protection Agency, encourages public and private partnerships to promote recycling. Through Plug-In To eCycling, we are helping reduce waste by providing consumers with information on how and where they can donate or safely recycle old electronics. Working together, we can conserve valuable resources and energy by managing materials more efficiently.

On America Recycles Day and throughout the year, I encourage all Americans to recycle appropriate materials and products. By recycling, reducing greenhouse gas emissions, and conserving energy, we can help build a healthier environment for everyone.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 15, 2007, as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5768
Filed 11–16–07; 9:54 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8204 of November 15, 2007

Thanksgiving Day, 2007

By the President of the United States of America

A Proclamation

Americans are a grateful people, ever mindful of the many ways we have been blessed. On Thanksgiving Day, we lift our hearts in gratitude for the freedoms we enjoy, the people we love, and the gifts of our prosperous land.

Our country was founded by men and women who realized their dependence on God and were humbled by His providence and grace. The early explorers and settlers who arrived in this land gave thanks for God's protection and for the extraordinary natural abundance they found. Since the first National Day of Thanksgiving was proclaimed by President George Washington, Americans have come together to offer thanks for our many blessings. We recall the great privilege it is to live in a land where freedom is the right of every person and where all can pursue their dreams. We express our deep appreciation for the sacrifices of the honorable men and women in uniform who defend liberty. As they work to advance the cause of freedom, our Nation keeps these brave individuals and their families in our thoughts, and we pray for their safe return.

While Thanksgiving is a time to gather in a spirit of gratitude with family, friends, and neighbors, it is also an opportunity to serve others and to share our blessings with those in need. By answering the universal call to love a neighbor as we want to be loved ourselves, we make our Nation a more hopeful and caring place.

This Thanksgiving, may we reflect upon the past year with gratefulness and look toward the future with hope. Let us give thanks for all we have been given and ask God to continue to bless our families and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 22, 2007, as a National Day of Thanksgiving. I encourage all Americans to gather together in their homes and places of worship with family, friends, and loved ones to reinforce the ties that bind us and give thanks for the freedoms and many blessings we enjoy.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–5769
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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To designate the Department of Veterans Affairs Medical Center in Asheville, North Carolina, as the "Charles George Department of Veterans Affairs Medical Center". (Nov. 15, 2007; 121 Stat. 1345)

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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	[9] 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	[9] 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	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
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600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] 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.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] 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.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.