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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, January 22, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



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Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS-2007-0142]

Addition of Armenia to the List of Regions Where African Swine Fever Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Armenia to the list of regions where African swine fever exists. We are taking this action because outbreaks of African swine fever have been confirmed in various locations in the northern portion of Armenia. This action will restrict the importation of pork and pork products into the United States from Armenia and is necessary to prevent the introduction of African swine fever into the United States.

DATES: This interim rule is effective January 7, 2008. However, we are imposing this restriction retroactively to August 29, 2007, which is the date that the presence of ASF in Armenia was confirmed. We will consider all comments that we receive on or before March 7, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0142> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS-2007-0142,

Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0142.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Animal Scientist, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-0756.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive diseases of ruminants and swine.

Section 94.8 of the regulations lists regions of the world where ASF exists or is reasonably believed to exist and imposes restrictions on the importation of pork and pork products into the United States from those regions.

On August 29, 2007, Armenia reported to the World Organization for Animal Health six outbreaks of ASF in various areas in the northern part of the country. The source of the outbreaks is unknown. Therefore, in order to prevent the introduction of ASF into the United States, we are amending the regulations by adding Armenia to the list of regions in § 94.8 where ASF exists or is reasonably believed to exist. As a result of this action, the importation into the

United States of pork and pork products from Armenia will be restricted. We are imposing this restriction retroactively to August 29, 2007, which is the date that the presence of ASF in Armenia was confirmed.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of ASF into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule amends the regulations by adding Armenia to the list of regions in which ASF exists. This action is necessary on an emergency basis to prevent the introduction of ASF into the United States.

The rule will restrict the importation of pork and pork products from Armenia. While the United States imported approximately \$2.1 million of agricultural products from Armenia between 2002 and 2006, these were largely horticultural products, wine and wine products, and fruit and vegetable products. Pork and pork products are not currently imported from Armenia into the United States. Therefore, it is unlikely that this interim rule will have any substantial effects on trade, or on large or small businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This 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 retroactive effect to August 29, 2007; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.8 [Amended]

■ 2. In § 94.8, the introductory text is amended by adding the word “Armenia,” after the word “Africa,”.

Done in Washington, DC, this 27th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–25661 Filed 1–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2007–0044; Directorate Identifier 2007–NM–126–AD; Amendment 39–15320; AD 2007–26–18]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: “An accumulator cylinder had material defects and suffered an in-flight burst failure causing damage to the aircraft structure.” We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 11, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 11, 2008.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 17, 2007 (72 FR 58774). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

An accumulator cylinder had material defects and suffered an in-flight burst failure causing damage to the aircraft structure. This resulted in the issue of EASA Emergency AD 2006–0061–E [we issued AD 2006–23–12 to address that EASA AD] that required the identification and check of cylinders from known suspect batches. Further investigations and checks by the accumulator manufacturer have concluded that all cylinders from a particular supplier may not have been correctly inspected at manufacture. To prevent the risk of further failures, this Airworthiness Directive (AD) requires all accumulators with cylinders from this supplier to be identified and inspected prior to re-installation.

The corrective action includes replacing any accumulator found to have a defect. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 1 product of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$320, or \$320 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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 AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

- Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007-26-18 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39-15320. Docket No. FAA-2007-0044; Directorate Identifier 2007-NM-126-AD.

Effective Date

- (a) This airworthiness directive (AD) becomes effective February 11, 2008.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to BAE Systems (Operations) Limited Model BAe 146-100A, -200A, and -300A series airplanes; and Model Avro 146-RJ70A, 146-RJ85A, and 146-RJ100A airplanes; certificated in any category, all models, all serial numbers.

Subject

- (d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: An accumulator cylinder had material defects and suffered an in-flight burst failure causing damage to the aircraft structure. This resulted in the issue of EASA Emergency AD 2006-0061-E [we issued AD 2006-23-12 to address that EASA AD] that required the identification and check of cylinders from known suspect batches. Further investigations and checks by the accumulator manufacturer have concluded that all cylinders from a particular supplier may not have been correctly inspected at manufacture. To prevent the risk of further failures, this Airworthiness Directive (AD) requires all accumulators with cylinders from this supplier to be identified and inspected prior to re-installation. The corrective action includes replacing any accumulator found to have a defect.

Actions and Compliance

- (f) Unless already done, do the following actions.
 - (1) Within 30 months after the effective date of this AD, identify the installed accumulator in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29-047, dated October 3, 2006, which makes reference to APPH Service Bulletin AIR91666-29-03, dated July 2006.
 - (2) When an accumulator is identified as being affected by this AD, before further flight after accomplishing the actions

required in paragraph (f)(1) of this AD, remove the accumulator in accordance with paragraph 2.D. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29-047, dated October 3, 2006, and do a magnetic particle inspection of the cylinder for any defects in accordance with the Accomplishment Instructions of APPH Service Bulletin AIR91666-29-03, dated July 2006.

(3) If any defect is found during the inspection required in paragraph (f)(2) of this AD, before next flight, replace the accumulator with a serviceable unit in accordance with the Accomplishment Instructions of APPH Service Bulletin AIR91666-29-03, dated July 2006.

(4) After the effective date of this AD, no person may install a spare accumulator identified by APPH Service Bulletin AIR91666-29-03, dated July 2006, as a replacement part, unless it has been inspected in accordance with APPH Service Bulletin AIR91666-29-02, dated March 2006; or APPH Service Bulletin AIR91666-29-03, dated July 2006 (see second Note in paragraph 1.D.(1) of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29-047, dated October 3, 2006, for further explanation).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

- (1) Where the MCAI specifies to identify the installed accumulator within 6 weeks after the effective date of the AD, we have determined that the identification may be done within 30 months after the effective date of this AD to coincide with the compliance time for the magnetic particle inspection. In making this determination, we considered the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety, fleet usage, and the availability of replacement parts.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM-116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007-0076, dated March 21, 2007, and the service information listed in Table 1 of this AD for related information.

TABLE 1.—SERVICE INFORMATION

Service Bulletin	Date
APPH Service Bulletin AIR91666-29-02.	March 2006.
APPH Service Bulletin AIR91666-29-03.	July 2006.
BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29-047.	October 3, 2006.

Material Incorporated by Reference

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact British Aerospace Regional Aircraft American Support 13850 Mclearn Road, Herndon, Virginia 20171; and APPH Ltd., Engineering Division, Unit 1, Pembroke Court, Chancellor Road, Manor Park, Runcorn, Cheshire, WA7 1TG, England, United Kingdom.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Date
APPH Service Bulletin AIR91666-29-03.	July 2006.
BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29-047.	October 3, 2006.

Issued in Renton, Washington, on December 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-25479 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28989; Directorate Identifier 2007-NM-070-AD; Amendment 39-15319; AD 2007-26-17]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747-200B, 747-200C, 747-200F, 747-300, 747-400, and 747SP series airplanes. That AD currently requires doing a detailed inspection of the left and right longeron extension fittings, and corrective action if necessary. This new AD adds airplanes to the applicability of the existing AD. This AD results from reports that accidental drilling damage to the longeron extension fittings was found on airplanes not subject to the existing AD. We are issuing this AD to detect and correct accidental drilling damage of the longeron extension fittings, which could lead to cracking of the longeron extension fittings and result in rapid decompression of the airplane.

DATES: This AD becomes effective February 11, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 11, 2008.

On June 16, 2006 (71 FR 27592, May 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005.

ADDRESSES: 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility,

U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6437; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006-10-04, amendment 39-14588 (71 FR 27592, May 12, 2006). The existing AD applies to certain Boeing Model 747-200B, 747-200C, 747-200F, 747-300, 747-400, and 747SP series airplanes. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45973). That NPRM proposed to continue to require doing a detailed inspection of the left and right longeron extension fittings, and corrective action if necessary. That NPRM also proposed to add airplanes to the applicability of the existing AD.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the single comment received. Boeing supports the NPRM.

Clarification of Service Bulletins

Where paragraphs (h) and (i) of the NPRM referred to “the alert service bulletin” and “the service bulletin,” we have specified the number, revision level and date of those service bulletins for clarity.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Interim Action

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

Costs of Compliance

There are about 876 airplanes of the affected design in the worldwide fleet. This AD affects about 156 airplanes of U.S. registry.

The actions specified by this AD were previously required by AD 2006–10–04, which was applicable to approximately 25 airplanes of U.S. registry. The actions required by that AD take about 1 work hour per airplane. We estimated the cost of the current requirements of that AD on U.S. operators to be \$2,000, or \$80 per airplane. Some operators of the 25 airplanes subject to AD 2006–10–04 may have already initiated the required actions. This AD adds no new costs associated with those airplanes.

This AD is applicable to approximately 131 additional airplanes of U.S. registry. New actions required by this AD take about 1 work hour per airplane. Based on the current labor rate of \$80 per work hour, we estimate the new costs imposed by this AD on U.S. operators to be \$10,480, or \$80 per airplane. This figure is based on assumptions that no operator of these additional airplanes has yet done any of the requirements of this AD, and that no operator would do those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

(3) 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 39–14588 (71 FR 27592, May 12, 2006) and by adding the following new airworthiness directive (AD):

2007–26–17 Boeing: Amendment 39–15319. Docket No. FAA–2007–28989; Directorate Identifier 2007–NM–070–AD.

Effective Date

(a) This AD becomes effective February 11, 2008.

Affected ADs

(b) This AD supersedes AD 2006–10–04.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2515, Revision 1, dated March 1, 2007.

Unsafe Condition

(d) This AD results from reports that accidental drilling damage to the longeron extension fittings was found on airplanes not subject to the existing AD. We are issuing this AD to detect and correct accidental drilling damage of the longeron extension fittings, which could lead to cracking of the longeron extension fittings and result in rapid decompression of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2006–10–04

Detailed Inspection

(f) For Group 1 airplanes identified in Boeing Alert Service Bulletin 747–53A2515, Revision 1, dated March 1, 2007: At the applicable compliance time specified in paragraph (f)(1) or (f)(2) of this AD, do a detailed inspection of the left and right longeron extension fittings for damage, and, before further flight, do the corrective action if applicable, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005; or Revision 1, dated March 1, 2007.

Note 1: Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005; and Revision 1, dated March 1, 2007; refer to Boeing Alert Service Bulletin 747–53A2390, Revision 1, dated July 6, 2000, as an additional source of service information for replacing a damaged longeron fitting with a new longeron extension fitting.

(1) For airplanes that have accomplished the inspection of the splice area for cracking as specified in Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997; or Revision 1, dated July 6, 2000: Inspect in accordance with paragraph (f) of this AD before the airplane has accumulated 10,000 total flight cycles, or within 1,000 flight cycles after June 16, 2006 (the effective date of AD 2006–10–04), whichever is later.

(2) For airplanes that have not accomplished the inspection of the splice area for cracking as specified in Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997; or Revision 1, dated July 6, 2000: Inspect in accordance with paragraph (f) of this AD before the airplane has accumulated 10,000 total flight cycles, or within 250 flight cycles after June 16, 2006, whichever is later.

New Requirements of This AD

Detailed Inspection of Additional Airplanes

(g) For Group 2 and Group 3 airplanes identified in Boeing Alert Service Bulletin 747–53A2515, Revision 1, dated March 1, 2007: Except as provided by paragraphs (h) and (i) of this AD, at the applicable time specified in paragraph 1.E of Boeing Alert Service Bulletin 747–53A2515, Revision 1, dated March 1, 2007, do a detailed inspection of the left and right longeron extension fittings for damage and, before further flight, do the corrective action, as applicable; by accomplishing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin.

Compliance Times

(h) Where the Boeing Alert Service Bulletin 747–53A2515, dated October 20, 2005; or Revision 1, dated March 1, 2007; specify compliance times relative to the release date of the alert service bulletin, this AD requires compliance at compliance times relative to the effective date of this AD.

Repair of Certain Conditions

(i) If any damage is found during any inspection required by this AD and Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the damage using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Credit for Actions Done Using Previous Service Information

(j) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005, are considered acceptable for compliance with the corresponding actions 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) AMOCs approved previously in accordance with AD 2006-10-04, are approved as AMOCs for the corresponding provisions of this AD.

(3) 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.

(4) 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.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005; or Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747-53A2515, Revision 1, dated March 1, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 16, 2006 (71 FR 27592, May 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747-53A2515, dated October 20, 2005.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the

National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on December 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-25500 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27811; Directorate Identifier 2004-NE-11-AD; Amendment 39-15321; AD 2007-26-19]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Tay 611-8, Tay 611-8C, Tay 620-15, Tay 650-15, and Tay 651-54 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611-8, Tay 620-15, Tay 650-15, and Tay 651-54 turbofan engines. That AD currently requires initial and repetitive visual inspections of all ice-impact panels and fillers in the low pressure (LP) compressor case for certain conditions and replacing, as necessary, any or all panels. This AD requires the same actions, provides terminating action to those repetitive actions, and adds the Tay 611-8C turbofan engine to the applicability. This AD results from RRD introducing new LP compressor case ice-impact panels with additional retention features to these Tay turbofan engines. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

DATES: This AD becomes effective February 11, 2008. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of January 21, 2005 (70 FR 1172, January 6, 2005). The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 11, 2008.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D-15827 Dahlewitz, Germany; telephone 49 (0) 33-7086-1768; fax 49 (0) 33-7086-3356.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT:

Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: Jason.yang@faa.gov; telephone (781) 238-7747; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2004-26-10, Amendment 39-13922 (70 FR 1172, January 6, 2005), with a proposed AD. The proposed AD applies to RRD Tay 611-8, Tay 620-15, Tay 650-15, and Tay 651-54 turbofan engines. We published the proposed AD in the **Federal Register** on July 6, 2007 (72 FR 36916). That action proposed to require initial and repetitive visual inspections of all ice-impact panels and fillers in the LP compressor case for certain conditions and replacing, as necessary, any or all panels. That action also proposed to provide terminating action to those repetitive actions, and to add the Tay 611-8C turbofan engine to the applicability.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Compliance Time Extension

Two commenters, Rolls-Royce North America Inc. and Gulfstream, request that we extend the Tay 611-8 and 611-8C engine compliance time four more years, from December 31, 2011, to

December 31, 2015, to address new engines having the 6-ice-impact panel configuration. The commenters state that so far, 12 engines have incorporated the ice-impact panel retention features, and those engines displayed strong bonding of the ice-impact panels before the panels were removed. The commenters are concerned with potential shop capacity problems, and extra cost if a special in-service repair is necessary.

We do not agree. We coordinated with Rolls-Royce Deutschland Ltd & Co KG in reviewing the request. Rolls-Royce Deutschland Ltd & Co KG re-states that the rework of the LP compressor case and installation of new LP compressor case ice-impact panels with additional retention features must be done before December 31, 2011 in accordance with Alert Service Bulletin No. TAY-72-A1650, dated November 2, 2005.

Reference Errors in the Proposed AD

Rolls-Royce Deutschland Ltd & Co KG requests that we correct some reference errors appearing in the proposed AD, as follows:

- In paragraphs (f)(2) and (f)(3), change “RRD SB No. TAY-72-1638, Revision 2, dated September 21, 2004”, to “RRD SB No. TAY-72-1638, Revision 3, dated February 25, 2005.”
- In paragraphs (h)(2) and (i)(2), change “RRD SB No. TAY-72-1638, Revision 2, dated September 21, 2004”, to “RRD SB No. TAY-72-1639, Revision 2, dated September 21, 2004.”
- In paragraph (h)(3), change “every 1,000 CSLI” to “every 1,000 operating hours.”
- In paragraph (i)(1), change “every 3,000 CSLI” to “every 3,000 operating hours.”

We agree and made these corrections to the AD.

Corrections Not Carried Forward

Rolls-Royce Deutschland Ltd & Co KG also requests that we review the proposed AD for missing corrections that were made to AD 2004-26-10, but not carried forward.

We agree. The corrections were inadvertently left out of the proposed AD. We have made those corrections to this AD, which throughout the compliance section changed “paragraph 3.E.” to “paragraphs 3.C. through 3.E.”

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the

economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect about 1,085 engines installed on airplanes of U.S. registry. We also estimate that it will take about 2.5 work-hours per engine to perform an inspection, and about 12 work-hours to perform a repair. The average labor rate is \$80 per work-hour. Required terminating action parts will cost about \$7,500 per engine. Based on these figures, for the AD, we estimate:

- The cost of one inspection to the U.S. fleet to be \$217,000.
- The cost of a repair to the U.S. fleet to be \$1,041,600.
- The cost of parts to the U.S. fleet for terminating action to be \$8,137,500.

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

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866;
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) 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 summary of the costs to comply with this AD and placed it in the AD docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39-13922 (70 FR 1172, January 6, 2005), and by adding a new airworthiness directive, Amendment 39-15321, to read as follows:

2007-26-19 Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce plc):
Amendment 39-15321. Docket No. FAA-2007-27811; Directorate Identifier 2004-NE-11-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 11, 2008.

Affected ADs

(b) This AD supersedes AD 2004-26-10, Amendment 39-13922.

Applicability

(c) This AD applies to:
(1) Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611-8, Tay 620-15, Tay 650-15, and Tay 651-54 turbofan engines that have one or more ice-impact panels installed in the low pressure (LP) compressor case that conform to the (RRD) Service Bulletin (SB) No. TAY-72-1326 standard.

(2) RRD Tay 611-8C turbofan engines with serial numbers (SN) below SN 85078.

(3) The turbofan engines listed in paragraph (c) of this AD are installed on, but not limited to, Fokker F.28 Mk.0070 and Mk.0100 series airplanes, Gulfstream Aerospace G-IV and G-IV-X series airplanes, and Boeing Company 727-100 series airplanes modified in accordance with Supplemental Type Certificate SA8472SW (727-QF).

Unsafe Condition

(d) This AD results from RRD introducing new LP compressor case ice-impact panels with additional retention features, to these Tay turbofan engines. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

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.

Inspecting Ice-Impact Panels in Tay 620-15, Tay 650-15, and Tay 651-54 Engines

(f) For airplanes that have any Tay 620-15, Tay 650-15, or Tay 651-54 engines with ice-

impact panels incorporated by the RR SB No. TAY-72-1326 standard, and not all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648, or HRS3649, do the following:

(1) Before further flight, rework all six ice-impact panels using repair scheme HRS3648 or HRS3649 on at least one of the affected engines.

(2) Before further flight, inspect the ice-impact panels and the surrounding fillers on the engine not reworked. Use paragraphs 3.C. through 3.E. of the Accomplishment Instructions of RRD SB No. TAY-72-1638, Revision 2, dated September 21, 2004, or SB No. TAY-72-1638, Revision 3, dated February 25, 2005, and the inspection disposition criteria in Table 1 of this AD.

TABLE 1.—INSPECTION DISPOSITION CRITERIA

If:	Then:
(i) Any movement or rocking motion of LP compressor ice-impact panel, or any movement of the front edge of ice-impact panel.	Before further flight, replace all panels using repair scheme HRS3648 or HRS3649.
(ii) Reappearing signs of moisture on the ice-impact panel or the surrounding filler.	Before further flight, replace all panels using repair scheme HRS3648 or HRS3649.
(iii) Any dents or impact damage on the ice-impact panel that is greater than 3.1 square inch in total.	Before further flight, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(iv) Any dents or impact damage on the ice-impact panel that is between 1.55 square inch and 3.1 square inch in total.	Within 5 flight cycles or 5 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(v) Any dents or impact damage on the ice-impact panel that is less than 1.55 square inch in total.	Within 50 flight cycles or 50 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(vi) Any crack appears on the ice-impact panel and there is visible distortion of the airwashed surface.	Within 50 flight cycles or 50 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(vii) Any crack appears on the ice-impact panel and there is no visible distortion of the airwashed surface.	Within 150 flight cycles or 150 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(viii) Delamination or peeling of the compound layers of the airwashed surface and the penetrated area is greater than 3.1 square inch in total.	Before further flight, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(ix) Delamination or peeling of the compound layers of the airwashed surface and the penetrated area is between 1.55 square inch and 3.1 square inch in total.	Within 5 flight cycles or 5 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(x) Delamination or peeling of the compound layers of the airwashed surface and the penetrated area is less than 1.55 square inch in total.	Within 50 flight cycles or 50 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(xi) Delamination or peeling of the compound layers but the airwashed surface is not penetrated.	Within 150 flight cycles or 150 flight hours, whichever occurs first, repair the damaged panel using repair scheme HRS3630.
(xii) Missing filler surrounding the LP compressor case	Before further flight, repair the damaged filler using repair scheme HRS3630.
(xiii) Damage to the filler surrounding the LP compressor case such as chipped, cracked, or missing material.	Within 25 flight cycles or 25 flight hours, whichever occurs first, repair damaged filler using repair scheme HRS 3630.

(3) Re-inspect all ice-impact panels within every 500 cycles-since-last-inspection (CSLI) or two months since-last-inspection, whichever occurs first. Use paragraphs 3.C. through 3.E. of the Accomplishment Instructions of RRD SB No. TAY-72-1638, Revision 2, dated September 21, 2004, or SB No. TAY-72-1638, Revision 3, dated February 25, 2005, and the inspection disposition criteria in Table 1 of this AD.

Repetitive Inspections for Tay 620-15, Tay 650-15, and Tay 651-54 Engines With All Ice-Impact Panels Repaired by Polysulfide Bonding Material

(g) For Tay 620-15, Tay 650-15, and Tay 651-54 engines with ice-impact panels incorporated by the RRD SB No. TAY-72-1326 standard, and all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648 or HRS3649, do the following:

(1) Re-inspect within every 1,500 CSLI, for the condition of the ice-impact panels and the surrounding fillers.

(2) Use paragraphs 3.C. through 3.E. of the Accomplishment Instructions of RRD SB No. TAY-72-1638, Revision 2, dated September 21, 2004 or SB No. TAY-72-1638, Revision

3, dated February 25, 2005, and the inspection disposition criteria in Table 1 of this AD.

Inspecting Ice-Impact Panels in Tay 611-8 Engines

(h) For airplanes that have any Tay 611-8 engines with ice-impact panels incorporated by the RR SB No. TAY-72-1326 standard, and RR repair scheme HRS3491 or HRS3615 was done with two pack epoxy (Omat 8/52) on one or more of the six ice-impact panels, do the following:

(1) Before further flight, rework all six ice-impact panels using repair scheme HRS3648 or HRS3649 on at least one of the affected engines.

(2) Before further flight, inspect the ice-impact panels and the surrounding fillers on the engine not reworked. Use paragraphs 3.C. through 3.E. of the Accomplishment Instructions of RRD SB No. TAY-72-1639, Revision 2, dated September 21, 2004 and the inspection disposition criteria in Table 1 of this AD.

(3) Re-inspect the ice-impact panels within every 1,000 operating hours or six months since-last-inspection, whichever occurs first. Use paragraphs 3.C. through 3.E. of the

Accomplishment Instructions of RRD SB No. TAY-72-1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

Repetitive Inspections for Tay 611-8 Engines With All Ice-Impact Panels Repaired by Polysulfide Bonding Material or Introduced Since New Production

(i) For Tay 611-8 engines with ice-impact panels incorporated by the RRD SB No. TAY-72-1326 standard and all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648 or HRS3649, or panels were introduced since new production, do the following:

(1) Re-inspect within every 3,000 hours-since-last-inspection, for the condition of the ice-impact panels and the surrounding fillers.

(2) Use paragraphs 3.C. through 3.E. of the Accomplishment Instructions of RRD SB No. TAY-72-1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

Installing Tay 620–15, Tay 650–15, or Tay 651–54 Engines That Are Not Inspected

(j) After the effective date of this AD, do not install any Tay 620–15, Tay 650–15, or Tay 651–54 engines with ice-impact panels if:

(1) Those ice-impact panels incorporate the RR SB No. TAY–72–1326 standard; and

(2) Ice-impact panels were repaired using RR repair scheme TV5451R, HRS3491, or HRS3615 and bonding material other than polysulfide; unless

(3) The panels and the surrounding fillers are inspected for condition using 3.B.

through 3.D.(3) (in-service) or 3.K.(1) through 3.M)(3) (at overhaul or shop visit) of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, or SB No. TAY–72–1638, Revision 3, dated February 25, 2005.

(k) Perform repetitive inspections as specified in paragraph (g) of this AD.

Installing Tay 611–8 Engines That Are Not Inspected

(l) After the effective date of this AD, do not install any Tay 611–8 engine with ice-impact panels if:

(1) Those ice-impact panels incorporate the RR SB No. TAY–72–1326 standard; and

(2) Ice-impact panels were repaired using RR repair scheme TV5451R, HRS3491, or HRS3615 and bonding material other than polysulfide, unless

(3) The panels and the surrounding fillers are inspected for condition using 3.B.

through 3.D.(2) (in-service) or 3.K.(1) through 3.M.(3) (at overhaul or shop visit) of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004.

(m) Perform repetitive inspections as specified in paragraph (i) of this AD.

Mandatory Terminating Action

(n) No later than December 31, 2011, as mandatory terminating action to the repetitive visual inspections or rework

required by paragraphs (f), (g), (h), (i), (j), (k), (l), and (m) of this AD, do the following:

(1) Rework the LP compressor case and install new LP compressor case ice-impact panels with additional retention features, at the next shop visit requiring the removal of any module, except when the work scope requires only the removal of the high speed gearbox module.

(2) For Tay 620–15, Tay 650–15, and Tay 651–54 turbofan engines, do the rework and installation using the Accomplishment Instructions of RRD Alert SB No. TAY–72–A1643, Revision 1, dated November 2, 2005.

(3) For Tay 611–8 turbofan engines, do the rework and installation using the Accomplishment Instructions of RRD Alert SB No. TAY–72–A1650, dated November 2, 2005.

Tay 611–8C Turbofan Engines

(o) For Tay 611–8C turbofan engines, no later than December 31, 2011, do the following:

(1) Rework the LP compressor case and install new LP compressor case ice-impact panels with additional retention features, at the next shop visit after the effective date of this AD, requiring the removal of any module, except when the work scope requires only the removal of the high speed gearbox module.

(2) Do the rework and installation using the Accomplishment Instructions of RRD Alert SB No. TAY–72–A1650, dated November 2, 2005.

Alternative Methods of Compliance

(p) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(q) German AD D2004–313R5, dated November 15, 2005, also addresses the subject of this AD.

(r) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: Jason.yang@faa.gov; telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(s) You must use the service information specified in Table 2 of this AD to perform the inspections and rework required by this AD. Except for Service Bulletin No. TAY–72–1638, Revision 3, Alert Service Bulletin No. TAY–72–A1643, Revision 1, and Alert Service Bulletin No. TAY–72–A1650, the Director of the Federal Register previously approved the incorporation by reference of the Rolls-Royce Deutschland Ltd & Co KG service information listed in Table 2 of this AD as of January 21, 2005 (70 FR 1172, January 6, 2005). The Director of the Federal Register approved the incorporation by reference of Service Bulletin No. TAY–72–1638, Revision 3, dated February 25, 2005, Alert Service Bulletin No. TAY–72–A1643, Revision 1, dated November 2, 2005, and Alert Service Bulletin No. TAY–72–A1650, dated November 2, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356 for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 2.—INCORPORATION BY REFERENCE

Service information No.	Page	Revision	Date
SB No. TAY–72–1638	ALL	2	September 21, 2004.
Total Pages: 35			
SB No. TAY–72–1638	ALL	3	February 25, 2005.
Total Pages: 35			
SB No. TAY–72–1639	ALL	2	September 21, 2004.
Total Pages: 28			
Alert SB No. TAY–72–A1643	ALL	1	November 2, 2005.
Total Pages: 13			
Alert SB No. TAY–72–A1643 Appendix 1	ALL	1	November 2, 2005.
Total Pages: 43			
Alert SB No. TAY–72–A1650	ALL	Original	November 2, 2005.
Total Pages: 11			
Alert SB No. TAY–72–A1650 Appendix 1	ALL	Original	November 2, 2005.
Total Pages: 45			
Repair Scheme No. HRS3648 Front Sheet	ALL	2	January 28, 2004.
Total Pages: 1			
Repair Scheme No. HRS3648 History Sheet	ALL	2	January 28, 2004.
Total Pages: 3			
Repair Scheme No. HRS3648	ALL	2	January 27, 2004.
Total Pages: 30			
Repair Scheme No. HRS3649 Front Sheet	ALL	2	September 1, 2004.
Total Pages: 1			
Repair Scheme No. HRS3649 History Sheet	ALL	2	September 7, 2004.

TABLE 2.—INCORPORATION BY REFERENCE—Continued

Service information No.	Page	Revision	Date
Total Pages: 3 Repair Scheme No. HRS3649 Total Pages: 24	ALL	2	June 17, 2004.

Issued in Burlington, Massachusetts, on December 21, 2007.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7-25497 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0411; Directorate Identifier 2007-NM-291-AD; Amendment 39-15326; AD 2004-07-22 R1]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to all Boeing Model 747 series airplanes. That AD currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure. We issued that AD to ensure the continued structural integrity of the entire fleet of Model 747 series airplanes. This new AD clarifies the applicability of the existing AD by specifying which Boeing Model 747 airplanes are affected by this AD because we have determined that certain new variants that have not yet been certified will not be subject to the requirements of this AD. This AD results from a report of incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their design service objective. We are issuing this AD to ensure the continued structural integrity of all Boeing Model 747-100, 747-100B,

747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes.

DATES: Effective January 22, 2008.

The incorporation by reference of Boeing Document D6-35022, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision G, dated December 2000, was approved previously by the Director of the Federal Register as of May 12, 2004 (69 FR 18250, April 7, 2004).

The incorporation by reference of Boeing Document No. D6-35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993, was approved previously by the Director of the Federal Register as of September 12, 1994 (59 FR 41233, August 11, 1994).

The incorporation by reference of Boeing Document No. D6-35655, "Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 37933, July 26, 1994).

We must receive comments on this AD by March 7, 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 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6437; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

On March 24, 2004, we issued AD 2004-07-22, amendment 39-13566 (69 FR 18250, April 7, 2004). A correction of that AD was published in the **Federal Register** on May 3, 2004 (69 FR 24063). AD 2004-07-22 applies to all Boeing Model 747 series airplanes. That AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure. That AD resulted from a report of incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their design service objective. We issued that AD to ensure the continued structural integrity of the entire fleet of Model 747 series airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 2004-07-22, Boeing has announced the production of additional Model 747 variants. Although they have not yet been certified, the new variants (Model 747-8 and -8F series airplanes) have a certification basis that will alleviate the safety issues addressed by AD 2004-07-22. All of the supplemental structural inspections required by AD 2004-07-22 will be included in the Airworthiness Limitations Section of the Boeing 747-8/8F Maintenance Planning Data Document.

Because AD 2004-07-22 currently applies to "all Boeing Model 747 series airplanes," these additional Model 747

variants will be required to do the actions mandated by that AD, once they are certified. Therefore, we must clarify the applicability to specify only the airplanes that are affected by this AD.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2004-07-22. This new AD retains the requirements of the existing AD. This AD also clarifies the applicability of the existing AD.

Change to Existing AD

Since we issued AD 2004-07-22, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004-07-22	Corresponding requirement in AD 2004-07-22 R1
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).
(This paragraph was mis-lettered as (a) in the Federal Register .)	
Paragraph (e)	Paragraph (j).
Paragraph (f)	Paragraph (k).

We have also removed Note 1 of AD 2004-07-22 from this AD. The information in that note is now included in the Federal Aviation Regulations (14 CFR part 39) and it is not necessary to include it in this AD. We have re-numbered the notes in AD 2004-07-22 R1 accordingly.

Costs of Compliance

We estimate that this AD affects about 165 airplanes of U.S. registry. The requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that the actions required by AD 2004-07-22 and retained in this AD take up to 6,825 work-hours per product. The average labor rate is \$80 per work hour. Based on these figures, we estimate the cost of this AD to U.S. operators to be up to \$90,090,000 or up to \$546,000 per product.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions required by AD 2004-07-22 and retained in this

AD are to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

FAA's Determination of the Effective Date

No airplane variant that we had previously excluded from the applicability of this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0411; Directorate Identifier 2007-NM-291-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this 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, Incorporation by reference, Safety.

Adoption of the Amendment

- Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 39-13566 (69 FR 18250, April 7, 2004), corrected at 69 FR 24063, May 3, 2004, and adding the following new airworthiness directive (AD):

2004-07-22 R1 Boeing: Amendment 39-15326. Docket No. FAA-2008-0411; Directorate Identifier 2007-NM-291-AD.

Effective Date

- (a) This AD becomes effective January 22, 2008.

Affected ADs

(b) This AD revises AD 2004-07-22.

Applicability

(c) This AD applies to all Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their design service objective. We are issuing this AD to ensure the continued structural integrity of all Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes.

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.

Note 1: Where there are differences between this AD and the supplemental structural inspection document (SSID) specified in this AD, the AD prevails.

Requirements of AD 2004-07-22*Inspection Program*

(f) For Model 747-100SR series airplanes having line numbers 346, 351, 420, 426, 427, and 601: Within 1 year after August 10, 1994 (the effective date of AD 94-15-12, amendment 39-8983, which was superseded by AD 2004-07-22), incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required damage tolerance rating (DTR) for each structural significant item (SSI) listed in Boeing Document No. D6-35655, "Supplemental Structural Inspection Document (SSID) for 747-100SR," dated April 2, 1986. The revision to the maintenance program must include and be implemented per the procedures specified in Sections 5.0 and 6.0 of the SSID D6-35655. Revision to the maintenance program shall be per the SSID D6-35655, dated April 2, 1986, until Revision G of the SSID D6-35022 is incorporated into the FAA-approved maintenance or inspection program per the requirements of paragraph (h) of this AD.

Note 2: For the purposes of this AD, an SSI is defined as a principal structural element (PSE). A PSE is a structural element that contributes significantly to the carrying of flight, ground, or pressurization loads, and whose integrity is essential in maintaining the overall structural integrity of the airplane.

(g) For airplanes listed in Boeing Document No. D6-35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993; and manufacturer's line numbers 42, 174, 221, 231, 234, 239, 242, and 254: Within 12 months after September 12, 1994 (the effective date of AD 94-15-18, amendment 39-8989, which was superseded by AD 2004-07-22), incorporate a revision into the

FAA-approved maintenance inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6-35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993. Revision F, dated May 1996, is acceptable for compliance with this paragraph. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include Sections 5.0 and 6.0 of the SSID D6-35022 and shall be implemented per the procedures contained in those sections. Revision to the maintenance program shall be per Revision E or F of SSID D6-35022, until Revision G of the SSID D6-35022 is incorporated into the FAA-approved maintenance or inspection program per the requirements of paragraph (h) of this AD.

(h) For all Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes: Prior to reaching either of the thresholds specified in paragraph (i)(1)(i) or (i)(2)(i) of this AD, or within 12 months after May 12, 2004 (the effective date of AD 2004-07-22), whichever occurs later, incorporate a revision into the FAA-approved maintenance or inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6-35022, "Supplemental Structural Inspection Document," Revision G, dated December 2000 (hereinafter referred to as "Revision G"). (The required DTR value for each SSI is listed in Revision G.) The revision to the maintenance or inspection program shall include and shall be implemented per the procedures in Section 5.0, "DTR System Application" and Section 6.0, "SSI Discrepancy Reporting" of Revision G, excluding paragraphs 5.1.2; 5.1.6, item 5; 5.1.8; 5.2; 5.2.1; 5.2.2; 5.2.3; and 5.2.4 of Revision G. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements (Section 6.0, "SSI Discrepancy Reporting") contained in this AD and has assigned OMB Control Number 2120-0056. Upon incorporation of Revision G required by this paragraph, the revision required by either paragraph (f) or (g) of this AD, as applicable, may be removed.

Note 3: Operators should note that, although paragraph 5.2 is referenced in paragraph 5.1.11 of Revision G, paragraph 5.2 is excluded as a method of compliance with the requirements of this AD.

Initial Inspection

(i) For all Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes: Perform an inspection to detect cracks of all structure identified in Revision G of SSID D6-35022 at the time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For wing structure: At the times specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD, whichever occurs later.

(i) Prior to the accumulation of 20,000 total flight cycles or 100,000 total flight hours, whichever comes first. Or,

(ii) Within 1,000 flight cycles measured from 12 months after May 12, 2004.

(2) For all other structure: At the times specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD, whichever occurs later.

(i) Prior to the accumulation of 20,000 total flight cycles, or

(ii) Within 1,000 flight cycles measured from 12 months after May 12, 2004.

(3) For any portion of an SSI that has been replaced with new structure: At the later of the times specified in paragraph (i)(3)(i) or (i)(3)(ii) of this AD.

(i) At the times specified in either paragraph (i)(1) or (i)(2) of this AD, as applicable, or

(ii) Within 10,000 flight cycles after the replacement of the part with a new part.

Note 4: Notwithstanding the provisions of paragraphs 5.1.2, 5.1.6, item 5, 5.2, 5.2.1, 5.2.2, 5.2.3, and 5.2.4 of the General Instructions of Revision G, which would permit operators to perform fleet and rotational sampling inspections to perform inspections on less than whole airplane fleet sizes and to perform inspections on substitute airplanes, this AD requires that all airplanes that exceed the threshold be inspected per Revision G. Although paragraph 5.1.8 of Revision G allows provisions for touch-and-go training flights, fleet averaging, and 10% escalations of flight cycles to achieve the required DTR, this AD does not allow for those provisions.

Note 5: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision G in order to remain in compliance with their maintenance or inspection programs, as revised per paragraph (h) of this AD.

Repair

(j) Cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

Inspection Program for Transferred Airplanes

(k) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (i) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For airplanes that have been inspected per this AD, the inspection of each SSI must be accomplished by the new operator per the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected per this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the

airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the Manager, Seattle Aircraft Certification Office (ACO). After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Alternative Methods of Compliance (AMOCs)

(1)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6437; fax (425) 917-6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

(4) AMOCs approved previously in accordance with AD 94-15-12, are approved as alternative methods of compliance for the requirements of paragraphs (f) and (j) of this AD.

(5) AMOCs approved previously in accordance with AD 94-15-18, are approved as alternative methods of compliance for the requirements of paragraphs (g) and (j) of this AD.

(6) AMOCs approved previously in accordance with AD 2004-07-22, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(m) You must use Boeing Document No. D6-35655, "Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986; Boeing Document No. D6-35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993; and Boeing Document No. D6-35022, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision G, dated December 2000; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The incorporation by reference of Boeing Document D6-35022, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision G, dated December 2000, was approved previously by the Director of the Federal Register as of May 12, 2004 (69 FR 18250, April 7, 2004).

(2) The incorporation by reference of Boeing Document No. D6-35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993, was approved previously by the Director of the Federal Register as of September 12, 1994 (59 FR 41233, August 11, 1994).

(3) The incorporation by reference of Boeing Document No. D6-35655, "Supplemental Structural Inspection Document for 747-100SR," dated April 2, 1986, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 37933, July 26, 1994).

(4) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on December 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-25614 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0412; Directorate Identifier 2007-NM-290-AD; Amendment 39-15327; AD 90-25-05 R1]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to all Boeing Model 747 series airplanes. That AD currently requires the implementation of a corrosion prevention and control program. We issued that AD to prevent degradation of the structural capabilities of the affected airplanes. This new AD clarifies the applicability of the existing AD by specifying which Boeing Model 747 airplanes are affected by this AD

because we have determined that certain new variants that have not yet been certified will not be subject to the requirements of this AD. This AD results from reports of incidents involving corrosion and cracking in transport category airplanes, which have jeopardized the airworthiness of the affected airplanes. We are issuing this AD to prevent degradation of the structural capabilities of all Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes.

DATES: Effective January 22, 2008.

On December 31, 1990 (55 FR 49268, November 27, 1990), the Director of the Federal Register approved the incorporation by reference of Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989.

We must receive comments on this AD by March 7, 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 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind

Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6437; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

On November 5, 1990, we issued AD 90-25-05, amendment 39-6790 (55 FR 49268, November 27, 1990). AD 90-25-05 applies to all Boeing Model 747 series airplanes. That AD requires the implementation of a corrosion prevention and control program. That AD resulted from reports of incidents involving corrosion and cracking in transport category airplanes, which have jeopardized the airworthiness of the affected airplanes. We issued that AD to prevent degradation of the structural capabilities of the affected airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 90-25-05, Boeing has announced the production of additional Model 747 variants. Although they have not yet been certified, the new variants (Model 747-8 and -8F series airplanes) have a certification basis that will alleviate the safety issues addressed by AD 90-25-05. All of the inspections required by AD 90-25-05 will be included in the Boeing Model 747-8/8F Maintenance Review Board Report (MRBR) Document and the corresponding Boeing Model 747-8/8F Maintenance Planning Data (MPD) Document.

Because AD 90-25-05 currently applies to “all Boeing Model 747 series airplanes,” these additional Model 747 variants will be required to do the actions mandated by that AD, once they are certified. Therefore, we must clarify the applicability to specify only the airplanes that are affected by this AD.

FAA’s Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 90-25-05. This new AD retains the requirements of the existing AD. This AD also clarifies the applicability of the existing AD.

Change to Existing AD

Since we issued AD 90-25-05, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 90-25-05	Corresponding requirement in AD 90-25-05 R1
paragraph A	paragraph (f).
paragraph B.1	paragraph (g).
paragraph B.2	paragraph (h).
paragraph B.3	paragraph (i).
paragraph C	paragraph (j).
paragraph D	paragraph (k).
paragraph E	paragraph (l).
paragraph F	paragraph (m).
paragraph G	paragraph (n).

We have also changed this AD to include numbers on each of the notes in the AD.

Costs of Compliance

We estimate that this AD affects about 165 airplanes of U.S. registry. The requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that the actions required by AD 90-25-05 and retained in this AD take about 4,720 work-hours per product. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this AD to U.S. operators to be \$62,304,000 or \$377,600 per product.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions required by AD 90-25-05 and retained in this AD are to be conducted as “stand alone” actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

FAA’s Determination of the Effective Date

No airplane variant that we had previously excluded from the applicability of this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your

comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2008-0412; Directorate Identifier 2007-NM-290-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 39-6790 (55 FR 49268, November 27, 1990), and adding the following new airworthiness directive (AD):

90-25-05 R1 Boeing: Amendment 39-15327. Docket No. FAA-2008-0412; Directorate Identifier 2007-NM-290-AD.

Effective Date

(a) This AD becomes effective January 22, 2008.

Affected ADs

(b) This AD revises AD 90-25-05.

Applicability

(c) This AD applies to all Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of incidents involving corrosion and cracking in transport category airplanes, which have jeopardized the airworthiness of the affected airplanes. We are issuing this AD to prevent degradation of the structural capabilities of all Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes.

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.

Note 1: This AD references Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989, for inspection procedures,

compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Requirements of AD 90-25-05

Maintenance Program Revision

(f) Within one year after December 31, 1990 (the effective date of AD 90-25-05), revise the FAA-approved maintenance program to include the corrosion control program specified in Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989, (hereinafter referred to as "the Document").

Note 2: All structure found corroded or cracked as a result of an inspection conducted in accordance with paragraph (f) of this AD must be addressed in accordance with FAR Part 43.

Note 3: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4.1 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

Note 4: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

Actions if Corrosion is Found

(g) If, as a result of any inspection conducted in accordance with the program required by paragraph (f) of this AD, Level 3 corrosion is determined to exist in any area, accomplish paragraph (g)(1) or (g)(2) of this AD within 7 days after such determination.

(1) Submit a report of any findings of Level 3 corrosion to the Manager of the Seattle Aircraft Certification Office (ACO), FAA, and inspect the affected area on all Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes in the operator's fleet.

(2) Submit for approval to the Manager of the Seattle ACO the proposal or data in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Proposed adjustments to the schedule for performing the tasks in that area on remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments.

(ii) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

Note 5: Notwithstanding the provision of Section 1.1. of the Document that would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," paragraph (g)(2) of this AD requires that data substantiating any such finding be submitted to the FAA for approval.

Note 6: As used throughout this AD, where documents are to be submitted to the Manager of the Seattle ACO, the document should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO. The Seattle ACO will not respond to the operator without the PI's comments or concurrence.

(h) The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(i) Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph (g) or (h) of this AD, revise the FAA-approved maintenance program to include those adjustments.

Note 7: The reporting requirements of paragraphs (g) and (k) of this AD do not relieve operators from reporting corrosion as required by FAR Section 121.703.

Acceptable Extension to Repeat Inspection Interval

(j) To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

Note 8: Except as provided paragraph (j) of this AD, notwithstanding Section 3.1., paragraph 4, of the Document, all extensions to any compliance time must be approved by the Manager of the Seattle ACO.

Report of Levels 2 and 3 Corrosion

(k) Report forms for Level 2 corrosion and a follow-up report for Level 3 corrosion must be submitted at least quarterly in accordance with Section 5.0 of the Document.

Approval for Increasing Existing Corrosion Inspection/Task Intervals

(l) If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in Section 4.3 of the Document, they may not be increased without specific approval of the Manager of the Seattle ACO.

Addition of an Airplane to Operations Specifications

(m) Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with paragraphs (m)(1) and (m)(2) of this AD.

(1) For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Seattle ACO.

Actions for Corrosion That Exceeds Level 1

(n) If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

(1) Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO.

(2) Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6437; fax (425) 917-6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

(4) AMOCs approved previously in accordance with AD 90-25-05, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(p) You must use Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The incorporation by reference of Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989, was approved previously by the Director of the Federal Register as of

December 31, 1990 (55 FR 49268, November 27, 1990).

(2) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on December 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-25616 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9375]

RIN-1545-BA96

Guidance Necessary To Facilitate Electronic Tax Administration—Updating of Section 7216 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations to update the rules regarding the disclosure and use of tax return information by tax return preparers. Among other things, the regulations finalize rules for taxpayers to consent to the disclosure or use of their tax return information by tax return preparers.

DATES: *Effective Date:* These regulations are effective January 7, 2008.

Applicability Date: The regulations apply to disclosures or uses of tax return information occurring on or after January 1, 2009.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7216 of the Internal Revenue Code. These regulations strengthen taxpayers' ability to control their tax return information by requiring that tax return preparers give taxpayers specific information, including who will receive the tax return information and the particular items of tax return information that will be disclosed or used, to allow taxpayers to make

knowing, informed, and voluntary decisions over the disclosure or use of their tax information by their tax return preparer.

Section 7216 imposes criminal penalties on tax return preparers who knowingly or recklessly make unauthorized disclosures or uses of information furnished to them in connection with the preparation of an income tax return. In addition, tax return preparers are subject to civil penalties under section 6713 for disclosure or use of this information unless an exception under the rules of section 7216(b) applies to the disclosure or use.

Section 7216 was enacted by section 316 of the Revenue Act of 1971, Public Law 92-178 (85 Stat. 529). In 1988, Congress modified the section by limiting the criminal sanction to knowing or reckless, unauthorized disclosures. Public Law 100-647 (102 Stat. 3749). At the same time, Congress enacted the civil penalty that is now found in section 6713. Public Law 100-647, § 6242(a) (102 Stat. 3759). In 1989, Congress further modified section 7216, directing the Treasury Department to issue regulations permitting disclosures of tax return information for quality or peer reviews. Public Law 101-239, § 7739(a) (103 Stat. 3759).

The Treasury Department and the IRS proposed regulations under section 7216 on December 20, 1972 (37 FR 28070). Final regulations were issued on March 29, 1974 (39 FR 11537). These regulations are divided into three parts: § 301.7216-1 for general provisions and definitions; § 301.7216-2 for disclosures and uses that do not require formal taxpayer consent; and § 301.7216-3 for disclosures and uses that require formal taxpayer consent. Since the regulations were adopted in 1974, the Treasury Department and the IRS have amended § 301.7216-2 on occasion, but §§ 301.7216-1 and 301.7216-3 have remained unchanged.

A notice of proposed rulemaking (REG-137243-02) was published in the **Federal Register** (70 FR 72954) on December 8, 2005. Concurrently with publication of the proposed regulations, the IRS published Notice 2005-93, 2005-52 I.R.B. 1204 (December 07, 2005), setting forth a proposed revenue procedure that would provide guidance to tax return preparers regarding the format and content of consents to disclose and consents to use tax return information under § 301.7216-3.

Written comments were received in response to the notice of proposed rulemaking. A public hearing was held on April 4, 2006. Commentators appeared at the public hearing and

commented on the notice of proposed rulemaking.

All comments were considered and are available for public inspection upon request. This preamble summarizes most of the comments received by the IRS and Treasury Department. After consideration of the written comments and the comments provided at the public hearing, the proposed regulations under section 7216 are adopted as revised by this Treasury decision.

Concurrently with publication of these regulations, the IRS is publishing a revenue procedure and an advanced notice of proposed rulemaking. The revenue procedure provides guidance on the format and content of consents to disclose or use tax return information under § 301.7216-3 for taxpayers filing a return in the Form 1040 series, e.g., Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ. The revenue procedure also provides specific guidance for electronic signatures when a taxpayer filing a return in the Form 1040 series executes an electronic consent to the disclosure or use of the taxpayer's tax return information.

The advanced notice of proposed rulemaking requests comments regarding a proposed rule under § 301.7216-3 that a tax return preparer may not obtain a consent to disclose or use tax return information for the purpose of the tax return preparer soliciting, or the taxpayer obtaining, a refund anticipation loan (RAL) or certain other products.

Summary of Comments

1. Preamble

Some commentators recommended that the final regulations specify the existing revenue rulings, notices, and other guidance under section 7216 that continue to have effect under the final regulations. While the final regulations do not identify all guidance that has continuing effect, the section of this Treasury decision entitled "Effect on Other Documents" specifies guidance that Treasury and the IRS have determined as contrary to the regulations.

One commentator requested that the preamble of the regulations clarify whether a tax return preparer may offer for sale an insurance policy that will reimburse the taxpayer additional tax the taxpayer is required to pay under certain circumstances involving errors by the tax return preparer. Section 7216 and the regulations thereunder govern only a tax return preparer's disclosure or use of tax return information. To the extent that a tax return preparer offers a product, such as insurance, where the

offer is based on the disclosure of tax return information to a third-party, or where use of such tax return information serves as the basis for making the offer, section 7216 and the regulations thereunder only govern whether use or disclosure of the tax return information requires taxpayer consent.

2. Section 301.7216-1 Penalty for Disclosure or Use of Tax Return Information

A. Statutory Provisions

Some commentators recommended that Treasury and the IRS seek legislative changes to section 7216. More specifically, these commentators recommended that the amount of the section 7216 criminal penalty be increased, that the amount of the section 6713 civil penalty be increased, and that the Code be amended to provide a private right of action against tax return preparers. Another commentator recommended amending section 7216 to provide a means to abate the penalty in cases where reasonable cause and good faith is established. This commentator also recommended that Treasury and the IRS not attempt to regulate the disclosure or use of tax return information in the context of a criminal statute, section 7216, but that only civil penalties should apply.

Requests for statutory changes to sections 7216 and 6713 are outside of the scope of these regulations. Section 7216 expressly provides for Treasury to promulgate regulations to exempt certain disclosures or uses of information from the statute's criminal sanction. Although Treasury and the IRS do not have the regulatory authority to provide for a reasonable cause exception under section 7216, the criminal penalty provided for by that statute is premised on a finding of knowing or reckless conduct.

B. Tax Return Preparer

One commentator requested expanding the definition of tax return preparer to include clerical staff involved in preparation of a tax return. Because the definition of tax return preparer in the regulations already encompasses clerical staff involved in the preparation of a return, no change is needed to address this comment.

While approving of the generally broad scope of the term "tax return preparer," one commentator expressed concern that the term did not cover employees of tax return preparers who do not personally assist in the preparation of tax returns or the provision of auxiliary services. That

commentator recommended that section 7216 should nonetheless apply to any employee. This comment was not adopted. The statute applies only to persons "engaged in the business of preparing, or providing services in connection with the preparation of, returns." The regulations, however, do not permit disclosure by one employee of a tax return preparer to another employee of the tax return preparer on the basis of employment status alone. See Treas. Reg. § 301.7216-2(c).

Based on recent amendments to section 7701(a)(36) of the Code (which post-amendment applies more generally to tax return preparers other than income tax returns), the final regulations were revised to omit the language in the proposed regulations pertaining to the lack of uniformity of the definition of tax return preparer provided in section 7701(a)(36) and the definition of tax return preparer for purposes of section 7216.

C. Tax Return Information

Some commentators expressed concern that the definition of tax return information encompasses an overly broad amount of information. One commentator recommended that a taxpayer's name, address, telephone number, e-mail address, and identification number should not be treated as tax return information. Another commentator recommended that a taxpayer's name, address, and other contact information should be available for a tax return preparer to use to provide the taxpayer with any information that the tax return preparer believes may be of interest to the taxpayer. These recommendations regarding tax return information were not adopted because information revealing the identity of, or how to contact, a person is information central to one's privacy and deserving of treatment as tax return information when submitted for, or in connection with, the preparation of a tax return. Section 301.7216-2(n), however, permits tax return preparers to make limited use of taxpayer's contact information to offer tax information or additional tax return preparation services to previous customers.

One commentator recommended eliminating language from the regulations providing that information maintained in a form that is associated with the tax return preparation becomes tax return information regardless of how the information was initially obtained. The commentator questioned whether non-tax return information could become tax return information as a result of the manner in which it is

stored and maintained by the tax return preparer. Treasury and the IRS agree that section 7216 protects only information furnished to a tax return preparer for, or in connection with, the preparation of a return and that information does not become tax return information merely by the method in which the information is stored. The language in the proposed regulations that is the subject of the comment was included to recognize that the protections of section 7216 may extend to information furnished by persons other than the taxpayer, including information furnished by one person within a firm to a tax return preparer employed by the same firm. In that situation, the information in the hands of the tax return preparer would be tax return information even if the person furnishing the information had obtained it other than in connection with the preparation of a tax return. Because this rule is evident from other provisions of the regulations, and the language commented upon may create confusion, the language has been removed from these regulations.

One commentator expressed concern that the proposed regulations improperly expand upon section 7216 by defining "tax return information" to include information derived or generated from tax return information. The commentator commented that section 7216 protects only information furnished to tax return preparers, and data that a tax return preparer derives from that information should not be considered data furnished to the tax return preparer. The commentator, therefore, recommended removing this language from the regulations.

The commentator's recommendation was not adopted. Information that a tax return preparer would typically derive from other information furnished in connection with the preparation of a return could include information on the taxpayer's entitlement to deductions, credits, losses or gains, the amounts thereof, and the amount of tax due. It would frustrate the purpose of the statute not to protect this information when a taxpayer has furnished the tax return preparer the means to derive it.

Similarly, the same commentator stated that the proposed regulations improperly expand upon the statute by defining "tax return information" to include "information received by the tax return preparer from the IRS in connection with the processing of such return." The commentator recommended eliminating this language from the regulations. This recommendation was not adopted. The statute protects information furnished to

a tax return preparer for, or in connection with, preparation of a return and does not require that the taxpayer have furnished the information.

Some commentators approved of the proposed regulations' definition of tax return information, but expressed concern that Example 1 in § 301.7216-1(b)(3)(ii) suggests that information supplied to register tax preparation software is not tax return information unless the tax return preparer states during the registration process that it will provide updates to registrants. These commentators, therefore, recommended deleting that fact from the example. This recommendation was adopted to explicitly provide that all information furnished to register tax return preparation software is tax return information.

Some commentators expressed concern that if information furnished to register tax return preparation software was treated as tax return information, then tax return preparers would be required to obtain consent from taxpayers prior to updating the tax return preparation software. To address this concern, section 301.7216-2(c) of the regulations has been revised.

D. Disclosure and Use

One commentator stated that the definition of "use" is overly broad. The commentator proposed that the "use" of tax return information should not include tax return preparers informing taxpayers of the availability of products and services that tax return preparers offer that could benefit taxpayers. As an example, the commentator stated that informing a taxpayer about the availability of a refund anticipation loan based on the taxpayer's tax return information should not be a "use" of tax return information. This recommendation was not adopted. The regulations require consents for tax return preparers to use tax return information so that taxpayers themselves determine whether they want additional information regarding products and services that might benefit them. The potential uses of tax return information should be clearly described by tax return preparers and the potential uses must be consented to by taxpayers before such uses occur.

Two commentators recommended that tax return preparers should be responsible for subsequent disclosures or uses of tax return information by third parties to whom tax return preparers made an authorized disclosure of tax return information. This recommendation was not adopted because section 7216 does not apply to

third parties who are not tax return preparers.

E. Providing Auxiliary Services

Section 301.7216-1(b)(2)(iii) of the proposed regulations provides that a person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in paragraph (b)(2)(i)(B) of that section if, in the course of the person's business, the person holds himself out to tax return preparers or to taxpayers as a person who performs auxiliary services, whether or not providing the auxiliary services is the person's sole business activity and whether or not the person charges a fee for the auxiliary services. One commentator recommended broadening the definition of auxiliary services to include analysis of data for purposes of monitoring the tax return preparer's business for fraud prevention and provision of data storage services. These services as well as similar services are typical of the types of auxiliary services that can be provided to tax return preparers as contemplated by § 301.7216-1(b)(2)(iii) and are already covered by the broad definition of auxiliary services in the regulations. The same commentator also recommended broadening the definition of auxiliary services to include the analysis of customer activity to improve services and assistance in connection with preparation for taxpayer audits. These services are already addressed in other parts of the regulations. See §§ 301.7216-2(o) and 301.7216-2(k).

F. Exclusions Under § 301.7216-1(b)(2)(v)

One commentator recommended that the express exclusion under § 301.7216-1(b)(2)(v) of the proposed regulations of certain persons from the definition of tax return preparer should be extended to include persons who provide "a broad range of financial products and services * * * to customers of tax return preparers, including savings, transaction, and retirement accounts." The commentator's recommendation was not adopted as the regulations do not provide an exhaustive list of the persons identified as excluded from the definition of tax return preparer. To the extent the service providers suggested to be excluded by the commentator provide services only incidentally related to the preparation of the return, these persons would be excluded under the regulation.

G. Hyperlinks

One commentator recommended that the regulations should not treat as a

disclosure by a tax return preparer the situation where a taxpayer is transferred from the tax return preparer's website to a different website and the taxpayer separately enters information on the different website. This recommendation was not adopted because the regulations already do not treat this fact pattern as a disclosure by the tax return preparer.

3. Section 301.7216-2 Permissible Disclosures or Uses Without Consent of the Taxpayer

A. Disclosures to the IRS

Section 301.7216-2(b) of the proposed regulations provides that tax return preparers may disclose to the IRS any tax return information the IRS requests to assist in the administration of electronic filing programs. One commentator requested limiting this rule to "specific necessary purposes, such as compliance by electronic return originators." This recommendation was not adopted. Return information in the hands of the IRS is already protected from unauthorized disclosure. *See, e.g.*, section 6103.

Other commentators expressed concern regarding whether § 301.7216-2(b) permitted disclosures of tax return information to the IRS in general. Because the purpose of these regulations is to protect taxpayers from the unauthorized uses and disclosures by tax return preparers, and because tax return information in the hands of the IRS is already protected from unauthorized disclosure, § 301.7216-2(b) has been modified to clarify that return preparers may disclose any tax return information to the IRS for any purpose.

B. Use By Tax Return Preparer for Purposes of Updating Software

Section 301.7216-2(c)(1) of the final regulations has been revised to provide that if a tax return preparer provides software to a taxpayer that is used in connection with the preparation or filing of a tax return, the tax return preparer may use the taxpayer's tax return information to update the taxpayer's software for the purpose of addressing changes in IRS forms, e-file specifications and administrative, regulatory and legislative guidance or to test and ensure the software's technical capabilities without obtaining the taxpayer's consent under § 301.7216-3.

C. Disclosure to a Tax Return Preparer Within the Same Firm Located Outside of the United States

Section 301.7216-2(c) of the proposed regulations generally provides that an officer, employee, or member of a tax

return preparer in the United States may disclose tax return information to another officer, employee, or member of the same tax return preparer located within the United States. Section 301.7216-2(c)(1) of the proposed regulations provides that the taxpayer must give consent under § 301.7216-3 prior to any disclosure of tax return information by an officer, employee, or member of a tax return preparer in the United States to an officer, employee, or member of the same tax return preparer located outside of the United States or any territory or possession of the United States. One commentator expressed concern that this rule was too strict with respect to multinational companies and employees on assignment outside of the United States. This commentator stated that such taxpayers anticipate that their tax return information will be disclosed outside of the United States. This commentator recommended that consent under § 301.7216-3 should not be required with respect to disclosures when the taxpayer is a multinational company or an individual taxpayer employed or on assignment outside of the United States and that an engagement letter explaining potential circumstances involving disclosures overseas ought to be permitted in these situations.

This recommendation was not adopted. As explained in the preamble to the proposed regulations, the Treasury Department and IRS believe that a separate explanation is required under these circumstances in order to advise taxpayers that their tax return information is being disclosed to tax return preparers located outside the United States. The final regulations, however, address the commentator's request for additional flexibility with respect to the form and manner of the consent for taxpayers other than individuals. For tax return preparers providing tax return preparation services to taxpayers who do not file an income tax return in the Form 1040 series, *e.g.*, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ, a consent to disclose tax return information outside the United States may be in any format, including an engagement letter to a client, as long as the consent provides sufficient information to enable the taxpayer to provide informed consent. For tax return preparers providing tax return preparation services to taxpayers who file an income tax return in the Form 1040 series, the regulations provide that the Secretary may issue guidance, by publication in the Internal Revenue Bulletin, prescribing the form and manner of the

consent to disclose tax return information, including disclosure of return information outside the United States. This rule is consistent with the general rule adopted by these final regulations with respect to a tax return preparer's request for consent to disclose tax return information. *See* section 301.7216-3(a)(3).

Additionally, one commentator recommended that, rather than provide limitations on the disclosure of tax return information by a tax return preparer within the United States to another tax return preparer of the same firm who is located outside of the United States, the regulations should instead permit such disclosures without consent if the tax return preparer of the same firm outside of the United States consents to adhere to the rules of section 7216. This recommendation was not adopted because it does not inform taxpayers that their tax return information will be disclosed outside of the United States or allow taxpayers to control the decision whether their information is disclosed overseas.

D. Disclosures to Other Tax Return Preparers

Section 301.7216-2(d) of the proposed regulations provides that disclosures between tax return preparers are authorized when the disclosures (i) assist in the preparation of a return; (ii) the services provided by the recipient of the disclosure are not substantive determinations or advice affecting a taxpayer's reported tax liability; and (iii) the disclosure is to a tax return preparer located in the United States. Two commentators expressed concern that the phrase "substantive determinations or advice" is a vague standard and recommended the use of examples in the regulations that adequately define the phrase. The final regulations clarify the meaning of substantive determinations and provide an example to illustrate the operation of this rule.

One commentator recommended adopting the professional ethics rules of the American Institute of Certified Public Accountants (AICPA) on outsourcing in lieu of § 301.7216-2(d) of the proposed regulations. Rule 102 of the AICPA Code of Professional Conduct requires that, prior to sharing confidential client information (such as a tax return) with a third-party service provider, an AICPA member must inform the client, preferably in writing, that the member may use a third-party service provider when providing professional services to the client. Unlike the rules in the regulations, the AICPA Code of Professional Conduct does not require that the client consent

to the disclosure of tax return information when substantive determinations or advice are sought from third parties. Under the AICPA rules, AICPA members who use third-party service providers remain responsible for the work done by the service providers and they must contract with the third-party service provider for the service provider to monitor the confidentiality of the client's information to the third-party Service provider. The commentator's recommendation that the regulations adopt only the protections of the AICPA ethics rules was not adopted. The Treasury Department and the IRS are concerned that taxpayers and tax return information would not be adequately protected if a tax return preparer could disclose tax return information to any third-party service provider without taxpayer consent to that disclosure.

One commentator recommended modifying § 301.7216-2(d) of the proposed regulations to allow disclosures between franchisors and franchisees in the tax return preparation business according to the terms of their franchise agreement. The commentator's recommendation was not adopted because the existence of a written franchise agreement should not affect the confidentiality of a taxpayer's tax return information.

One commentator critiqued § 301.7216-2(d) because it will limit the benefits tax return preparation firms may enjoy from using foreign outsourcing. Foreign outsourcing is not prohibited by the final regulations, which permit the disclosure of tax return information outside of the United States if the taxpayer consents to such disclosure. One commentator recommended that tax return preparers should be allowed to disclose tax return information to third-party service providers subject to the requirements of the privacy provisions of Title V of the Gramm-Leach-Bliley Act, Public Law 106-102 (113 Stat. 1338) (GLBA). Specifically, the commentator proposed that the regulations should permit tax return preparers to: (1) Execute a written contract with a service provider limiting the service provider's disclosure or use of tax return information; (2) select and retain service providers that are capable of safeguarding tax return information; and (3) implement contractual provisions requiring service providers to develop and maintain appropriate information safeguards. This recommendation was not adopted. While the requirements of section 7216 and these regulations do not override any requirements or restrictions of the GLBA, the sensitivity of tax return

information justifies affording tax return information stronger protections than other information subject to the GLBA.

E. Disclosure Pursuant to an Order of a Court, or an Administrative Order, Demand, Request, Summons or Subpoena Which is Issued in the Performance of its Duties by a Federal or State Agency, the United States Congress, a Professional Association Ethics Committee or Board, or the Public Company Accounting Oversight Board

One commentator recommended that the title of proposed § 301.7216-2(f) be revised to add the word "request" following the word "demand," to align the subsection's title with the regulation's language in § 301.7216-2(f)(5). This recommendation was adopted in the final regulation.

One commentator recommended replacing the phrase "professional ethics board" in proposed § 301.7216-2(f) with the phrase "certain professional association ethics committees or boards." The commentator noted that this change would avoid confusion as to whether the reference to professional ethics boards means governmental entities that control licensing for CPAs or whether the phrase would include professional associations that have boards or committees that discipline their members, such as the AICPA or state and local bar associations. This recommendation was adopted, in part, by changing the phrase "professional ethics board" to "professional association ethics committee or board." Section 301.7216-2(f)(4)(ii) separately addresses disclosures to government entities charged with licensing, registration, or regulation of tax return preparers.

One commentator recommended permitting disclosure of tax return information without taxpayer consent pursuant to disclosures required by Federal or State laws and administrative rules, but did not identify any specific rule or law that required a disclosure in circumstances contrary to either the preexisting regulations or the proposed regulations. Preexisting regulations already permitted disclosures pursuant to an order of a court or a Federal or State agency. These final regulations permit disclosures pursuant to an order of a court or an administrative order, demand, summons or subpoena that is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional association ethics committee or board, or the Public Company Accounting Oversight Board. The protections

offered by limiting disclosures to responses to specific governmental or quasi-governmental requests provide appropriate protection for taxpayer privacy.

One commentator expressed concern about proposed § 301.7216-2(f)(5) and the safeguarding of tax return information received by a professional association board or committee conducting an ethics investigation. The commentator recommended revising § 301.7216-2(f)(5) to expressly prohibit professional associations from publishing as part of any resulting professional disciplinary determination the tax return information of a taxpayer furnished to them during an ethics investigation of a preparer unless the taxpayer provides consent. This recommendation was not adopted because section 7216 does not provide for penalties against third parties who receive tax return information in this context.

One commentator recommended rewording proposed § 301.7216-2(f)(6) to provide the following: "A written request from the Public Company Accounting Oversight Board (PCAOB) in connection with an inspection under section 104 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7214, or an investigation under section 105 of such Act, 15 U.S.C. 7215, for use in accordance with such Act." The commentator noted that this wording describes more clearly the situations in which disclosures to the PCAOB are permitted, and to permit registered firms and their associated persons to comply with their disclosure obligations under the Act. This recommendation was adopted.

One commentator expressed concern that permitting the disclosure of tax return information pursuant to a subpoena issued by the United States Congress is inconsistent with the rules regarding disclosures by the IRS to Congress under section 6103(f). The commentator stated that the regulations may provide a method to avoid the specific disclosure rules of section 6103(f), which are designed to protect taxpayers and prevent Congressional abuse of returns or return information. Another commentator recommended eliminating the term "demand" in § 301.7216-2(f)(4)(i) because the commentator believes the term is too broad and could permit any Federal agency to simply ask for tax return information even if the agency does not have authority to issue "formal legal orders" compelling the disclosure. These recommendations were not adopted. Both Congress and Federal agencies are presumed to act in accordance with the law and there are

other limitations on their abilities to seek tax return information.

F. Disclosure for Use in Securing Legal Advice, Treasury Investigations, or Court Proceedings

Final section 301.7216-2(g) has been revised to confirm that a tax return preparer may disclose tax return information to an attorney for purposes of the preparer securing legal advice.

G. Tax Return Preparers Working for the Same Firm

Section 301.7216-2(h)(1)(ii) provides that a tax return preparer's law or accounting firm does not include any related or affiliated firms. Some commentators expressed concern that this rule reduces the application of the § 301.7216-2 exceptions for tax return preparers that are structured as separate legal entities, but are closely related. One commentator recommended that the regulations be revised to provide that the "same firm" standard be determined in a manner similar to the rules for qualified employee plans for a single employer. This recommendation was not adopted. Taxpayers should have a clear understanding with whom they are dealing. Adopting this recommendation would require that a taxpayer understand complex rules about which separate legal entities are part of the "same firm" as their tax return preparer to be able to understand who might receive their tax return information. Additionally, a tax return preparer has the ability to obtain consent from a taxpayer to disclose tax return information to a related or affiliated firm.

H. Disclosure or Use of Tax Return Information in Preparation for Audit

One commentator recommended that a tax return preparer should be permitted to disclose tax return information to another tax return preparer so that the second tax return preparer can provide assistance in connection with the audit of a return under the law of any State or political subdivision thereof, the District of Columbia, or any territory or possession of the United States. This comment was not adopted because § 301.7216-2(k) already permits such disclosures.

I. Payment for Tax Preparation Services

Section 301.7216-2(l) provides that a tax return preparer may disclose and use, without the taxpayer's written consent, tax return information that the taxpayer provides to the tax return preparer to pay for tax preparation services to the extent necessary to process the payment. One commentator

recommended applying this rule to the collection of payments. This recommendation was adopted. The exception under § 301.7216-2(l) for the collection of payments is subject to the same limitations as the rule for processing payments. Only tax return information that the taxpayer provided to the tax return preparer to pay for tax return preparation services may be used to collect payment. This limitation precludes tax return preparers from using any other tax return information to collect on delinquent payments.

J. Lists for Solicitation of Tax Return Business

Section 301.7216-2(n) of the proposed regulations provides that a tax return preparer may compile and maintain a separate list containing solely the names, addresses, e-mail addresses, and phone numbers of taxpayers whose tax returns the tax return preparer has prepared or processed. The proposed regulations also state that this list may be used by the compiler solely to contact the taxpayers on the list for the purpose of offering tax information or additional tax return preparation services. One commentator recommended adding that no mention of services or products other than those related to tax preparation services may be made. Treasury and the IRS agree that the prohibition on using the list to solicit business other than tax return preparation services could be strengthened, and have modified § 301.7216-2(n) to address the commentator's concern.

K. Producing Statistical Information in Connection With Tax Return Preparation Business

Section 301.7216-2(o) of the proposed regulations permits a tax return preparer to use tax return information to prepare anonymous statistical compilations for limited purposes related to management or support of the tax return preparer's business. Two commentators recommended that the disclosure or use of tax return information in statistical compilations should be limited to "internal management" because "support" might be read to allow a tax return preparer to target specific customers with advertising. This recommendation was not adopted because § 301.7216-2(o) specifically prohibits the disclosure or use of statistical compilations in connection with, or in support of, businesses other than tax return preparation, and use of lists to solicit additional tax return preparation business is specifically governed, and limited, by § 301.7216-2(n).

One commentator recommended that statistical compilations of tax return information that do not identify taxpayers should not be considered "tax return information" for purposes of section 7216. The commentator stated that if statistical information is treated as "tax return information," such a rule could prevent tax return preparers (especially tax return preparers that are publicly traded) from reporting essential data to financial regulators or to market participants to provide an accurate picture of the tax return preparer's performance and financial condition. In response to the concern raised by the commentator, the final regulation was modified to provide that the compiler of the statistical compilation may not disclose the compilation, or any part thereof, to any other person unless the disclosure of the statistical compilation is made in order to comply with financial accounting or regulatory reporting requirements or occurs in conjunction with the sale or other disposition of the compiler's tax return preparation business.

One commentator recommended that tax return preparers located within the same firm should be permitted, without obtaining consent, to use tax return information for "the management, support or maintenance of the tax return preparer's business." This recommendation was not adopted. Because the regulations already permit a tax return preparer to use tax return information to prepare statistical compilations for limited purposes related to management or support of the tax return preparer's business, it is unclear how the commentator's recommendation would further aid in the management or support of a tax return preparer's business.

One commentator recommended that the regulations require that "taxpayer identifying" data, such as names and social security numbers, be redacted from statistical information. This recommendation was not adopted. The regulations already require that statistical compilations must be "anonymous."

L. Quality or Peer Reviews

Section 301.7216-2(p) of the proposed regulations provides that a quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. Some commentators recommended that this subsection of the proposed regulations should be revised to permit other professionals to participate in quality or peer reviews.

This recommendation was not adopted. The restriction helps to prevent unauthorized disclosures of tax return information by limiting participation in such reviews to those persons subject to Circular 230, 31 CFR Part 10.

M. Extraction of Tax Return Information Within Software Only for the Purposes of Reducing Repetitive Data Entry

One commentator recommended that the use of computer software designed to assist with the preparation of an income tax return should be allowed without consent to "extract" certain tax return information once entered, such as the taxpayer's name and address, and reprint such information in required fields on the same return in order to eliminate repetitive data entry. This comment was not adopted because the regulations do not prohibit such a use of tax return information where the information is being used for the permitted purpose of preparing the taxpayer's tax return.

4. Proposed § 301.7216-3: Disclosures and Uses Authorized by Taxpayer Consent

A. Consent To Disclose Tax Return Information

Some commentators expressed concern that the proposed regulations authorize the IRS to make available for sale to third parties its internal records and data containing tax return information. This concern reflects a fundamental misunderstanding of the proposed regulations. The proposed regulations do not address any disclosure of tax return information by the IRS; the proposed regulations address only the disclosure and use of tax return information by tax return preparers. Separate laws, including section 6103, strictly protect the confidentiality of returns and return information in the hands of IRS employees and others.

Some commentators expressed concern that the proposed regulations would loosen the current rules regarding a tax return preparer's ability to disclose a client's tax return information. This concern is based on a misunderstanding of the purpose and content of the proposed and preexisting regulations. Section 301.7216-3(a)(1) of the proposed regulations provides that, unless section 7216 or § 301.7216-2 authorizes the disclosure of tax return information, a tax return preparer may not disclose a taxpayer's tax return information prior to obtaining consent from the taxpayer. Since 1974, section 301.7216-3(a)(2) has provided that, "[i]f a tax return preparer has obtained from

a taxpayer a consent * * *, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct." Thus, the proposed regulations contained the same substantive rule that has been in place for over 30 years. Throughout the long-standing existence of former § 301.7216-3(a)(2), there has been no objection to the provision that allowed taxpayers to provide informed consent to tax return preparers disclosing tax return information to third parties.

Nonetheless, commentators criticized the proposed rule, stating that it could allow tax return preparers to induce clients into providing unknowing or inadvertent consents to sell or otherwise disclose tax return information. Furthermore, they argue that disclosure to third parties could result in identity theft. Thus, one solution these commentators recommend is to prohibit taxpayers from ever consenting to the disclosure of their tax return information.

The Treasury Department and IRS did not adopt the commentators' recommendation. Rather, the final regulations retain the general rule that has been in place for more than 30 years recognizing that taxpayers should have control over their own tax return information and that taxpayers should, with appropriate limits and safeguards, be able to direct tax return preparers to disclose tax return information as taxpayers see fit. This rule parallels the statutory rule in section 6103(c) that allows taxpayers to consent to the IRS disclosing returns or return information to third parties of the taxpayer's choosing.

In addition, this rule is consistent with the privacy protection regime in the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191 (110 Stat. 1936). HIPAA permits health care providers and health plans to disclose information about health status, provision of health care, or payment to a third-party if they have obtained authorization from the individual patient.

While identity theft is a significant concern, Treasury and the IRS do not believe a generalized concern regarding the potential for criminal activity by third parties should preclude taxpayers from being able to direct the disclosure of tax return information to third parties for legitimate reasons of the taxpayer's own choosing, particularly in the absence of any evidence that disclosure of tax return information by tax return preparers has been a source of identity theft problems.

While the idea of a complete prohibition on consent to disclosure

was rejected, Treasury and the IRS did revise § 301.7216-3(b)(5), based on several factors. These factors include: (1) The fact that it is not necessary for tax return preparers to disclose certain taxpayer identifying information to other tax return preparers who are assisting them in preparing a return; (2) the important role a social security number (SSN) plays in the tax administration process, and the heightened potential for misuse when an SSN is readily associated with confidential information, such as tax return information; and (3) the heightened concern about the theft of an individual's confidential information resulting from disclosures outside the United States. Section 301.7216-3(b)(4) now provides that a tax return preparer located within the United States, including any territory or possession of the United States, may not obtain consent to disclose a taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States. Thus, if a tax return preparer located within the United States obtains consent from a taxpayer to disclose tax return information to another tax return preparer located outside of the United States, as provided under §§ 301.7216-2(c) and 301.7216-2(d), the tax return preparer located in the United States may not disclose the taxpayer's SSN, and the tax return preparer must redact or otherwise mask the taxpayer's SSN before the tax return information is disclosed outside of the United States. If a tax return preparer located within the United States initially receives or obtains a taxpayer's SSN from another tax return preparer located outside of the United States, however, the tax return preparer within the United States may, without consent, retransmit the taxpayer's SSN to the tax return preparer located outside the United States that initially provided the SSN to the tax return preparer located within the United States. Where a taxpayer-client requests that a tax return preparer within the United States transfer the return preparation engagement to a tax return preparer located outside the United States, the preparer must still redact or otherwise mask the taxpayer's SSN before the information is disclosed and, in this situation, it will be incumbent upon the taxpayer to provide the SSN directly to the tax return preparer located abroad.

Some commentators recommended that the regulations provide taxpayers with the ability to informally initiate a request for the disclosure of tax return information from their tax return

preparers without formally following the consent rules of § 301.7216-3. This recommendation was not adopted. As a practical matter, it would be difficult to distinguish when a taxpayer informally initiates a request for the disclosure of tax return information and when tax return preparers merely claim that a taxpayer initiated the request for disclosure. Additionally, tax return preparers are always free to provide taxpayers their own returns and taxpayers may disclose tax return information to others directly.

Other commentators recommended that the regulations should prohibit disclosure to third-party solicitors and not allow taxpayers to consent to disclosures for the purpose of receiving solicitations because the risks to the taxpayer of providing consent inadvertently are too great in comparison to the benefit of receiving solicitations from third parties. This recommendation was not adopted because it denies taxpayers the ability to control and direct the disclosure of their own tax return information. If taxpayers do not wish to receive offers or solicitations from third parties, they can simply refuse to provide the consent needed for third parties to receive their tax return information. If a tax return preparer obtains written consent under circumstances that make the consent unknowing or uninformed, the consent would be invalid under the requirements of the regulations.

B. Consent To Use of Tax Return Information

Section 301.7216-3 of the preexisting regulations provides that a consent to use tax return information does not apply for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless the other person and the tax return preparer are members of the same affiliated group of corporations within the meaning of section 1504. The proposed regulations removed this "affiliated group" limitation because the affiliated group concept has little application in the context of modern return preparation businesses. The proposed regulations also reflected a determination by the IRS and Treasury Department that a taxpayer's ability to consent to a preparer's use of tax return information to solicit additional business should not be limited by arbitrary factors largely beyond the taxpayer's knowledge or control, such as the size, diversity, or organizational structure of the tax return preparer. Some commentators expressed concern that removal of the "affiliated group"

limitation would make it easier for tax return preparers to disclose tax return information to third parties for marketing purposes. This comment reflects a misunderstanding of the nature of a consent governing a tax return preparer's use of tax return information. Use consents are limited to what a tax return preparer can do with tax return information in the tax return preparer's own hands; use consents cannot be used in connection with disclosures to third parties. Thus, identity theft or other abuses by third parties could not arise from taxpayers providing use consents to tax return preparers.

Further, prohibiting the commercial use of tax return information outright would result in no longer allowing legitimate uses of tax return information that have evolved over time as standard commercial practices. For example, tax return preparers could not use tax return information to advise taxpayers of strategies that may positively affect the taxpayers' finances such as individual retirement accounts or qualified tuition programs, or of the taxpayers' eligibility to participate in government benefit programs, such as food stamps.

C. Prohibit Tax Return Preparers From Disclosing Tax Return Information for Any Reason Unrelated to the Preparation of a Tax Return

Many commentators recommended prohibiting tax return preparers from disclosing tax return information for any purpose unrelated to the preparation of tax returns. This recommendation was not adopted because there are many legitimate purposes for the disclosure of tax return information identified in § 301.7216-2, such as the disclosure of tax return information for the reporting of a crime or for an ethics investigation. Similarly, there are legitimate purposes, other than tax return preparation, when a taxpayer would choose to consent to the tax return preparer's disclosure of tax return information.

As an alternative, some commentators recommended that the regulations prohibit or greatly restrict the use or disclosure of tax return information for marketing purposes. They specifically recommended banning tax return preparers from disclosing tax return information in association with taxpayers seeking refund anticipation loans (RALs) and similar products. Treasury and the IRS did not adopt this recommendation because it was not contained in the proposed regulations and could have a significant impact on existing business practices. Concurrently with the publication of

these final regulations, however, Treasury and the IRS are requesting comments on a proposed rule that, if ultimately adopted as final, would prohibit tax return preparers from using or disclosing tax return information for the purpose of soliciting, or the taxpayer obtaining, a RAL or certain other products.

Commentators also recommended that disclosure of tax return information by tax return preparers should be conditioned upon the existence of an agreement by third parties receiving the information that the tax return information will not be used for any purpose other than the purpose for which the information was provided. This recommendation was not adopted because policing agreements by third parties are outside the scope of section 7216. Section 7216 governs only the actions of tax return preparers.

D. Obtaining Consent Through Engagement Letters

Some commentators recommended that when the regulations require consent to disclose or use tax return information, tax return preparers should be permitted to obtain such consent from "large taxpayers," such as large corporations, through an engagement letter. These commentators observed that it is ordinary business practice for tax return preparers and large taxpayers to negotiate and set the terms of the provision of services, including the preparation of income tax returns, in an engagement letter. This recommendation was adopted. Treasury and the IRS agree that requiring multiple, separate consents would impose a significant burden and could frustrate these taxpayers' ability to comply with tax laws and other regulatory and reporting requirements. Section 301.7216-3(a)(3) has been modified to provide a set of requirements regarding the format and content of consents to disclose and use tax return information with respect to taxpayers filing income tax returns in the Form 1040 series, *e.g.*, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ, and a separate set of requirements regarding the format and content of consents to disclose and use tax return information with respect to taxpayers filing all other tax returns. Under § 301.7216-3(a)(3)(iii), for tax return preparers providing tax return preparation services to taxpayers who do not file an income tax return in the Form 1040 series, a consent to use or a consent to disclose may be in any format, including an engagement letter to a client, as long as the consent

complies with the requirements of § 301.7216-3(a)(3)(i).

E. Conditioning Services on Consent

Section 301.7216-3(a)(1) provides that a consent to use or disclose tax return information must be knowing and voluntary. Section 301.7216-3(a)(1) has been modified to clarify that to condition the provision of services on the taxpayer's consent will make the consent involuntary and invalid unless § 301.7216-3(a)(2) applies.

Section 301.7216-3(a)(2) provides that a tax return preparer may condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer. One commentator requested a clarification regarding whether a tax return preparer with offices within and outside of the United States is permitted to condition its provision of tax preparation services to a taxpayer outside of the United States on the taxpayer consenting to disclosure. The final regulations permit a tax return preparer with offices within and outside of the United States to condition its provision of tax preparation services to a taxpayer on the taxpayer's consenting to disclosure to a return preparer located outside the United States. An example was added to the final regulations to clarify this rule.

Other commentators recommended that the regulations should prohibit tax return preparers from conditioning the provision of any services upon consent. This recommendation was adopted by inserting the word "any" before "services" in § 301.7216-3(a)(1), to which § 301.7216-3(a)(2) provides the only exception.

F. Requests To Consent After Completed Tax Return Provided to Taxpayer

Proposed section 301.7216-3(b)(2) provides that a tax return preparer may not request a taxpayer's consent to disclose or use tax return information after the tax return preparer provides a completed tax return to the taxpayer for signature. Commentators suggested that there may be legitimate circumstances where a request to consent is necessary in light of taxpayer preferences and is part of client service provided by the preparer. Specifically, the commentators gave the example of a taxpayer requesting that his or her tax return preparer disclose the past three years of the taxpayer's tax returns to his or her attorney for purposes of preparing the

client's estate plan. Under the proposed regulation, a request for consent to disclose would be untimely in this situation, even though the taxpayer requests the disclosure as part of the client service provided by the tax return preparer. As indicated by the provisions regarding solicitation of other business that were included in the previous final regulations, the Treasury Department and IRS believe that taxpayers should not be the subject of repetitive solicitation requests for business made by tax return preparers after the tax preparation engagement has ended. Consistent with previous final regulations, the final regulation in section 301.7216-3(b)(2) has been modified to state that a tax return preparer may not request a taxpayer's consent to disclose or use tax return information for purposes of solicitation of business unrelated to tax return preparation after the tax return preparer provides a completed tax return to the taxpayer for signature. Under the final regulations, the preparer would not be precluded from requesting consent to disclose the past three years of the taxpayer's tax returns to his or her attorney for purposes of preparing the client's estate plan according to the example provided by commentators.

G. Prohibition on Multiple Requests for Consent

Proposed section 301.7216-3(b)(3) provides that if a taxpayer declines to provide consent to a disclosure or use of tax return information, a tax return preparer cannot make another request for consent. Some commentators recommended that the regulations permit a tax return preparer to clarify the purpose and extent of the consent if necessary after the taxpayer declines to provide consent, and that such a clarification should not be treated as a second request by the tax return preparer to obtain a consent. Another commentator stated that tax return preparers should be permitted to request consent whenever they wish so long as the consent properly describes the nature of, and reasons for, potential disclosures or uses. The commentators' recommendations were based upon the recognition that there may be legitimate reasons for the preparer to more thoroughly explain the request for consent and how the consent relates to the tax preparation engagement. However, Treasury and the IRS are concerned that lack of restrictions regarding multiple requests for consent regarding the same or similar request may cause undue pressure to consent where there are repetitious requests. In light of these concerns, section

301.7216-3(b)(3) has been modified to provide that, for purposes unrelated to a tax preparation engagement, if a taxpayer declines a request for consent to the disclosure or use of tax return information, the tax return preparer may not solicit from the taxpayer another consent for a purpose substantially similar to that of the rejected request. Under this rule, there is no prohibition regarding the taxpayer independently asking the tax return preparer about a disclosure or use of the taxpayer's same tax return information after a declined consent request.

H. Multiple Disclosures or Multiple Uses Within a Single Consent Form

Section 301.7216-3(c)(1) of the proposed regulations provides that a taxpayer may consent to multiple disclosures within the same written document, or multiple uses within the same written document. One commentator recommended permitting taxpayers to consent to multiple disclosures and multiple uses with the same form. Another commentator recommended prohibiting a taxpayer from consenting to multiple disclosures within the same written document, or multiple uses within the same written document, in order to avoid potential taxpayer confusion. These recommendations were not adopted.

The proposed rule was intended to emphasize that disclosure and use are two distinct concepts, and a taxpayer may consider consenting to one and not the other. The comments to the proposed regulations demonstrated that there is potential for confusion regarding the distinction between disclosure and use. Treasury and the IRS believe it is appropriate to require separate consents in situations where there is a probability that the taxpayer could become confused over the distinction between use and disclosure. Section 301-7216-3(c)(1) of the final regulations provides that for taxpayers who are filers of returns in the Form 1040 series, the proposed rule is retained. The rule requiring separate consents is limited to individuals because use or disclosure of that tax return information involves situations where confusion is most likely to occur.

I. Disclosure of All Information Contained Within a Return

Section 301.7216-3(c)(2) of the proposed regulations provides that a consent authorizing the disclosure of all information contained within a return must set forth an explanation of the reason why a consent authorizing a more limited disclosure of tax return information is unsatisfactory for the

purpose of the consent. Some commentators characterized this requirement as burdensome in certain situations and recommended eliminating this requirement. Commentators reasoned that a third party service provider, such as the taxpayer's attorney, may request a copy of the return and the requirement to provide an explanation would interject the preparer between the requirements imposed by the third party service provider and the taxpayer. In light of these concerns, section 301.7216-3(c)(2) of the final regulations modifies this provision to provide that where a consent authorizes the disclosure of a copy of the taxpayer's tax return or all information contained within a return, the consent must provide that the taxpayer has the ability to request a more limited disclosure of tax return information as the taxpayer may direct.

Some commentators concerned with marketing of tax return information recommended that disclosure of the entire tax return should not be permitted under any circumstances. The commentators' rationale was that disclosure of the entire return is never necessary for marketing purposes. This recommendation was not adopted because, in general, taxpayers should have control over their own tax return information and they should be able to direct tax return preparers to disclose tax return information as the taxpayers see fit.

J. Duration of Consent

Section 301.7216-3(b)(5) of the proposed regulations provides that no consent to the disclosure or use of tax return information may be effective for a period longer than one year from the date the taxpayer signed the consent. Some commentators expressed concern that the duration of consent may need to be effective for a period greater than one year. One commentator observed that when preparing expatriate tax returns, there may be circumstances when the due date for a foreign tax return or other related document is more than one year after the taxpayer signs the consent. Some commentators recommended that taxpayers should be permitted to establish the duration of consent, and the one-year period should apply only if the taxpayer fails to specify a different duration of consent. This recommendation was adopted in the final regulations.

K. Consents Read Aloud

Some commentators recommended that § 301.7216-3 require that consents be read aloud by audio output. This recommendation was not adopted. This

recommendation would impose a burdensome rule that is outside the norm of standard practices for obtaining consent.

5. General Comments

Several commentators recommended rejecting all of the provisions of the proposed regulations under section 7216. The recommendations to reject the proposed regulations were not adopted. The proposed regulations were finalized to provide updates relating to uses and disclosures of tax return information in the electronic return preparation context and create an environment that allows taxpayers to make informed decisions regarding the disclosure or use of their tax return information.

Effect on Other Documents

The following publication is obsolete on or after January 1, 2009: Rev. Rul. 79-114, 1979-1 C.B. 441 (1979).

Special Analyses

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

Drafting Information

The principal author of these regulations is Dillon Taylor, formerly of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding these regulations contact Lawrence Mack of the Office of the Associate Chief Counsel (Procedure and Administration) at 202-622-4940 (not a toll-free call).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** Section 301.7216-0 is added to read as follows:

§ 301.7216-0 Table of contents.

This section lists captions contained in §§ 301.7216-1 through 301.7216-3.

§ 301.7216-1 *Penalty for disclosure or use of tax return information.*

- (a) In general.
- (b) Definitions.
- (c) Gramm-Leach-Bliley Act.
- (d) Effective date.

§ 301.7216-2 *Permissible disclosures or uses without consent of the taxpayer.*

- (a) Disclosure pursuant to other provisions of the Internal Revenue Code.
- (b) Disclosures to the IRS.
- (c) Disclosures or uses for preparation of a taxpayer's return.
- (d) Disclosures to other tax return preparers.

(e) Disclosure or use of information in the case of related taxpayers.

(f) Disclosure pursuant to an order of a court, or an administrative order, demand, request, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional association ethics committee or board, or the Public Company Accounting Oversight Board.

(g) Disclosure for use in securing legal advice, Treasury investigations or court proceedings.

(h) Certain disclosures by attorneys and accountants.

(i) Corporate fiduciaries.

(j) Disclosure to taxpayer's fiduciary.

(k) Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.

(l) Payment for tax preparation services.

(m) Retention of records.

(n) Lists for solicitation of tax return business.

(o) Producing statistical information in connection with tax return preparation business.

(p) Disclosure or use of information for quality or peer reviews.

(q) Disclosure to report the commission of a crime.

(r) Disclosure of tax return information due to a tax return preparer's incapacity or death.

(s) Effective date.

§ 301.7216-3 *Disclosure or use permitted only with the taxpayer's consent.*

(a) In general.

(b) Timing requirements and limitations.

(c) Special rules.

(d) Effective date.

■ **Par. 3.** Section 301.7216-1 is revised to read as follows:

§ 301.7216-1 Penalty for disclosure or use of tax return information.

(a) *In general.* Section 7216(a) prescribes a criminal penalty for tax return preparers who knowingly or recklessly disclose or use tax return information for a purpose other than preparing a tax return. A violation of section 7216 is a misdemeanor, with a maximum penalty of up to one year imprisonment or a fine of not more than \$1,000, or both, together with the costs of prosecution. Section 7216(b) establishes exceptions to the general rule in section 7216(a) prohibiting disclosure and use. Section 7216(b) also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures and uses. Section 6713(a) prescribes a related civil penalty for disclosures and uses that constitute a violation of section 7216. The penalty for violating section 6713 is \$250 for each prohibited disclosure or use, not to exceed a total of \$10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713. Under section 7216(b), the provisions of section 7216(a) will not apply to any disclosure or use permitted under regulations prescribed by the Secretary.

(b) *Definitions.* For purposes of section 7216 and §§ 301.7216-1 through 301.7216-3:

(1) *Tax return.* The term *tax return* means any return (or amended return) of income tax imposed by chapter 1 of the Internal Revenue Code.

(2) *Tax return preparer—(i) In general.* The term *tax return preparer* means:

(A) Any person who is engaged in the business of preparing or assisting in preparing tax returns;

(B) Any person who is engaged in the business of providing auxiliary services in connection with the preparation of tax returns, including a person who develops software that is used to prepare or file a tax return and any Authorized IRS e-file Provider;

(C) Any person who is otherwise compensated for preparing, or assisting in preparing, a tax return for any other person; or

(D) Any individual who, as part of their duties of employment with any person described in paragraph (b)(2)(i)(A), (B), or (C) of this section performs services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, a tax return.

(ii) *Business of preparing returns.* A person is engaged in the business of preparing tax returns as described in paragraph (b)(2)(i)(A) of this section if, in the course of the person's business,

the person holds himself out to tax return preparers or taxpayers as a person who prepares tax returns or assists in preparing tax returns, whether or not tax return preparation is the person's sole business activity and whether or not the person charges a fee for tax return preparation services.

(iii) *Providing auxiliary services.* A person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in paragraph (b)(2)(i)(B) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or to taxpayers as a person who performs auxiliary services, whether or not providing the auxiliary services is the person's sole business activity and whether or not the person charges a fee for the auxiliary services. Likewise, a person is engaged in the business of providing auxiliary services if, in the course of the person's business, the person receives a taxpayer's tax return information from another tax return preparer pursuant to the provisions of § 301.7216-2(d)(2).

(iv) *Otherwise compensated.* A tax return preparer described in paragraph (b)(2)(i)(C) of this section includes any person who—

(A) Is compensated for preparing a tax return for another person, but not in the course of a business; or

(B) Is compensated for helping, on a casual basis, a relative, friend, or other acquaintance to prepare their tax return.

(v) *Exclusions.* A person is not a tax return preparer merely because he leases office space to a tax return preparer, furnishes credit to a taxpayer whose tax return is prepared by a tax return preparer, furnishes information to a tax return preparer at the taxpayer's request, furnishes access (free or otherwise) to a separate person's tax return preparation Web site through a hyperlink on his own Web site, or otherwise performs some service that only incidentally relates to the preparation of tax returns.

(vi) *Examples.* The application of § 301.7216-1(b)(2) may be illustrated by the following examples:

Example 1. Bank B is a tax return preparer within the meaning of paragraph (b)(2)(i)(A) of this section, and an Authorized IRS e-file Provider. B employs one individual, Q, to solicit the necessary tax return information for the preparation of a tax return; another individual, R, to prepare the return on the basis of the information that is furnished; a secretary, S, who types the information on the returns into a computer; and an administrative assistant, T, who uses a computer to file electronic versions of the tax returns. Under these circumstances, only R is a tax return preparer for purposes of section

7701(a)(36), but all four employees are tax return preparers for purposes of section 7216, as provided in paragraph (b) of this section.

Example 2. Tax return preparer P contracts with department store D to rent space in D's store. D advertises that taxpayers who use P's services may charge the cost of having their tax return prepared to their charge account with D. Under these circumstances, D is not a tax return preparer because it provides space, credit, and services only incidentally related to the preparation of tax returns.

(3) *Tax return information—(i) In general.* The term *tax return information* means any information, including, but not limited to, a taxpayer's name, address, or identifying number, which is furnished in any form or manner for, or in connection with, the preparation of a tax return of the taxpayer. This information includes information that the taxpayer furnishes to a tax return preparer and information furnished to the tax return preparer by a third party. Tax return information also includes information the tax return preparer derives or generates from tax return information in connection with the preparation of a taxpayer's return.

(A) Tax return information can be provided directly by the taxpayer or by another person. Likewise, tax return information includes information received by the tax return preparer from the IRS in connection with the processing of such return, including an acknowledgment of acceptance or notice of rejection of an electronically filed return.

(B) Tax return information includes statistical compilations of tax return information, even in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. See § 301.7216-2(o) for limited use of tax return information to make statistical compilations without taxpayer consent and to use the statistical compilations for limited purposes.

(C) Tax return information does not include information identical to any tax return information that has been furnished to a tax return preparer if the identical information was obtained otherwise than in connection with the preparation of a tax return.

(D) Information is considered "in connection with tax return preparation," and therefore tax return information, if the taxpayer would not have furnished the information to the tax return preparer but for the intention to engage, or the engagement of, the tax return preparer to prepare the tax return.

(ii) *Examples.* The application of this paragraph (b)(3) may be illustrated by the following examples:

Example 1. Taxpayer A purchases computer software designed to assist with the preparation and filing of her income tax return. When A loads the software onto her computer, it prompts her to register her purchase of the software. In this situation, the software provider is a tax return preparer under paragraph (b)(2)(i)(B) of this section and the information that A provides to register her purchase is tax return information because she is providing it in connection with the preparation of a tax return.

Example 2. Corporation A is a brokerage firm that maintains a Web site through which its clients may access their accounts, trade stocks, and generally conduct a variety of financial activities. Through its Web site, A offers its clients free access to its own tax preparation software. Taxpayer B is a client of A and has furnished A his name, address, and other information when registering for use of A's Web site to use A's brokerage services. In addition, A has a record of B's brokerage account activity, including sales of stock, dividends paid, and IRA contributions made. B uses A's tax preparation software to prepare his tax return. The software populates some fields on B's return on the basis of information A already maintains in its databases. A is a tax return preparer within the meaning of paragraph (b)(2)(i)(B) of this section because it has prepared and provided software for use in preparing tax returns. The information in A's databases that the software accesses to populate B's return, *i.e.*, the registration information and brokerage account activity, is not tax return information because A did not receive that information in connection with the preparation of a tax return. Once A uses the information to populate the return, however, the information associated with the return becomes tax return information. If A retains the information in a form in which A can identify that the information was used in connection with the preparation of a return, the information in that form is tax return information. If, however, A retains the information in a database in which A cannot identify whether the information was used in connection with the preparation of a return, then that information is not tax return information.

(4) *Use*—(i) *In general.* Use of tax return information includes any circumstance in which a tax return preparer refers to, or relies upon, tax return information as the basis to take or permit an action.

(ii) *Example.* The application of this paragraph (b)(4) may be illustrated by the following example:

Example. Preparer G is a tax return preparer as defined by paragraph (b)(2)(i)(A) of this section. If G determines, upon preparing a return, that the taxpayer is eligible to make a contribution to an individual retirement account (IRA), G will ask whether the taxpayer desires to make a contribution to an IRA. G does not ask about IRAs in cases in which the taxpayer is not eligible to make a contribution. G is using tax return information when it asks whether a

taxpayer is interested in making a contribution to an IRA because G is basing the inquiry upon knowledge gained from information that the taxpayer furnished in connection with the preparation of the taxpayer's return.

(5) *Disclosure.* The term *disclosure* means the act of making tax return information known to any person in any manner whatever. To the extent that a taxpayer's use of a hyperlink results in the transmission of tax return information, this transmission of tax return information is a disclosure by the tax return preparer subject to penalty under section 7216 if not authorized by regulation.

(6) *Hyperlink.* For purposes of section 7216, a hyperlink is a device used to transfer an individual using tax preparation software from a tax return preparer's Web page to a Web page operated by another person without the individual having to separately enter the Web address of the destination page.

(7) *Request for consent.* A request for consent includes any effort by a tax return preparer to obtain the taxpayer's consent to use or disclose the taxpayer's tax return information. The act of supplying a taxpayer with a paper or electronic form that meets the requirements of a revenue procedure published pursuant to § 301.7216-3(a) is a request for a consent. When a tax return preparer requests a taxpayer's consent, any associated efforts of the tax return preparer, including, but not limited to, verbal or written explanations of the form, are part of the request for consent.

(c) *Gramm-Leach-Bliley Act.* Any applicable requirements of the Gramm-Leach-Bliley Act, Public Law 106-102 (113 Stat. 1338), do not supersede, alter, or affect the requirements of section 7216 and §§ 301.7216-1 through 301.7216-3. Similarly, the requirements of section 7216 and §§ 301.7216-1 through 301.7216-3 do not override any requirements or restrictions of the Gramm-Leach-Bliley Act, which are in addition to the requirements or restrictions of section 7216 and §§ 301.7216-1 through 301.7216-3.

(d) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009.

■ **Par. 4.** Section 301.7216-2 is revised to read as follows:

§ 301.7216-2 Permissible disclosures or uses without consent of the taxpayer.

(a) *Disclosure pursuant to other provisions of the Internal Revenue Code.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information if

the disclosure is made pursuant to any other provision of the Internal Revenue Code or the regulations thereunder.

(b) *Disclosures to the IRS.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information to an officer or employee of the IRS.

(c) *Disclosures or uses for preparation of a taxpayer's return*—(1) *Updating Taxpayers' Tax Return Preparation Software.* If a tax return preparer provides software to a taxpayer that is used in connection with the preparation or filing of a tax return, the tax return preparer may use the taxpayer's tax return information to update the taxpayer's software for the purpose of addressing changes in IRS forms, e-file specifications and administrative, regulatory and legislative guidance or to test and ensure the software's technical capabilities without the taxpayer's consent under § 301.7216-3.

(2) *Tax return preparers located within the same firm in the United States.* If a taxpayer furnishes tax return information to a tax return preparer located within the United States, including any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use the tax return information, or disclose the tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the taxpayer's tax return. If an officer, employee, or member to whom the tax return information is to be disclosed is located outside of the United States or any territory or possession of the United States, the taxpayer's consent under § 301.7216-3 prior to any disclosure is required.

(3) *Furnishing tax return information to tax return preparers located outside the United States.* If a taxpayer initially furnishes tax return information to a tax return preparer located outside of the United States or any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use tax return information, or disclose any tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer by or for whom the information was furnished without the taxpayer's consent under § 301.7216-3.

(4) *Examples.* The following examples illustrate this paragraph (c):

Example 1. Preparer P provides tax return preparation software to Taxpayer T for T to use in the preparation of its 2009 income tax return. For the 2009 tax year, and using T's tax return information furnished while registering for the software, P would like to update the tax return preparation software that T is using to account for last minute changes made to the tax laws for the 2009 tax year. P is not required to obtain T's consent to update the tax return preparation software. P may perform a software update regardless of whether the software update will affect T's particular return preparation activities.

Example 2. T is a client of Firm, which is a tax return preparer. E, an employee at Firm's State A office, receives tax return information from T for use in preparing T's income tax return. E discloses the tax return information to P, an employee in Firm's State B office; P uses the tax return information to process T's income tax return. Firm is not required to receive T's consent under § 301.7216-3 prior to E's disclosure of T's tax return information to P because the tax return information is disclosed to an employee employed by the same tax return preparer located within the United States.

Example 3. Same facts as *Example 2* except T's tax return information is disclosed to FE who is located in Firm's Country F office. FE uses the tax return information to process T's income tax return. After processing, FE returns the processed tax return information to E in Firm's State A office. Because FE is outside of the United States, Firm is required to obtain T's consent under § 301.7216-3 prior to E's disclosure of T's tax return information to FE.

Example 4. T, Firm's client, is temporarily located in Country F. She initially furnishes her tax return information to employee FE in Firm's Country F office for the purpose of having Firm prepare her U.S. income tax return. FE makes the substantive determinations concerning T's tax liability and forwards T's tax return information to FP, an employee in Firm's Country P office, for the purpose of processing T's tax return information. FP processes the return information and forwards it to Partner at Firm's State A office in the United States for review and delivery to T. Because T initially furnished the tax return information to a tax return preparer outside of the United States, T's prior consent for disclosure or use under § 301.7216-3 was not required. An officer, employee, or member of Firm in the United States may use T's tax return information or disclose the tax return information to another officer, employee, or member of Firm without T's prior consent under § 301.7216-3 as long as any disclosure or use of T's tax return information is within the United States. Firm is required to receive T's consent under § 301.7216-3 prior to any subsequent disclosure of T's tax return information to a tax return preparer located outside of the United States.

(d) *Disclosures to other tax return preparers—(1) Preparer-to-preparer disclosures.* Except as limited in paragraph (d)(2) of this section, an

officer, employee, or member of a tax return preparer may disclose tax return information of a taxpayer to another tax return preparer (other than an officer, employee, or member of the same tax return preparer) located in the United States (including any territory or possession of the United States) for the purpose of preparing or assisting in preparing a tax return, or obtaining or providing auxiliary services in connection with the preparation of any tax return, so long as the services provided are not substantive determinations or advice affecting the tax liability reported by taxpayers. A substantive determination involves an analysis, interpretation, or application of the law. The authorized disclosures permitted under this paragraph (d)(1) include one tax return preparer disclosing tax return information to another tax return preparer for the purpose of having the second tax return preparer transfer that information to, and compute the tax liability on, a tax return of the taxpayer by means of electronic, mechanical, or other form of tax return processing service. The authorized disclosures permitted under this paragraph (d)(1) also include disclosures by a tax return preparer to an Authorized IRS *e-file* Provider for the purpose of electronically filing the return with the IRS. Authorized disclosures also include disclosures by a tax return preparer to a second tax return preparer for the purpose of making information concerning the return available to the taxpayer. This would include, for example, whether the return has been accepted or rejected by the IRS, or the status of the taxpayer's refund. Except as provided in paragraph (c) of this section, a tax return preparer may not disclose tax return information to another tax return preparer for the purpose of the second tax return preparer providing substantive determinations without first receiving the taxpayer's consent in accordance with the rules under § 301.7216-3.

(2) *Disclosures to contractors.* A tax return preparer may disclose tax return information to a person under contract with the tax return preparer in connection with the programming, maintenance, repair, testing, or procurement of equipment or software used for purposes of tax return preparation only to the extent necessary for the person to provide the contracted services, and only if the tax return preparer ensures that all individuals who are to receive disclosures of tax return information receive a written notice that informs them of the

applicability of sections 6713 and 7216 to them and describes the requirements and penalties of sections 6713 and 7216. Contractors receiving tax return information pursuant to this section are tax return preparers under section 7216 because they are performing auxiliary services in connection with tax return preparation. See § 301.7216-1(b)(2)(i)(B) and (D).

(3) *Examples.* The following examples illustrate this paragraph (d):

Example 1. E, an employee at Firm's State A office, receives tax return information from T for Firm's use in preparing T's income tax return. E makes substantive determinations and forwards the tax return information to P, an employee at Processor; Processor is located in State B. P places the tax return information on the income tax return and furnishes the finished product to E. E is not required to receive T's prior consent under § 301.7216-3 before disclosing T's tax return information to P because Processor's services are not substantive determinations and the tax return information remained in the United States at Processor's State B office during the entire course of the tax return preparation process.

Example 2. Firm, a tax return preparer, offers income tax return preparation services. Firm's contract with its software provider, Contractor, requires Firm to periodically randomly select certain taxpayers' tax return information solely for the purpose of testing the reliability of the software sold to Firm. Under its agreement with Contractor, Firm discloses tax return information to Contractor's employee, C, who services Firm's contract without providing Contractor or C with a written notice that describes the requirements of and penalties under sections 7216 and 6713. C uses the tax return information solely for quality assurance purposes. Firm's disclosure of tax return information to C was an impermissible disclosure because Firm failed to ensure that C received a written notice that describes the requirements and penalties of sections 7216 and 6713.

Example 3. E, an employee of Firm in State A in the United States, receives tax return information from T for use in preparing T's income tax return. After E enters T's tax return information into Firm's computer, that information is stored on a computer server that is physically located in State A. Firm contracts with Contractor, located in Country F, to prepare its clients' tax returns. FE, an employee of Contractor, uses a computer in Country F and inputs a password to view T's income tax information stored on the computer server in State A to prepare T's tax return. A computer program permits FE to view T's tax return information, but prohibits FE from downloading or printing out T's tax return information from the computer server. Because Firm is disclosing T's tax return information outside of the United States, Firm is required to obtain T's consent under § 301.7216-3 prior to the disclosure to FE. As provided in § 301.7216-3(b)(5), however, Firm may not obtain consent to disclose T's social security number (SSN) to a tax return

preparer located outside of the United States or any territory or possession of the United States.

Example 4. A, an employee at Firm A, receives tax return information from T for Firm's use in preparing T's income tax return. A forwards the tax return information to B, an employee at another firm, Firm B, to obtain advice on the issue of whether T may claim a deduction for a certain business expense. A is required to receive T's prior consent under § 301.7216-3 before disclosing T's tax return information to B because B's services involve a substantive determination affecting the tax liability that T will report.

(e) *Disclosure or use of information in the case of related taxpayers.* (1) In preparing a tax return of a second taxpayer, a tax return preparer may use, and may disclose to the second taxpayer in the form in which it appears on the return, any tax return information that the tax return preparer obtained from a first taxpayer if—

(i) The second taxpayer is related to the first taxpayer within the meaning of paragraph (e)(2) of this section;

(ii) The first taxpayer's tax interest in the information is not adverse to the second taxpayer's tax interest in the information; and

(iii) The first taxpayer has not expressly prohibited the disclosure or use.

(2) For purposes of paragraph (e)(1)(i) of this section, a taxpayer is related to another taxpayer if they have any one of the following relationships: Husband and wife, child and parent, grandchild and grandparent, partner and partnership, trust or estate and beneficiary, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563.

(3) See § 301.7216-3 for disclosure or use of tax return information of the taxpayer in preparing the tax return of a second taxpayer when the requirements of this paragraph are not satisfied.

(f) *Disclosure pursuant to an order of a court, or an administrative order, demand, request, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional association ethics committee or board, or the Public Company Accounting Oversight Board.* The provisions of section 7216(a) and § 301.7216-1 will not apply to any disclosure of tax return information if the disclosure is made pursuant to any one of the following documents:

(1) The order of any court of record, Federal, State, or local.

(2) A subpoena issued by a grand jury, Federal or State.

(3) A subpoena issued by the United States Congress.

(4) An administrative order, demand, summons or subpoena that is issued in the performance of its duties by—

(i) Any Federal agency as defined in 5 U.S.C. 551(1) and 5 U.S.C. 552(f), or

(ii) A State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.

(5) A written request from a professional association ethics committee or board investigating the ethical conduct of the tax return preparer.

(6) A written request from the Public Company Accounting Oversight Board in connection with an inspection under section 104 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7214, or an investigation under section 105 of such Act, 15 U.S.C. 7215, for use in accordance with such Act.

(g) *Disclosure for use in securing legal advice, Treasury investigations or court proceedings.* A tax return preparer may disclose tax return information—

(1) To an attorney for purposes of securing legal advice;

(2) To an employee of the Treasury Department for use in connection with any investigation of the tax return preparer (including investigations relating to the tax return preparer in its capacity as a practitioner) conducted by the IRS or the Treasury Department; or

(3) To any officer of a court for use in connection with proceedings involving the tax return preparer (including proceedings involving the tax return preparer in its capacity as a practitioner), or the return preparer's client, before the court or before any grand jury that may be convened by the court.

(h) *Certain disclosures by attorneys and accountants.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information permitted by this paragraph (h).

(1)(i) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may use the taxpayer's tax return information, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm, consistent with applicable legal and ethical responsibilities, who may use the tax return information for the purpose of providing other legal or accounting services to the taxpayer. As an example, a lawyer who prepares a tax return for a taxpayer may use the tax return information of the taxpayer for,

or in connection with, rendering legal services, including estate planning or administration, or preparation of trial briefs or trust instruments, for the taxpayer or the estate of the taxpayer. In addition, the lawyer who prepared the tax return may disclose the tax return information to another officer, employee or member of the same firm for the purpose of providing other legal services to the taxpayer. As another example, an accountant who prepares a tax return for a taxpayer may use the tax return information, or disclose it to another officer, employee or member of the firm, for use in connection with the preparation of books and records, working papers, or accounting statements or reports for the taxpayer. In the normal course of rendering the legal or accounting services to the taxpayer, the attorney or accountant may make the tax return information available to third parties, including stockholders, management, suppliers, or lenders, consistent with the applicable legal and ethical responsibilities, unless the taxpayer directs otherwise. For rules regarding disclosures outside of the United States, see § 301.7216-2(c) and (d).

(ii) A tax return preparer's law or accounting firm does not include any related or affiliated firms. For example, if law firm A is affiliated with law firm B, officers, employees and members of law firm A must receive a taxpayer's consent under § 301.7216-3 before disclosing the taxpayer's tax return information to an officer, employee or member of law firm B.

(2) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may, consistent with the applicable legal and ethical responsibilities, take the tax return information into account, and may act upon it, in the course of performing legal or accounting services for a client other than the taxpayer, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm to enable that other officer, employee or member to take the information into account, and act upon it, in the course of performing legal or accounting services for a client other than the taxpayer. This is permissible when the information is, or may be, relevant to the subject matter of the legal or accounting services for the other client, and consideration of the information by those performing the services is necessary for the proper performance of the services. In no event, however, may the tax return information be disclosed to a person who is not an officer, employee or member of the law

or accounting firm, unless the disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision of §§ 301.7216-2 or 301.7216-3.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A, a member of an accounting firm, renders an opinion on a financial statement of M Corporation that is part of a registration statement filed with the Securities and Exchange Commission. After the registration statement is filed, but before its effective date, B, a member of the same accounting firm, prepares an income tax return for N Corporation. In the course of preparing N's income tax return, B discovers that N does business with M and concludes that the information given by N should be considered by A to determine whether the financial statement opined on by A contains an untrue statement of material fact or omits a material fact required to keep the statement from being misleading. B discloses to A the tax return information of N for this purpose. A determines that there is an omission of material fact and that an amended statement should be filed. A so advises M and the Securities and Exchange Commission. A explains that the omission was revealed as a result of confidential information that came to A's attention after the statement was filed, but A does not disclose the identity of the taxpayer or the tax return information itself. Section 7216(a) and § 301.7216-1 do not apply to B's disclosure of N's tax return information to A and A's use of the information in advising M and the Securities and Exchange Commission of the necessity for filing an amended statement. Section 7216(a) and § 301.7216-1 would apply to a disclosure of N's tax return information to M or to the Securities and Exchange Commission unless the disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision of either this section or § 301.7216-3.

Example 2. A, a member of an accounting firm, is conducting an audit of M Corporation, and B, a member of the same accounting firm, prepares an income tax return for D, an officer of M. In the course of preparing the return, B obtains information from D indicating that D, pursuant to an arrangement with a supplier doing business with M, has been receiving from the supplier a percentage of the amounts that the supplier invoices to M. B discloses this information to A who, acting upon it, searches in the course of the audit for indications of a kickback scheme. As a result, A discovers information from audit sources that independently indicate the existence of a kickback scheme. Without revealing the tax return information A has received from B, A brings to the attention of officers of M the audit information indicating the existence of the kickback scheme. Section 7216(a) and § 301.7216-1 do not apply to B's disclosure of D's tax return information to A, A's use of D's information in the course of the audit, and A's disclosure to M of the audit information indicating the existence of the

kickback scheme. Section 7216(a) and § 301.7216-1 would apply to a disclosure to M, or to any other person not an employee or member of the accounting firm, of D's tax return information furnished to B.

(i) *Corporate fiduciaries.* A trust company, trust department of a bank, or other corporate fiduciary that prepares a tax return for a taxpayer for whom it renders fiduciary, investment, or other custodial or management services may, unless the taxpayer directs otherwise—

(1) Disclose or use the taxpayer's tax return information in the ordinary course of rendering such services to or for the taxpayer; or

(2) Make the information available to the taxpayer's attorney, accountant, or investment advisor.

(j) *Disclosure to taxpayer's fiduciary.* If, after furnishing tax return information to a tax return preparer, the taxpayer dies or becomes incompetent, insolvent, or bankrupt, or the taxpayer's assets are placed in conservatorship or receivership, the tax return preparer may disclose the information to the duly appointed fiduciary of the taxpayer or his estate, or to the duly authorized agent of the fiduciary.

(k) *Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.* The provisions of paragraphs (c) and (d) of this section shall apply to the disclosure by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and § 301.7216-1 shall not apply to the use by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and § 301.7216-1 shall not apply to the disclosure or use by any tax return preparer of any tax return information in the audit of, or in connection with the audit of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, or any territory or possession of the United States.

(l) *Payment for tax preparation services.* A tax return preparer may use and disclose, without the taxpayer's

written consent, tax return information that the taxpayer provides to the tax return preparer to pay for tax preparation services to the extent necessary to process or collect the payment. For example, if the taxpayer gives the tax return preparer a credit card to pay for tax preparation services, the tax return preparer may disclose the taxpayer's name, credit card number, credit card expiration date, and amount due for tax preparation services to the credit card company, as necessary, to process the payment. Any tax return information that the taxpayer did not give the tax return preparer for the purpose of making payment for tax preparation services may not be used or disclosed by the tax return preparer without the taxpayer's prior written consent, unless otherwise permitted under another provision of this section.

(m) *Retention of records.* A tax return preparer may retain tax return information of a taxpayer, including copies of tax returns, in paper or electronic format, prepared on the basis of the tax return information, and may use the information in connection with the preparation of other tax returns of the taxpayer or in connection with an examination by the Internal Revenue Service of any tax return or subsequent tax litigation relating to the tax return. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any records and related papers to which this paragraph applies.

(n) *Lists for solicitation of tax return business.* A tax return preparer may compile and maintain a separate list containing solely the names, addresses, e-mail addresses, and phone numbers of taxpayers whose tax returns the tax return preparer has prepared or processed. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of offering tax information or additional tax return preparation services to such taxpayers. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the list. The term *list*, as used in this paragraph (n), includes any record or system whereby the names and addresses of taxpayers are retained. The provisions of this paragraph (n) also apply to the transfer of any records and

related papers to which this paragraph (n) applies.

(o) *Producing statistical information in connection with tax return preparation business.* A tax return preparer may use, for the limited purpose specified in this paragraph (o), tax return information to produce a statistical compilation of data described in § 301.7216-1(b)(3)(i)(B). The purpose and use of the statistical compilation must relate directly to the internal management or support of the tax return preparer's tax return preparation business. The tax return preparer may not disclose or use the tax return information in connection with, or in support of, businesses other than tax return preparation. The compiler of the statistical compilation may not disclose the compilation, or any part thereof, to any other person unless disclosure of the statistical compilation is made in order to comply with financial accounting or regulatory reporting requirements or occurs in conjunction with the sale or other disposition of the compiler's tax return preparation business. A person who acquires a compilation, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph (o) with respect to the compilation as if the acquiring person had compiled it.

(p) *Disclosure or use of information for quality or peer reviews.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Tax return information may also be disclosed to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the

reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel. Any person (including administrative and support personnel) receiving tax return information in connection with a quality or peer review is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(q) *Disclosure to report the commission of a crime.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to the disclosure of any tax return information to the proper Federal, State, or local official in order, and to the extent necessary, to inform the official of activities that may constitute, or may have constituted, a violation of any criminal law or to assist the official in investigating or prosecuting a violation of criminal law. A disclosure made in the bona fide but mistaken belief that the activities constituted a violation of criminal law is not subject to section 7216(a) and § 301.7216-1.

(r) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased tax return preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (r) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(s) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009.

■ **Par. 5.** Section 301.7216-3 is revised to read as follows:

§ 301.7216-3 Disclosure or use permitted only with the taxpayer's consent.

(a) *In general—(1) Taxpayer consent.* Unless section 7216 or § 301.7216-2 specifically authorizes the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a written consent from the taxpayer, as described in this section. A tax return preparer may disclose or use

tax return information as the taxpayer directs as long as the preparer obtains a written consent from the taxpayer as provided in this section. The consent must be knowing and voluntary. Except as provided in paragraph (a)(2) of this section, conditioning the provision of any services on the taxpayer's furnishing consent will make the consent involuntary, and the consent will not satisfy the requirements of this section.

(2) *Taxpayer consent to a tax return preparer furnishing tax return information to another tax return preparer.* (i) A tax return preparer may condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer.

(ii) *Example.* The application of this paragraph (a)(2) may be illustrated by the following example:

Example. Preparer P, who is located within the United States, is retained by Company C to provide tax return preparation services for employees of Company C. An employee of Company C, Employee E, works for C outside of the United States. To provide tax return preparation services for E, P requires the assistance of and needs to disclose E's tax return information to a tax return preparer who works for P's affiliate located in the country where E works. P may condition its provision of tax return preparation services upon E consenting to the disclosure of E's tax return information to the tax return preparer in the country where E works.

(3) *The form and contents of taxpayer consents—(i) In general.* All consents to disclose or use tax return information must satisfy the following requirements—

(A) A taxpayer's consent to a tax return preparer's disclosure or use of tax return information must include the name of the tax return preparer and the name of the taxpayer.

(B) If a taxpayer consents to a disclosure of tax return information, the consent must identify the intended purpose of the disclosure. Except as provided in § 301.7216-3(a)(3)(iii), if a taxpayer consents to a disclosure of tax return information, the consent must also identify the specific recipient (or recipients) of the tax return information. If the taxpayer consents to use of tax return information, the consent must describe the particular use authorized. For example, if the tax return preparer intends to use tax return information to generate solicitations for products or services other than tax return

preparation, the consent must identify each specific type of product or service for which the tax return preparer may solicit use of the tax return information. Examples of products or services that must be identified include, but are not limited to, balance due loans, mortgage loans, mutual funds, individual retirement accounts, and life insurance.

(C) The consent must specify the tax return information to be disclosed or used by the return preparer.

(D) If a tax return preparer to whom the tax return information is to be disclosed is located outside of the United States, the taxpayer's consent under § 301.7216-3 prior to any disclosure is required. See § 301.7216-2(c) and (d).

(E) A consent to disclose or use tax return information must be signed and dated by the taxpayer.

(ii) *The form and contents of taxpayer consents with respect to taxpayers filing a return in the Form 1040 series—guidance describing additional requirements for taxpayer consents with respect to Form 1040 series filers.* The Secretary may issue guidance, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), describing additional requirements for tax return preparers regarding the format and content of consents to disclose and use tax return information with respect to taxpayers filing a return in the Form 1040 series, e.g., Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ.

(iii) *The form and contents of taxpayer consents with respect to all other taxpayers.* A consent to disclose or use tax return information with respect to a taxpayer not filing a return in the Form 1040 series may be in any format, including an engagement letter to a client, as long as the consent complies with the requirements of § 301.7216-3(a)(3)(i). Additionally, the requirements of § 301.7216-3(c)(1) are inapplicable to consents to disclose or use tax return information with respect to taxpayers not filing a return in the Form 1040 series. Solely for purposes of a consent issued under § 301.7216-3(a)(3)(iii), in lieu of identifying specific recipients of an intended disclosure under § 301.7216-3(a)(3)(i)(B), a consent may allow disclosure to a descriptive class of entities engaged by a taxpayer or the taxpayer's affiliate for purposes of services in connection with the preparation of tax returns, audited financial statements, or other financial statements or financial information as required by a government authority, municipality or regulatory body.

(iv) *Examples.* The application of § 301.7216-3(a)(3)(iii) may be illustrated by the following examples:

Example 1. Consistent with applicable legal and ethical responsibilities, Preparer Z sends its client, a corporation, Taxpayer C, an engagement letter. Part of the engagement letter requests the consent of Taxpayer C for the purpose of disclosing tax return information to an investment banking firm to assist the investment banking firm in securing long term financing for Taxpayer C. The engagement letter includes language and information that meets the requirements of § 301.7216-3(a)(3)(i), including: (I) Preparer Z's name, Taxpayer C's name, and a signature and date line for Taxpayer C; and (II) a statement that "Taxpayer C authorizes Preparer Z to disclose the portions of Taxpayer C's 2009 tax return information to the firm retained by Taxpayer C necessary for the purposes of assisting Taxpayer C secure long term financing." The engagement letter satisfies the requirements of § 301.7216-3(a)(3) for the disclosure of the information provided therein for the specific purpose stated.

Example 2. Consistent with applicable legal and ethical responsibilities, Preparer N sends its client, a corporation, Taxpayer D, an engagement letter. Part of the engagement letter requests the consent of Taxpayer D for the purpose of disclosing tax return information to Preparer N's affiliated firms located outside of the United States for the purposes of preparation of Taxpayer D's 2009 tax return". The engagement letter includes language and information that meets the requirements of § 301.7216-3(a)(3)(i), including: (I) Preparer N's name, Taxpayer D's name, and a signature and date line for Taxpayer D; (II) a statement that "Taxpayer D authorizes Preparer N to disclose Taxpayer D's 2009 tax return information to Preparer N's affiliates located outside of the United States for the purposes of assisting Preparer N prepare Taxpayer D's 2009 tax return"; and (III) a statement that, in providing consent, Taxpayer D acknowledges that its tax return information for 2009 will be disclosed to tax return preparers located abroad. The engagement letter satisfies the requirements of § 301.7216-3(a)(3) for the disclosure of the information provided therein for the specific purpose stated.

(b) *Timing requirements and limitations—(1) No retroactive consent.* A taxpayer must provide written consent before a tax return preparer discloses or uses the taxpayer's tax return information.

(2) *Time limitations on requesting consent in solicitation context.* A tax return preparer may not request a taxpayer's consent to disclose or use tax return information for purposes of solicitation of business unrelated to tax return preparation after the tax return preparer provides a completed tax return to the taxpayer for signature.

(3) *No requests for consent after an unsuccessful request.* With regard to tax return information for each income tax

return that a tax return preparer prepares, if a taxpayer declines a request for consent to the disclosure or use of tax return information for purposes of solicitation of business unrelated to tax return preparation, the tax return preparer may not solicit from the taxpayer another consent for a purpose substantially similar to that of the rejected request.

(4) *No consent to the disclosure of a taxpayer's social security number to a return preparer outside of the United States.* A tax return preparer located within the United States, including any territory or possession of the United States, may not obtain consent to disclose the taxpayer's social security number (SSN) to a tax return preparer located outside of the United States or any territory or possession of the United States. Thus, if a tax return preparer located within the United States (including any territory or possession of the United States) obtains consent from a taxpayer to disclose tax return information to another tax return preparer located outside of the United States, as provided under §§ 301.7216-2(c) and 301.7216-2(d), the tax return preparer located in the United States may not disclose the taxpayer's SSN, and the tax return preparer must redact or otherwise mask the taxpayer's SSN before the tax return information is disclosed outside of the United States. If a tax return preparer located within the United States initially receives or obtains a taxpayer's SSN from another tax return preparer located outside of the United States, however, the tax return preparer within the United States may, without consent, retransmit the taxpayer's SSN to the tax return preparer located outside the United States that initially provided the SSN to the tax return preparer located within the United States.

(5) *Duration of consent.* A consent document may specify the duration of the taxpayer's consent to the disclosure or use of tax return information. If a consent agreed to by the taxpayer does not specify the duration of the consent, the consent to the disclosure or use of tax return information will be effective for a period of one year from the date the taxpayer signed the consent.

(c) *Special rules—(1) Multiple disclosures within a single consent form or multiple uses within a single consent form.* A taxpayer may consent to multiple uses within the same written document, or multiple disclosures within the same written document. A single written document, however, cannot authorize both uses and disclosures; rather one written document must authorize the uses and

another separate written document must authorize the disclosures. Furthermore, a consent that authorizes multiple disclosures or multiple uses must specifically and separately identify each disclosure or use. See § 301.7216-3(a)(3)(iii) for an exception to this rule for certain taxpayers.

(2) *Disclosure of entire return.* A consent may authorize the disclosure of all information contained within a return. A consent authorizing the disclosure of an entire return must provide that the taxpayer has the ability to request a more limited disclosure of tax return information as the taxpayer may direct.

(3) *Copy of consent must be provided to taxpayer.* The tax return preparer must provide a copy of the executed consent to the taxpayer at the time of execution. The requirements of this paragraph (c)(3) may also be satisfied by giving the taxpayer the opportunity, at the time of executing the consent, to print the completed consent or save it in electronic form.

(d) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 08-1 Filed 1-3-08; 8:58 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AM72

Dependents' Educational Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulation regarding dependents' educational assistance. A recent statutory change provides eligibility for dependents' educational assistance for dependents of servicepersons who meet certain criteria. This final rule is necessary to incorporate statutory amendments into VA regulations.

DATES: *Effective Date:* This final rule is effective January 7, 2008.

Applicability Date: In accordance with statutory provisions, the amendment in this final rule will be

applied retroactively. The amendment to 38 CFR 3.807 is applicable for a course of education pursued after December 22, 2006.

FOR FURTHER INFORMATION CONTACT:

Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 301 of the Veterans Benefits, Health Care, and Information Technology Act of 2006, Public Law 109-461, amended the basic eligibility criteria for dependents' educational assistance (DEA) in 38 U.S.C. 3501(a). Under prior law, spouses and children of servicemembers missing in action, captured in the line of duty by a hostile force, or forcibly detained or interned in the line of duty by a foreign government or power had eligibility for DEA. The amendments expand eligibility, for pursuit of a course of education that occurs after December 22, 2006, to include spouses and children of servicemembers receiving treatment for permanent and total disability incurred in the line of duty and likely to result in discharge or release from service.

VA's DEA regulations, specifically 38 CFR 3.807(a)(5), restate the statutory basic eligibility criteria for spouses and children of servicemembers. Accordingly, we are amending that provision, consistent with the amendments to section 3501(a), to clarify that spouses and children of certain permanently and totally disabled servicemembers are eligible for DEA for pursuit of a course of education that occurs after December 22, 2006.

Administrative Procedures Act

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and a delayed effective date under the provisions of 5 U.S.C. 553. Use of those procedures would be impracticable, unnecessary, and contrary to the public interest.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. VA 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.

In § 3.807 (concerning certification of basic eligibility for dependents' educational assistance), the final rule amends provisions concerning information collection requirements that are currently approved by OMB under the following control numbers: 2900-0049 (VA Form 21-674, Request for Approval of School Attendance), 2900-0098 (VA Form 22-5490, Application for Survivors' and Dependents' Educational Assistance), 2900-0099 (VA Form 22-5495, Request for Change of Program or Place of Training Survivors' and Dependents' Educational Assistance).

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule would not affect any small entities. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is also exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1532, requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program number and title for this rule is 64.117, Survivors and Dependents Educational Assistance.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: November 16, 2007.

Gordon H. Mansfield,

Acting Secretary of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.807(a)(5) to read as follows:

§ 3.807 Dependents' educational assistance; certification.

* * * * *

(a) * * *

(5) Is on active duty as a member of the Armed Forces and

(i) Now is, and, for a period of more than 90 days, has been listed by the Secretary concerned as missing in

action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign Government or power; or

(ii) Has been determined by VA to have a total disability permanent in nature incurred or aggravated in the line of duty during active military, naval, or air service; is hospitalized or receiving outpatient medical care, services, or treatment for such disability; is likely to be discharged or released from such service for such disability; and the pursuit of a course of education by such individual's spouse or child for which benefits under 38 U.S.C. chapter 35 are sought occurred after December 22, 2006.

* * * * *

[FR Doc. E7-25657 Filed 1-4-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AM80

Education: Approval of Accredited Courses for VA Education Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations governing aspects of educational assistance programs administered by the Department of Veterans Affairs (VA) to remove a requirement that had mirrored a former statutory requirement. This final rule reflects a statutory amendment that removed the statutory requirement that educational institutions offering accredited courses must notify VA and the student using VA education benefits of the amount of credit granted for the student's prior education and training.

DATES: *Effective Date:* This final rule is effective January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Devon E. Seibert, Management and Program Analyst, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (225C), 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9837. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: This document amends VA regulations set forth in 38 CFR part 21 concerning approval criteria for payment under education programs administered by VA for accredited courses of education. Specifically, it removes a requirement from 38 CFR 21.4253(d)(3) that had

mirrored a statutory requirement. On October 9, 1996, section 103(c) of the Veterans' Benefits Improvements Act of 1996 (Pub. L. 104-275) removed the requirement in 38 U.S.C. 3675(b) that had required institutions offering accredited courses to notify VA and the student using VA education benefits of the amount of credit granted for a student's prior education and training.

A similar statutory requirement, in 38 U.S.C. 3676(c)(4), imposing the same reporting requirement for institutions offering non-accredited courses, was not removed by Pub. L. 104-275 and still remains in effect. When Pub. L. 104-275 was enacted, VA had no administratively efficient way to distinguish between the enrollment certifications submitted by institutions offering accredited courses and non-accredited courses. Consequently, retaining in VA regulations the same reporting requirement for educational institutions offering accredited or non-accredited courses assisted VA in being able to monitor compliance by institutions offering non-accredited courses.

However, distinguishing between accredited and non-accredited course enrollments is now administratively feasible for VA. Because we now have the means to make this distinction, we are amending § 21.4253(d)(3) to remove the notification requirements for institutions offering accredited courses.

Administrative Procedure Act

This document is being published without regard to the notice-and-comment and delayed-effective-date provisions of 5 U.S.C. 553(b) and (d) since it merely changes an interpretive rule to reflect a statutory amendment, by removing language that had mirrored the former statutory requirement.

Paperwork Reduction Act of 1995

This final rule contains no provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined that it is not a significant regulatory action under the Executive Order because this rule merely reflects a statutory amendment by removing the regulatory requirement that had mirrored the language of the former statutory requirement.

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Any impact on the educational institutions affected by the rule that may be small entities would be minor for at least the reason that the rule merely removes from the regulations a requirement for reporting information that would still be required to be maintained by such educational institutions. Under 38 U.S.C. 3675(b), educational institutions offering

accredited courses are still required to maintain written records of credit for prior education given to students using VA education benefits, with the training period shortened proportionately. This final rule is therefore also exempt pursuant to 5 U.S.C. 605(b) from the regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; and 64.117, Survivors and Dependents Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 16, 2007.

Gordon H. Mansfield,

Acting Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 (subpart D) as follows:

PART 21—[AMENDED]**Subpart D—Administration of Educational Assistance Programs**

■ 1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, and as noted in specific sections.

§ 21.4253 [Amended]

■ 2. Amend § 21.4253(d)(3) by removing “, and the person and the Department of Veterans Affairs so notified”.

[FR Doc. E7–25658 Filed 1–4–08; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[Docket No. EPA–R05–RCRA–2007–0722; FRL–8514–1]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting Michigan final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA published a proposed rule on October 9, 2007 at 72 FR 57258 and provided for public comment. The public comment period ended on November 8, 2007. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State's changes through this final action.

DATES: The final authorization will be effective on January 7, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R05–RCRA–2007–0722. All documents in the docket are listed in the <http://www.regulations.gov> Web site index. Although listed in the index, some of the 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. You may view and copy Michigan's application from 9 a.m. to 4 p.m. at the following addresses: Michigan Department of Environmental Quality, Waste and Hazardous Materials Division, Constitution Hall—Atrium North, 525 West Allegan Street, Lansing, Michigan (mailing address P.O. Box 30241, Lansing, Michigan 48909), contact Ronda Blayer, (517) 353–9548; and at EPA Region 5, contact Judy Greenberg at the following address.

FOR FURTHER INFORMATION CONTACT: Judy Greenberg, Michigan Regulatory Specialist, Land and Chemicals Division (LR–8J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4179, e-mail: Greenberg.Judith@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We conclude that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Michigan final authorization to operate its hazardous waste program with the changes described in the authorization application. Michigan has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under

the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Michigan subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Michigan has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports;
2. Enforce RCRA requirements and suspend or revoke permits; and
3. Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Michigan is being authorized by today's action are already effective and are not changed by today's action.

D. Proposed Rule

On October 9, 2007 (72 FR 57258), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Michigan's hazardous waste program and opened our decision

to public comment. The Agency received no comments on this proposal. EPA has found Michigan's RCRA program to be satisfactory.

E. What has Michigan previously been authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on April 23, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61175); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); and on March 9, 2006, effective March 9, 2006 (71 FR 12141).

F. What Changes are we authorizing with today's action?

On May 21, 2007, Michigan submitted a complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We have determined that Michigan's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we are granting Michigan final authorization for the following program changes:

Description of Federal requirement	Revision checklist ¹	Federal Register date and page	Analogous State authority
Mineral Processing Secondary Materials Exclusion	167D	May 26, 1998, 63 FR 28556.	Michigan Administrative Code, R 299.9202(1)(b)(iii) and R 299.9204(1)(v), effective December 16, 2004.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.	205	April 26, 2004, 69 FR 22601.	Michigan Combined Laws, 324.11105a(1) and (2), effective December 29, 2006. ²

¹ Revision Checklists generally reflect changes made the Federal regulations pursuant to a particular **Federal Register** notice and EPA publishes these checklists as aids to states to use for the development of their authorization application. See EPA's RCRA State Authorization Web Page at <http://www.epa.gov/epaoswer/hazwaste/state/>.

² The legislation we are authorizing contains a "sunset provision" by which the substantive requirements of the State legislation will lapse after a period of three years unless the legislature explicitly reauthorizes it. It is EPA's position that once program revisions are authorized, the substantive requirements of the legislation will remain federally enforceable and our authorization of the revised program will persist, until the State requests and receives authorization of superseding program revisions, despite any lapse in the legal effect or enforceability of statutory authority on the State level.

G. Where are the revised state rules different from the Federal rules?

These program revisions do not contain any State requirements that are considered to be more stringent or broader in scope than the analogous Federal requirements.

H. Who handles permits after the authorization takes effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued

prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA

requirements for which Michigan is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

EPA will continue to implement and administer the RCRA program in Indian country. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian country." *Washington Dep't of Ecology v. U.S. EPA*, 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). See 40 CFR 144.3 and 258.2.

J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

K. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

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.).

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

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).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (i.e., 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (i.e., 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.)

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22,

2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Because this rule authorizes pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 21, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8-16 Filed 1-4-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION
47 CFR Part 76

[MB Docket No. 07-51; FCC 07-189]

Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's action concerns "Multiple Dwelling Units" such as apartment or condominium buildings and centrally managed residential real estate developments (collectively, "MDUs"); cable operators that provide video service in MDUs; and agreements that grant them the exclusive right to provide video programming service in an MDU. The Commission finds that such agreements, in granting exclusivity, harm competition, the provision of programming to MDU residents, and broadband deployment. Thus, the Commission prohibits the enforcement of existing exclusivity clauses and the execution of new ones by cable operators (and a few others). This prohibition will materially advance the Communications Act's goals of enhancing competition, consumer choice in video service and programming, and broadband deployment.

DATES: Effective March 7, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact John W.

Berresford, (202) 418-1886, or Holly Saurer, (202) 418-7283, both of the Policy Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order in MB Docket No. 07-51, FCC 07-189, adopted October 31, 2007, and released November 13, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary of the Report and Order

1. The Notice of Proposed Rulemaking ("Notice") in this proceeding solicited comment on the need to regulate contracts containing clauses granting one multichannel video programming distributor (an "MVPD") exclusive access for the provision of video services ("exclusivity clauses") to multiple dwelling units ("MDUs") and other real estate developments. *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments*, Notice of Proposed Rulemaking, 22 FCC Rcd 5935 (2007). Approximately 30 percent of Americans live in MDUs, and their numbers are growing. In this *Report and Order*, we find that contractual agreements granting such exclusivity to cable operators harm competition and broadband deployment and that any benefits to consumers are outweighed by the harms of such clauses. Accordingly, we conclude that such clauses are proscribed by section 628 of the Communications Act of 1934, as amended. That section prohibits unfair methods of competition that have the purpose or effect of hindering significantly or preventing MVPDs from providing "satellite cable" and/or "satellite broadcast" programming to subscribers and consumers. Thus, in

this Order we prohibit the enforcement of existing exclusivity clauses and the execution of new ones by cable operators and others subject to the relevant statutory provisions. This prohibition will materially advance the Act's goals of enhancing competition and broadband deployment.

2. The record in this proceeding does not contain much information regarding the use of exclusivity clauses by providers of Direct Broadcast Satellite ("DBS") or other MVPDs that are not cable operators subject to section 628 of the Act. In the interests of developing a fuller record, and in the interests of regulatory parity, we also issue a *Further Notice of Proposed Rulemaking* ("Further Notice") concerning MVPDs not subject to section 628. In this *Further Notice*, we also seek comment on whether the Commission should prohibit exclusive marketing and bulk billing arrangements.

I. Background

3. This section reviews the history of this proceeding and makes several important findings of fact. Among these findings are that a large and growing number of Americans live in MDUs and that a significant number of those MDUs are subject to exclusivity clauses. The beneficiaries of most of those clauses are incumbent cable operators. Although Commission rules ensure that many residents of MDUs and other real estate developments may receive satellite-based video service, exclusivity clauses protect cable operators from competition in MDUs from new entrants into the MVPD business, chiefly incumbent local exchange carriers ("LECs") and other wire-based MVPDs that bring satellite cable and satellite broadcast programming to their subscribers. We also find that the entry of incumbent LECs into the MVPD business has led incumbent cable operators to increase their use of exclusivity clauses in order to bar or deter the new entrants.

4. These practices are reached primarily by our authority under section 628. That section, in brief, makes it unlawful for cable operators to engage in certain unfair acts and methods of competition. Specifically, section 628(b) prohibits cable operators from engaging in unfair practices that have the purpose or effect of hindering significantly or preventing their competitors from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. Such video programming is made for broadcast or cable systems and is delivered by satellite to MVPDs, who in turn deliver it to their subscribers. Section 628

concerns two kinds of programming in particular. One is "satellite cable programming," which is video programming (not including satellite broadcast programming) that is transmitted by satellite to cable operators for retransmission to cable subscribers. See 47 U.S.C. 548(i)(1), 605(d)(1). The other is "satellite broadcast programming," which is broadcast video programming that is retransmitted by satellite by an entity other than the broadcaster or an entity under the broadcaster's control. See 47 U.S.C. 548(i)(3). This programming comprises the substantial majority of programming carried by MVPDs. In section III below, we conclude that clauses that grant cable operators exclusive access to MDUs and other real estate developments fall within the scope of section 628(b), because those clauses effectively prohibit new entrants into the MVPD market from providing satellite-delivered programming to consumers who live in MDUs and other real estate developments.

5. The Commission last considered issues concerning exclusivity clauses in its 2003 Inside Wiring Order. At that time, the Commission decided that exclusivity clauses had both pro-competitive and anti-competitive effects, and that the record before the Commission made it unclear what their net effect was. The Commission therefore decided to take no action regarding exclusivity clauses at that time, but it did not close the door to action if new circumstances arose in which such clauses had new anti-competitive effects. The *Notice* of March 2007 re-opened the issue and prompted the submission of much new evidence. The *Notice* raised several questions concerning exclusivity clauses. These included the Commission's legal authority to regulate such clauses; the prevalence of such clauses; the possible increase in their number and scope at the instigation of incumbent cable operators with the impending entry of LECs into the MVPD marketplace; the benefits and harms to competition and consumers of exclusivity clauses; and the extent of any prohibition of such clauses, and other remedial action, that we should impose.

6. The *Notice* attracted filings from large and small cable operators and LECs, other providers of MVPD services (including so-called private cable operators or "PCOs"), builders and managers of MDUs and other dwellings, elected officials, two state government entities and many local governments, academic institutions, consumer groups, labor unions, and subscribers to MVPD and other services. (PCOs are also

known as Satellite Master Antenna Television providers or "SMATVs.") They are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban MDUs and commercial multiple tenant units such as hotels and office buildings. They are small compared to major incumbent cable operators and incumbent LECs.)

7. For purposes of this *Report and Order*, we define the term "MDU" to include the kinds of dwellings that we have defined as being MDUs in past decisions implementing the Act. That is, MDUs include apartment, cooperative, and condominium buildings. For purposes of this *Report and Order*, we adopt this definition but expand it to include other centrally managed real estate developments. Thus, the term MDUs, for purposes of this *Report and Order*, also includes gated communities, mobile home parks, garden apartments, and other centrally managed residential real estate developments. All of these are collections of private individual households with residents remaining for lengthy, indefinite periods of time, each in a dwelling space that is distinctly separate but shares some common spaces requiring central management. For purposes of this proceeding, MDUs do not include time share units, academic campuses and dormitories, military bases, hotels, rooming houses, jails, prisons, halfway houses, hospitals, nursing and other assisted living places, and other group quarters characterized by institutional living, high transience and, in some cases, a high need for security. These latter institutions do not have most of the key defining attributes of MDUs that we have just described, including voluntary long-term residency and significant control by the resident over uses of the private dwelling space. These attributes give the resident a strong interest in making his or her own choice of a MVPD provider and thus warrant regulatory action to preserve the resident's ability to do so.

8. The record in this proceeding indicates that approximately 30 percent of Americans live in MDUs and that this percentage is growing. The percentage of minorities living in MDUs is larger than that of the general population. The majority of incumbent MVPDs serving MDUs pursuant to exclusivity clauses are incumbent providers of cable television service to the surrounding local community. A few of the incumbent MVPDs that have executed contracts with exclusivity clauses are PCOs or small providers of fiber-based communications services. Some

incumbent LECs have requested exclusivity clauses from MDUs. There is no evidence in the record that providers of DBS service use exclusivity clauses.

9. Exclusivity clauses that run in favor of cable operators typically are a complete bar to entry into MDUs by fiber-deploying LECs such as Verizon, AT&T, and Qwest, as well as PCOs. These competitors in the MVPD marketplace receive much of their programming, both cable and broadcast, via satellite for retransmission directly to their subscribers. Although exclusivity clauses do not prevent MDU residents from installing receiving dishes and receiving DBS service where the Commission's "Over the Air Reception Devices" rules apply, they bar new wire-based competitors from MDUs.

10. The record herein reveals that exclusivity clauses are widespread in agreements between MVPDs and MDU owners, and that the overwhelming majority of them grant exclusive access to incumbent cable operators. Exclusivity clauses between MVPDs and MDU owners have the clear effect of barring new entry into MDUs by wire-based MVPDs. The evidence before us shows that this effect occurs on a large scale. Verizon provided examples of exclusivity clauses, most of them in favor of incumbent cable operators, that provoked requests to cease and desist the marketing of its FiOS cable service. Verizon has "repeatedly encountered exclusive access arrangements which have prevented it from providing cable services to significant numbers of residents." Early in its offering of FiOS, Verizon encountered exclusivity clauses running in favor of incumbent cable operators, which barred it from serving more than 3,000 residential units in the Dallas, Texas, area and many other places, all totaling "tens of thousands of units in five separate states." Other examples of exclusion, again mostly involving incumbent cable operators, are in the record from would-be MVPDs, a local government, and a MDU owner who agreed to exclusivity clauses in the past and now is prohibited from offering its residents new and improved communications services. AT&T states that "efforts to lock-up MDUs have occurred in California, Texas, and virtually every market where AT&T has begun to enter the video service market"—efforts that are "plainly intended to block competition and * * * not designed to address aesthetics or congestion in a MDU's common areas." The exclusivity clauses that AT&T has recently encountered typically last between five and 15 years, often with automatic renewal, or are

perpetual. Hargray CATV Inc., an affiliate of the incumbent LEC in Hilton Head, South Carolina, began to provide cable service there as a new entrant. It was forced to stop serving or marketing to 20,000 of the 25,000 homes in the community, however, due to exclusivity clauses entered into by real estate developers and the incumbent cable operator (originally Adelphia, whose systems later were acquired by Time Warner), decades ago in some cases.

11. Consumer groups are also concerned about exclusive agreements. As noted by several consumer groups, a disproportionately large number of communities of color live within MDUs. Consumer groups are concerned that these residents are unable to enjoy the benefits of competition in the video marketplace, and ask that the Commission act to ensure that all consumers can reap the benefits of competition.

12. The record indicates that the evidence before us understates the frequency of exclusivity clauses because many MDU owners are unwilling or legally unable to make public the contracts containing them. Also, many exclusivity clauses date from the time when cable operators had a *de facto* or *de jure* monopoly on wire-based MVPD service. In those market conditions, a MDU owner might have thought that agreeing to exclusivity was not giving the cable operator anything of significance. Some commenters state that a MDU owner can bargain for good service, low prices, and other concessions in exchange for exclusives. But the owner had no such bargaining power when the first cable operator was "the only game in town."

13. More recent developments were not part of the record the Commission compiled in the proceeding that culminated in the *2003 Inside Wiring Order*. Significantly, LECs and other wire-based providers have begun entering the video service business on a large scale. In this environment, exclusivity clauses executed by incumbent cable operators are causing an important loss of potential competition within MDUs and thereby depriving MDU residents of recognized benefits generated by competition in the form of price and service options. Exclusivity clauses may also be deterring new entry into the MVPD market in many areas because they put a significant number of new customers off limits to new entrants.

14. Moreover, AT&T, Lafayette Utilities in Louisiana, United States Telecom Association, and Verizon report that, with the imminent entry of LECs into the multichannel video

marketplace, incumbent cable operators have increased the use of exclusivity clauses in their agreements with MDU owners. As one commenter noted, "[i]ncumbent providers commonly engage in a flurry of activity to lock up MDUs and other real estate developments in exclusive arrangements as soon as it becomes clear that a new entrant will be coming to town." Sometimes these clauses are inserted in fine print, in "legalese," and without adequate notice to the MDU owner.

15. In sum, the record demonstrates that exclusivity clauses bar entry into MDUs by new providers of multichannel video service. It also shows that, in reaction to the recent competitive challenge posed by LEC entry into the video marketplace, incumbent providers (chiefly incumbent cable operators) are increasingly using exclusivity clauses in new agreements with MDU owners to bar the entry of their new rivals and potential rivals. These developments constitute a substantial change to the record the Commission compiled in the period leading up to the *2003 Inside Wiring Order*.

II. Discussion

A. Harms and Benefits of Exclusivity Clauses

16. In this section, we first describe the harms and benefits of exclusivity clauses. We conclude that the harms significantly outweigh the benefits in ways they did not at the time of the Commission's *2003 Inside Wiring Order*. Specifically, they bar new entry and competition for both MVPD services and the so-called "triple play" of voice, video, and broadband Internet access services. They also discourage the deployment of broadband facilities to American consumers. This, in turn, has the effect of significantly hindering or preventing new MVPDs from providing to MDU residents video programming services that are within the scope of section 628(b). Section 628(b) of the Act makes it unlawful for cable operators and their vertically integrated programmers to engage in certain practices that hinder or prevent MVPDs from providing "satellite cable programming" or "satellite broadcast programming" to subscribers. "Satellite cable programming" is video programming (not including satellite broadcast programming) that is transmitted by satellite to cable operators for retransmission to cable subscribers. "Satellite broadcast programming" is broadcast video programming that is retransmitted by

satellite by an entity other than the broadcaster or an entity under the broadcaster's control. We therefore conclude that cable operators' use of exclusivity clauses in contracts for the provision of video services to MDUs constitutes an unfair method of competition or an unfair act or practice proscribed by section 628(b).

17. *Harms Caused by Exclusivity Clauses*. By far the greatest harm that exclusivity clauses cause residents of MDUs is that they deny those residents another choice of MVPD service and thus deny them the benefits of increased competition. Congress and the Commission have repeatedly found, and few parties dispute here, that entry by LECs and other providers of wire-based video service into various segments of the multichannel video marketplace will produce major benefits for consumers. A significant increase in multichannel competition usually results in lower prices, more channels, and a greater diversity of information and entertainment from more sources. Notably, our most recent Cable Price Survey Reports show that the presence of a second wire-based MVPD competitor clearly holds prices down more effectively than is the case where DBS is the only alternative. The fact that an incumbent cable operator may face competitive pressures on its pricing in a franchise area surrounding or adjacent to a MDU does not mean that the residents of a MDU served by the same cable operator will reap the benefits of such competition, including the option to choose among competitive providers, some of which may provide a reduced-priced bundled package. This is particularly true when incumbent cable operators and MDU owners sign contracts before a competitive provider enters the market, a practice that the record in this proceeding indicates is quite common. Within the MDU, the incumbent, protected by its exclusivity clause from any competition it may face outside the MDU's boundaries, would have no incentive to hold down its prices within the MDU. The MDU's residents would also be denied the benefits of taking service from the new entrant, with potentially lower rates and better features than the incumbent's.

18. In addition, a new provider of MVPD services such as a LEC is likely to bring into a MDU some satellite-delivered cable programming that the incumbent beneficiary of the exclusivity clause does not. Absent the new entrant, the MDU's residents who favor that programming will be denied the programming of their choice. This denial will fall disproportionately on minorities and low-income families

(and on programmers specializing in programming oriented to those groups), and all residents will be denied increased competition in programming among MVPD providers. We agree with Consumers Union that we should ensure that the “no segment of the population is denied the benefits of video competition.”

19. LEC entry is also likely to result in increased deployment of fiber to American homes at lower cost per residence, and a new competitor offering the “triple play” bundle of video, voice, and Internet access service. An exclusivity clause in a MDU’s agreement with a MVPD denies all these benefits to the MDU’s residents. Even if exclusivity clauses do not completely bar new entrants from the MVPD market everywhere, they foreclose new entrants from many millions of households, a significant part of the national marketplace. Such clauses could therefore deter new entrants from attempting to enter the market in many areas. More important, exclusivity clauses deny consumers in a part of the market the benefits that could flow to them, and exclusivity clauses confer few, if any, benefits on those consumers. These harms to consumers are greater than they were several years ago, when new entry by LECs had not begun on a large scale, the recent increase in fiber construction had not yet materialized, and the popularity of the triple play was unproven.

20. The effect of exclusivity clauses on broadband deployment and “triple play” services merits further discussion. We have stated that broadband deployment and entry into the MVPD business are “inextricably linked.” One basis for this observation is the recent emergence of LECs, cable operators, and some other providers offering consumers a “triple play” of voice, MVPD, and broadband Internet access services. The offering of, and competition in, the triple play brings to consumers not just advanced telecommunications capability, but also a simplicity and efficiency that is proving to be highly attractive in the marketplace.

21. In a MDU where an incumbent has the exclusive right to provide MVPD service, no other provider can offer residents the triple play today on its own facilities. Any new entrant that could offer all three parts of the triple play but for the existence of an exclusivity clause, which limits its offerings to voice and broadband Internet access, would find entry less attractive. The new entrant might not enter at all. Or, if the new entrant enters despite that handicap and provides

MDU residents with only voice and Internet access services, leaving MVPD service to the beneficiary of an exclusivity clause, the new entrant’s wire is inefficiently underutilized. Thus, exclusivity clauses reduce competition in the provision of triple play services and result in inefficient use of communications facilities.

22. Exclusivity clauses can cause other harms to MDU residents. A MDU owner may grant exclusivity to one MVPD based on the available choice of service providers at a given time, and in doing so bar entry into the MDU by a more desirable but later-arriving MVPD. Or, the person who grants exclusivity to one MVPD may be the developer or builder of a MDU, who may grant exclusivity against the long-term interests of the residents and soon thereafter relinquish control of the MDU. In addition, exclusivity clauses can insulate the incumbent MVPD from any need to improve its service; Manatee County, Florida, aptly describes incumbent beneficiaries of exclusivity clauses as “sitting on these ‘fiefdoms.’”

23. Finally, the record indicates that exclusivity clauses are not always in the best interest of MDUs owners, either. Technologically advanced buildings are important for attracting and retaining residents, and a lack of competition for providing new communications services can negatively affect a residential development. A MDU owner may not see a benefit in an exclusivity clause that bars entry by new providers that were not in the market when the clause was written.

24. *Benefits of Exclusivity Clauses.* When the Commission last considered issues concerning exclusivity clauses in its 2003 *Inside Wiring Order*, it determined that exclusivity clauses had some pro-competitive effects. In some cases, exclusivity clauses, or at least those of a limited duration, may help a MVPD to obtain financing to wire an entire building for cable and other services and to recover its investment over the term of exclusivity. Similarly, some commenters claim that exclusivity clauses are especially necessary to attract investment in marginally attractive MDUs.

25. Some commenters argue in support of the use of exclusivity clauses that, with the decline of LECs’ and cable operators’ traditional duty to serve all homes in an area, an exclusivity clause may be necessary to attract a MVPD into a new real estate development. Other commenters state that a MDU owner, needing to attract buyers or tenants, may be counted on to represent them and will agree to an exclusivity clause only

if it is in their interests. The rational owner, these commenters claim, will give exclusive access to the one of several bidding MVPDs that offers the best mix of low price, quality service, promised improvements and in some cases, specialized program offerings. An exclusivity clause, in this view, substitutes competition for the MDU for competition for individual residents, and the resulting benefits may be passed on to the residents. In the same vein, some commenters deny that exclusivity clauses allow MVPDs to become complacent and provide inferior service; these entities believe that the high turnover in MDUs requires building owners to maintain and constantly improve their service so that the building or development will attract new residents who will become its subscribers.

26. *Conclusion.* We conclude that exclusivity clauses cause significant harm to competition and consumers that the record did not reflect at the time of our 2003 *Inside Wiring Order*. We further find that although exclusivity clauses may in certain cases be beneficial, at least in the short term, to consumers, the harms of exclusivity clauses outweigh their benefits. The evidence described in the preceding paragraphs demonstrates that exclusivity clauses, especially when used in current market conditions by incumbent cable operators, are a barrier to new entry into the multichannel video marketplace and the provision of triple play offerings. Such exclusivity clauses inhibit competition in these markets and slow the deployment of broadband facilities. In doing so, exclusivity clauses deny MDU residents the benefits of increased competition, including lower prices and the availability of more channels with more diverse content, as well as access to alternative providers of broadband facilities and the triple play of communications services their facilities support. It is also noteworthy that there is no evidence in the record that MDU residents pay higher rates for MVPD services in states whose laws prohibit or limit exclusivity. These harms to consumers are traceable to the incumbent cable operators’ practice, increased recently, of using exclusivity clauses, sometimes in fine print and without adequate notice to MDU owners, to forestall competition, particularly when new competitors are about to enter the market. We do not wish to deny MDU residents these benefits based on incumbents’ alleged need to be shielded from additional competition, or to subject them to

something resembling the exclusive franchises of an earlier era.

27. Moreover, we find that cable operators' use of exclusivity clauses in contracts for the provision of video services to MDUs constitutes an unfair method of competition or an unfair act or practice proscribed by section 628(b). Section 628 is designed to increase "competition and diversity" in the multichannel video marketplace, increase the availability of satellite cable and satellite broadcast programming to persons in "areas not currently able to receive such programming," and "spur the development of communications technologies." That provision specifically prohibits cable operators from engaging in unfair methods of competition or unfair acts or practices that have the purpose or effect of hindering significantly or preventing any MVPD from providing satellite cable programming or satellite broadcast programming to consumers. We have found above that a significant percentage of consumers live in MDUs. We also found that, with the increasing entry of wire-based competitors, such as LECs, into the MVPD marketplace, incumbent cable operators have increased their use of exclusivity clauses with MDU owners, particularly when new competitors are on the verge of entering a particular market. The record shows that these exclusivity clauses have the purpose or effect of preventing other MVPDs from providing the kind of programming covered by section 628—satellite cable and/or broadcast programming—to certain consumers; indeed, that is the intended and inevitable effect of exclusivity clauses. Exclusivity clauses prevent new entrant MVPDs from competing with entrenched incumbent providers on the basis of service offerings, including programming, and on price. Foreclosing competition in the MDU market in this way is unfair because it deprives consumers residing in MDUs of the opportunity to choose a MVPD provider. Cable operators' execution of exclusivity clauses, which foreclose the competitive provision of MVPD service, the triple play, broadband deployment, and satellite-delivered programming to MDUs, thus constitutes an unfair method of competition in violation of section 628(b).

28. We reject arguments that exclusivity clauses mostly work to the benefit of MDU owners and residents. First, as explained above, the person signing an exclusivity clause for a MDU may be a builder or manager whose interests do not coincide with those of the MDU's residents, especially after a few years. Second, the cable operator

may have induced the MDU owner to accept an exclusivity clause before any wire-based competitor was on the horizon, in which case there was no "competition for the MDU" at the time and no prospect of it in the future. Third, the exclusivity clause may be in "legalese" and in fine print and the MDU owner may be unaware of it. Fourth, the fact that a new entrant wants to serve the MDU undercuts any claim that only one wire-based provider can serve the building profitably—if new entry would be unprofitable, it is unlikely that the new entrant would want to enter. Fifth, there is no evidence in the record, other than generalities and anecdotes, that incumbent MVPD providers couple exclusivity clauses with significant new investments that they do not make elsewhere, such as in states whose laws prohibit exclusivity. Sixth, SureWest states that the triple play, which offers a provider revenue from three services, reduces any need for exclusivity that it may have had in the past, when MVPD revenue was the only way it could recover its investment. Finally, other agreements between incumbent MVPDs and MDU owners, perhaps providing for marketing exclusivity or bulk discounts, can provide benefits similar to those alleged for exclusivity clauses without causing the latter clauses' entry-foreclosing harms to consumers. Therefore, although "competition for the MDU" may have some theoretical advantages in some cases over competition for individual consumers, it may not describe reality in many cases. Even if it does, in general we find that the best results for consumers come from preserving their ability to play an active role in making an individual choice rather than allowing cable operators using exclusivity clauses to foreclose individual choice. In addition, as noted above, exclusivity clauses tend to insulate the incumbent from any need to improve its service. Thus, we conclude that exclusivity clauses generally do not benefit MDU residents.

29. The record contains claims that exclusivity clauses may lead to lower prices. Although we cannot rule out the possibility that those claims may be true in some cases, such assertions are outweighed by the numerous studies showing that a second wire-based MVPD lowers prices. We also reject arguments that "exclusivity is not really a problem" because many MDUs are not subject to exclusivity clauses and such clauses expire. A practice that harms a significant number of households in this country warrants remedial action even if it does not harm everyone.

B. Prohibition of Exclusivity Clauses

30. For the reasons set forth above, we prohibit cable operators and other entities that are subject to section 628 from enforcing existing exclusivity clauses and executing contracts containing new ones. These other entities are LECs and open video systems and are discussed in section III below.

31. Specifically, 60 days after publication of this *Report and Order* in the **Federal Register**, no cable operator or multichannel video programming distributor subject to section 628 of the Act shall enforce or execute any provision in a contract that grants it the exclusive right to provide any video programming service (alone or in combination with other services) to a MDU. Any such exclusivity clause shall be null and void.

32. We fashion the prohibition pursuant to section 628 for several reasons. First, that provision is a basis of our statutory authority to regulate exclusivity clauses. Second, incumbent cable operators, which are subject to section 628, are the beneficiaries of the vast majority of exclusivity clauses. As described above, incumbent cable operators are primarily responsible for the recent increase in newly executed exclusivity clauses. Also, the evidence in the record indicates that incumbent cable operators are using them to impede the entry of new competitors into the MVPD market in many areas. Incumbent cable operators are still by far the dominant force in the MVPD business, with a market share most recently measured at 67 percent and the ability to impose steadily rising prices. Our prohibition is limited to those MVPDs covered by section 628(b). It does not reach PCOs or DBS providers because we do not have an adequate record on which to decide whether such a prohibition is warranted for non-cable operators. Nevertheless, we are adopting a *Further Notice of Proposed Rulemaking* in order to develop such a record and, based on it, evaluate whether the action is called for.

33. We put no time limit on the prohibition we adopt in the instant order and we do not exempt from it any kind of MDU or any geographic location. We do, however, limit our prohibition to those residential real estate developments that we define as MDUs as discussed above.

34. The rule we adopt in this proceeding is consistent with the longstanding Congressional prohibition of exclusive franchises for cable service and the statement in our most recent *Inside Wiring Order* that "[n]ew entrants

to the video services and telephony markets should not be foreclosed from competing for consumers in multi-unit buildings.”

35. The rule we adopt in this proceeding prohibits both the enforcement of existing exclusivity clauses and the execution of new ones. Both have the same competition- and broadband-detering effect that harms consumers. A rule that left exclusivity clauses in effect would allow the vast majority of the harms caused by such clauses to continue for years, and we believe that it is strongly in the public interest to prohibit such clauses from being enforced. Those harms would continue indefinitely in the cases of exclusivity clauses that last perpetually or contemplate automatic renewal upon the renewal of the incumbent cable operator's franchise.

36. Our prohibition of the enforcement of existing exclusivity clauses does not disturb legitimate expectations of investors in MDUs and the video service providers affected by this Order. The lawfulness of exclusivity clauses has been under our active scrutiny for a decade, making the parties to them aware that such clauses may be prohibited. Although we have not prohibited enforcement of them until now, we had previously recognized the reasons for doing so but had lacked an adequate record on which to base such a decision. We have prohibited the enforcement of exclusivity clauses for satellite-delivered programming before. For example, the Commission prohibits, with respect to distribution to persons in areas served by cable operators and other MVPDs covered by section 628(b), exclusivity clauses for satellite cable programming and satellite broadcast programming between a cable operator and a vendor of such programming in which a cable operator has an attributable interest, unless the Commission determines that such contracts are in the public interest. Also, in the context of commercial telecommunications services, the Commission has prohibited the execution of exclusive access arrangements in multiple tenant environments and has sought comment on whether to prohibit the enforcement of existing exclusive access provisions. We recognize that the Commission has yet to address the issue raised in the *Competitive Networks Further Notice of Proposed Rulemaking* regarding the enforceability of exclusivity clauses for telecommunications services in residential MDUs. In light of the competitive parity implications, we will resolve that issue within the next two

months. Some states have given some or all MVPD providers rights of access to MDUs.

37. Moreover, incumbent cable operators will still be able to use their equipment in MDUs to provide service to residents who wish to continue to subscribe to their services. Finally, we note that the rule we adopt today does not require that any new entrant be given access to any MDU. A MDU owner still retains the rights it has under relevant state law to deny a particular provider the right to provide service to its property. We merely prohibit the enforcement of existing exclusivity clauses and the execution of new ones by cable operators. While this Order prohibits the enforcement of existing exclusivity clauses, it does not, on its own terms, purport to affect other provisions in contracts containing exclusivity clauses.

38. We reject proposals that we should exempt contracts with exclusivity clauses from this prohibition on a case-by-case basis or that we should allow exclusivity clauses for small cable operators, cable operators in rural areas, MVPDs that are found to lack “market power,” MVPDs other than incumbent cable operators, “planned communities,” and new real estate developments. We are reluctant to deny any large class of MDU residents the benefits of increased competition or to allow any cable operator to engage in future harmful conduct. Finally, we wish to avoid the burden that would be imposed by numerous individual adjudications about whether market power or some other undesirable condition exists in an individual MDU or community, or whether a particular entity in an allegedly unique situation is exempted from the prohibition. In addition, as discussed in section III below, restrictions adopted pursuant to section 628(b) apply automatically to certain categories of MVPDs pursuant to sections 602(7), 628(j), and 653(c)(1)(A).

39. Some commenters have suggested that we allow exclusivity clauses for a period of years or that we put a time limit on our prohibition of them, such as a specific term of years, the end of the current franchise of the incumbent cable operator, until “effective competition” is found to exist in an area, or until some other measure of competition is shown. We decline these suggestions. We are reluctant to grant any communications companies an artificial period of immunity from pro-competitive regulation during which the recovery of their investment is guaranteed; companies in communications markets regularly invest billions of dollars without any

such guarantees. Chiefly, we wish to avoid the burden of individualized adjudications and measurements because we believe that they would burden us and the industry, and we believe that the limited benefits that such clauses confer are outweighed by their deleterious long-term effects on the provision of competitive services to consumers.

III. Legal Authority

40. Several sources afford the Commission ample authority to prohibit exclusivity clauses in contracts between cable operators and owners of MDUs. First, consistent with our tentative conclusion in the *Notice*, we conclude that we have authority under section 628(b) of the Act to adopt rules prohibiting cable operators from enforcing or executing contracts that give them the exclusive right to provide video programming services (alone or in combination with other services) to MDUs. Moreover, we conclude that pursuant to the Act the same prohibition will apply to common carriers or their affiliates that provide video programming directly to subscribers under section 628(j) of the Act and to operators of open video systems under section 653(c)(1). Finally, we conclude that, even in the absence of this explicit statutory authority, we have ancillary authority to prohibit incumbent cable operators from entering into contracts that are for the provision of video services to MDUs and that contain exclusivity clauses.

41. Turning first to cable operators, the plain language of the statute provides a solid legal foundation for the rule adopted today. Section 628(b) broadly states that:

“[i]t shall be unlawful for a cable operator * * * to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.”

42. Section 628(c)(1), in turn, directs the Commission, “in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies,” to promulgate rules specifying the conduct prohibited by section 628(b).

43. The plain language of section 628(b) encompasses the conduct at issue here. First, although we have never specifically defined what constitutes an “unfair method of competition” or

“unfair * * * act or practice” beyond that conduct specifically proscribed in section 628(c)(2), we have recognized that there is additional conduct that could be proscribed under section 628(b). As discussed above, the use of an exclusivity clause by a cable operator to “lock up” a MDU owner is an unfair method of competition or unfair act or practice because it can be used to impede the entry of competitors into the market and foreclose competition based on the quality and price of competing service offerings. Moreover, as we have shown above, such a contract clearly has the effect of preventing a MVPD from providing satellite programming to consumers. Indeed, by its very nature, such an exclusivity clause prevents other MVPDs from providing service to the consumers who live in the MDU.

44. We reject Advance/Newhouse Communications’s suggestion that this interpretation of section 628(b) suffers a logical flaw—why would Congress only focus on “satellite” programming if it sought to vest the Commission with the authority to “curb unfair practices in the cable industry generally.” First, we are not finding that section 628(b) vests the Commission with some unlimited authority to limit unfair practices in the cable industry. Rather, we are finding that the language of section 628(b) prohibits unfair methods of competition with the purpose or effect of hindering significantly or preventing MVPDs from providing satellite cable and broadcast programming to consumers. Moreover, we acknowledge that section 628 was primarily, but not exclusively, concerned about the vertical integration of cable operators and satellite programming vendors, and thus section 628 significantly focuses on those relationships. In addition, we note that our decision to prohibit exclusivity clauses for the provision of video services to MDU owners is consistent with the focus on satellite programming because most programming is delivered via satellite. Thus, we have explicit authority under section 628(b) to prohibit cable operators from entering into exclusivity clauses with MDU owners.

45. We note that the New Jersey Division of Rate Counsel raises a number of issues, including the argument that the Commission’s regulation of exclusivity clauses for MDUs violates the Tenth Amendment of the U.S. Constitution, that hinge on its view that the Commission lacks any authority to adopt the prohibition on exclusivity clauses described herein. We need not address these tangential issues because, as explained herein, we find

that we have specific statutory authority to adopt the prohibition.

46. Contrary to commenters’ suggestions, the Commission’s authority under section 628(b) is not restricted to unfair methods of competition or unfair or deceptive practices that deny MVPDs access to programming. Section 628(b) is not so narrowly drawn. Anticompetitive practices can hinder or prevent MVPDs from providing programming to consumers either by blocking their access to programming or by blocking their access to consumers, and there is nothing in section 628(b) that suggests that the Commission’s authority is limited to the former. Although NCTA argues that the language “from providing satellite cable programming or satellite broadcast programming to subscribers or consumers” indicates that section 628(b) was “squarely directed at practices that unfairly denied MVPDs access to *programming*,” the better reading is the one based on the clear and complete terms of the provision: any practices that unfairly deny MVPDs the ability to provide such programming to consumers are prohibited. Had Congress wanted section 628(b) to proscribe only practices denying MVPDs access to programming, it could easily have done so by focusing that provision explicitly on conduct that impairs MVPDs’ access to programming. Congress knew how to draft narrowly drawn provisions of that kind as evidenced by another subsection, section 628(c)(2), which proscribes specific conduct hindering MVPDs’ access to programming. Thus, we believe that our interpretation of section 628(b) gives meaning to the broad, plain language of the statutory provision.

47. We recognize, as commenters point out, that much of section 628’s legislative history focuses on MVPDs’ access to programming. However, the legislative history indicates that a primary concern underlying section 628 was fostering competition among cable operators and enhancing consumer choice. For example, the Conference Report on section 628 reflects a concern that is broader than MVPDs’ access to programming:

“[T]he conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, *including* restricting the availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities based competition to cable and extending programming to areas not served by cable.”

48. Our adoption of a rule prohibiting exclusivity clauses addresses the Congressional concerns underlying section 628(b). The rule will prohibit the continuation and proliferation of an anticompetitive cable practice that has erected a barrier to the provision of competitive video services. It also will promote the development of new technologies that will provide facilities-based competition to existing cable operators, and thus serves the purposes set forth in section 628(a) (as well as other provisions of law, such as section 706 of the Telecommunications Act of 1996). As Verizon points out, fiber optic services and interactive video are new facilities-based technologies that competitors seek to deploy. Exclusivity clauses prevent competitive MVPDs from providing satellite cable and broadcast programming to consumers by means of such new technologies. SureWest similarly argues that, because the deployment of broadband networks and the provision of video service are intrinsically linked, exclusivity clauses that prevent it from providing video services compromise its ability to deploy other advanced telecommunications services, by inhibiting its ability to market a package of services that consumers demand and reducing the revenues it needs to support investment in new and innovative services.

49. More broadly, prohibiting exclusivity clauses for the provision of video services will further the purposes of the 1992 Cable Act and the 1934 Act. As several commenters point out, the 1992 Cable Act sought to promote competition and consumer choice in cable communications. In addition, the purpose of the Communications Act of 1934, as amended, is “to make available, so far as possible, to all the people of the United States * * * a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges.” Moreover, section 706 of the Telecommunications Act of 1996 directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans * * *”. Removing barriers to allow access to a broad segment of consumers in the multichannel video programming distribution market by prohibiting exclusivity clauses for the provision of video services will further these statutory purposes. As Verizon notes, once a MDU owner is “locked” into an exclusivity clause, “residents are prevented from choosing alternative services that they might prefer—on the

basis of price, quality, and innovative and technologically advanced service offerings." Thus, contrary to some commenters' arguments, our interpretation of section 628(b) to prohibit exclusivity clauses for the provision of video services is not only consistent with the plain language of that statutory provision and confirmed by that provision's legislative history, but also furthers the broader purposes of the Act. We also find that Congress's failure in 1984 to include a provision that would have mandated access to MDUs for cable service has no bearing on our interpretation of the subsequent legislation that became the 1992 Cable Act, particularly since there is no evidence that Congress's failure to act in 1984 is at all related to the action it did take in adopting section 628(b) in 1992.

50. We disagree with those commenters who argue that the regulatory requirements outlined in section 628(c) circumscribe the Commission's authority to prohibit exclusivity clauses for the provision of video services. For example, Real Access Alliance ("RAA") states that the specific provisions of sections 628(c)(2)(A), (B), (C), and (D) establish the full scope of the Commission's authority under section 628. However, nothing in these provisions indicates that they were intended to establish the outer limits of the Commission's authority under section 628(b). In fact, the very title of section 628(c)(2), "Minimum Contents of Regulations," strongly suggests that the rules the Commission was required to implement had to cover the conduct described in sections 628(c)(2) at the least, but that the Commission's authority under section 628(b) was broader. The term "minimum" indicates that more could be covered since it is defined as "the least quantity assignable, admissible, or possible." (Webster's *New Collegiate Dictionary* (1977).) This interpretation is confirmed by section 628(c)(1), which grants the Commission wide latitude to "specify particular conduct that is prohibited by [section 628(b)]." Other commenters' suggestions along the same lines are unconvincing for the same reasons.

51. As pointed out by several commenters, the Commission's implementation of this provision to date has focused on ensuring MVPD access to the programming they need to provide a viable and competitive multichannel alternative to consumers, *i.e.*, on the regulations adopted pursuant to section 628(c)(2). In the decision initially implementing section 628, the Commission described the provision as "intended to increase competition and

diversity in the multichannel video programming market, as well as to foster the development of competition to traditional cable systems, by prescribing regulations that govern the access by competing multichannel systems to cable programming services." Nevertheless, the Commission stated:

"Neither the record of this proceeding nor the legislative history offer much insight into the types of practices that might constitute a violation of the statute with respect to the unspecified "unfair practices" prohibited by section 628(b) beyond those more specifically referenced in section 628(c). The objectives of the provision, however, are clearly to provide a mechanism for addressing those types of conduct, primarily associated with horizontal and vertical concentration within the cable and satellite cable programming field, that inhibit the development of multichannel video distribution competition. * * * [A]lthough the types of conduct more specifically referenced in the statute * * * appear to be the primary areas of congressional concern, section 628(b) is a clear repository of Commission jurisdiction to adopt additional rules or to take additional actions to accomplish the statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to the broader distribution of satellite cable and broadcast video programming."

Viewing the implementation history as a whole, the Commission's early focus on program access is not surprising. It was shaped both by the specific provisions of section 628(c)(2)—since these regulations were statutorily required and thus appeared to be of the most pressing concern to Congress—and the policy goal in the 1992 Cable Act of "rely[ing] on the marketplace, to the maximum extent feasible" in promoting the availability of programming to the public." But the Commission's prior attention to these requirements in no way precludes its exercise of clear statutory authority to regulate unfair practices, beyond program access, which have the purpose or effect of hindering significantly or preventing the provision of certain programming to subscribers or consumers. The Commission has imposed no such artificial limitation on the scope of its authority, and section 628(b) does not require it.

52. The Commission has authority to delineate by rule conduct prohibited under section 628(b) in order to promote the public interest through increased competition and diversity in the MVPD market and continued development of communications technologies. We have explained how a rule prohibiting exclusivity clauses for the provision of video services promotes the public interest here because it will likely increase competition in the MVPD

market and promote continued development of communications technologies. Thus, we find that we may by rule prohibit cable operators from executing exclusivity clauses for the provision of video services to MDUs.

53. This prohibition necessarily also applies to common carriers and open video systems. Although section 628(b) extends only to cable operators, section 628(j) explicitly states that "[a]ny provision that applies to a cable operator under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers." In addition, section 653(c)(1)(A) provides that "[a]ny provision that applies to a cable operator under (A) section[] * * * 628 * * * of this title shall apply * * * to any operator of an open video system." Thus, pursuant to sections 628(j) and 653(c)(1)(A), our prohibition on exclusivity clauses for the provision of video services applies to both any common carrier or its affiliate and also to OVS operators to the extent that these entities provide video programming to subscribers or consumers.

54. Although we believe that we have specific statutory authority to adopt this prohibition, as described above, we note that our ancillary authority, under titles I and III of the 1934 Act, also provides a sufficient basis to prohibit cable operators from enforcing or executing exclusivity clauses for the provision of video service to MDUs. Courts have long recognized that, even in the absence of explicit statutory authority, the Commission has authority to promulgate regulations to effectuate the goals and provisions of the Act if the regulations are "reasonably ancillary to the effective performance of the Commission's various responsibilities" under the Act. The Supreme Court has established a two-part ancillary jurisdiction test: (1) The regulation must cover interstate or foreign communication by wire or radio; and (2) the regulation must be reasonably ancillary to the Commission's statutory responsibilities. The prohibition we adopt here applies to "interstate and foreign communication by wire or radio," advances the purposes of both the 1992 Cable Act and section 706 of the 1996 Telecommunications Act, and serves the public interest.

55. Title I confers on the Commission regulatory jurisdiction over all interstate radio and wire communication. The multichannel video services provided by cable operators are interstate in nature and are covered by the Act's definitions of "radio communications" and "wire communication." In addition, these services fall within the definition

of "cable service." Thus, cable services are within the scope of our subject matter jurisdiction granted in Title I.

56. In addition, we find that applying the prohibition against exclusivity clauses for the provision of video services to cable operators is reasonably ancillary to our statutory responsibilities under the Act. As we have explained, prohibiting exclusivity clauses for the provision of video services to MDUs will prohibit an anticompetitive cable practice that has erected a barrier to the provision of competitive video services. It also will promote the development of new technologies that will provide facilities-based competition to existing cable operators, and thus serves the purposes set forth in section 628(a). In addition, for the same reasons explained above, applying this prohibition to cable operators will ensure the furtherance of the broad goals of the 1992 Cable Act and the 1934 Act generally.

57. Because several commenters raise concerns about the treatment of exclusivity clauses in existing MDU contracts, we take particular care to observe that the law affords us wide authority to prohibit the enforcement of such clauses where, as here, the public interest so requires. Indeed, as the Commission has previously stated, "Congress intended that rules promulgated pursuant to implement section 628 should be applied prospectively to existing contracts, except as specifically provided for in section 628(h)." In addition, the Fifth Amendment's Takings Clause presents no obstacle to prohibiting the enforcement of existing exclusivity clauses. To begin with, such a step obviously does not involve the permanent condemnation of physical property and thus does not constitute a *per se* taking.

58. Nor does the proposed rule represent a regulatory taking. The Supreme Court has outlined the framework for evaluating regulatory takings claims as follows: "In all of these cases, we have eschewed the development of any set formula for identifying a 'taking' forbidden by the Fifth Amendment, and have relied instead on ad hoc, factual inquiries into the circumstances of each particular case. To aid in this determination, however, we have identified three factors which have particular significance: (1) The economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action."

None of these factors counsels in favor of finding a regulatory taking here.

59. First, prohibiting the enforcement of exclusivity clauses will have minimal adverse economic impact on affected MVPDs. Nothing in the rule precludes MVPDs from utilizing the wires they own to provide services to MDUs or requires them to jettison capitalized investments. Neither does it prohibit the enforcement of other types of agreements between MDUs or MVPDs, such as exclusive marketing agreements. The rule merely prohibits clauses that serve as a bar to other MVPDs that seek to provide services to a MDU. The record in this proceeding demonstrates that in some cases, exclusivity clauses in existing MDU contracts impose adverse *and* absolute impacts upon would-be competitors who are otherwise ready and able to provide customers the benefits of increased competition.

60. Second, the rule does not improperly interfere with investment-backed expectations. As previously stated, exclusivity clauses in MDU contracts have been under active scrutiny for over a decade, and the Commission has prohibited the enforcement of such clauses in similar contexts. States have also taken action to prohibit such clauses. Moreover, to the extent that MVPDs have used exclusivity clauses to "lock up" MDUs in anticipation of competitive entry or to obstruct competition, as described above, any underlying investment-backed expectations are not sufficiently longstanding or pro-competitive in nature to warrant immunity from regulation.

61. Finally, with respect to the character of governmental action, the rule's prohibition of the enforcement of exclusivity clauses in existing MDU contracts substantially advances the legitimate governmental interest in protecting consumers of programming from "unfair methods of competition or unfair acts or practices"—an interest Congress explicitly has recognized and protected by statute, *see* 47 U.S.C. 628(b), and commanded the Commission to vindicate by adopting appropriate regulations, *see id.* section 628(c)(1). The rule we adopt today is based upon the Commission's detailed analysis of the harms and benefits of exclusive MDU contracts, discussed above in section II, and is carefully calibrated to promote this interest. In short, the rule at issue here does not invoke Justice Holmes' observation that "if regulation goes too far it will be recognized as a taking."

62. Because the prohibition that we adopt today applies only to cable

operators, common carriers or their affiliates that provide video programming directly to subscribers, and operators of open video systems, and does not require MDU owners to provide access to all MVPDs, we do not address comments raising concerns about the Commission's authority to mandate such access. However, we reject arguments suggesting that the Commission has no authority to regulate such entities' contractual conduct because of the tangential effect of such regulation on MDU owners. As explained above, sections 628(b), 628(j), and our ancillary jurisdiction provide ample bases for regulating these specific MVPDs. Moreover, sections 4(i), 201(b), and 303(r) supply the Commission with strong authority to enforce the full scope of the Cable Act prohibition at issue.

IV. Further Notice of Proposed Rulemaking

63. The *Report and Order* found that further inquiry and analysis was needed before the Commission would decide how, if at all, to regulate building exclusivity clauses that give exclusivity to DBS service providers and PCOs. The Commission also refrained, in the *Report and Order*, from regulating exclusive marketing arrangements (which allow one MVPD into a MDU or real estate development but constrain the ability of competitive MVPDs to market their services directly to MDU residents) and bulk billing arrangements (which may be exclusive but do not prohibit MDU residents from selecting a competitive MVPD provider). The Commission commenced a further rulemaking to inquire into these as-yet unresolved matters, and states that it would conclude this rulemaking and release an order within six months of publication of this *Order*.

V. Procedural Matters

A. Regulatory Flexibility Analysis

64. Pursuant to the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix B to the *Report and Order*.

B. Paperwork Reduction Act Analysis

65. The *Report and Order* does not contain new or modified information collection requirements subject to the paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection

burdens 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).

C. Congressional Review Act

66. The Commission has sent a copy of the *Report and Order*, including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission has sent a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Additional Information

67. For additional information on this proceeding, please contact John W. Berresford, (202) 418–1886, or Holly Saurer, (202) 418–7283, both of the Policy Division, Media Bureau.

VI. Ordering Clauses

68. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i) 157 nt., 303(r), 335, 601(6), 628(b,c), and 653(c)(1) of the Communications Act of 1934, as amended; 47 U.S.C. 151, 152(a), 154(i), 157 nt., 303(r), 335, 521(6), 548(b,c), and 573(c)(1), this *Report and Order* is adopted.

69. *It is further ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i) 157 nt., 303(r), 335, 601(6), 628(b,c), and 653(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 157 nt., 303(r), 335, 521(6), 548(b,c), and 573(c)(1), 47 CFR part 76.2000 of the Commission’s rules *is amended*, as set forth below. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

70. *It is further ordered* that the following documents shall be made part of the record in this proceeding: (a) Letter from Leora Hochstein, Executive Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Commission Secretary, MB Docket No. 05–311 (Aug. 9, 2006); (b) Letter from Ms. Hochstein to Ms. Dortch, MB Docket No. 05–311 (July 6, 2006); (c) Comments of SureWest Communications in MM Docket No. 06–189; (d) Comments of Manatee County, Florida, in MB Docket No. 05–311; and (e) the Comments of Cablevision and Comcast in MB Docket No. 07–29.

71. *It is further ordered* that the rule contained herein *shall become effective*

60 days after publication of this *report and order* in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Add subpart X to part 76 to read as follows:

Subpart X—Access to MDUs

§ 76.2000 Exclusive access to multiple dwelling units generally.

(a) *Prohibition.* No cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enforce or execute any provision in a contract that grants to it the exclusive right to provide any video programming service (alone or in combination with other services) to a MDU. All such exclusivity clauses are null and void.

(b) *Definition.* For purposes of this rule, MDU shall include a multiple dwelling unit building (such as an apartment building, condominium building or cooperative) and any other centrally managed residential real estate development (such as a gated community, mobile home park, or garden apartment); provided however, that MDU shall not include time share units, academic campuses and dormitories, military bases, hotels, rooming houses, prisons, jails, halfway houses, hospitals, nursing homes or other assisted living facilities.

[FR Doc. E7–25349 Filed 1–4–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA–2006–28711 (HM–145N)]

RIN 2137–AE24

Hazardous Materials: Revisions to the List of Hazardous Substances and Reportable Quantities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA amends the Hazardous Materials Regulations (HMR) by revising the list of hazardous substances and reportable quantities (RQs) and by correcting editorial errors to the list of hazardous substances and RQs. Superfund (*i.e.*, CERCLA) requires PHMSA to list and regulate all hazardous substances designated by the Environmental Protection Agency (EPA). This final rule enables shippers and carriers to identify the affected hazardous substances, comply with all applicable regulatory requirements, and make the required notifications if the release of a hazardous substance occurs.

DATES: *Effective Date:* March 31, 2008.

Voluntary Compliance Date: PHMSA is authorizing voluntary compliance beginning February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Dirk Der Kinderen (202) 366–8553, Office of Hazardous Materials Standards, PHMSA, 1200 New Jersey Avenue, SE., East Building, Washington, DC 20590–0001. Questions about hazardous substance designations or reportable quantities should be directed to EPA at the Superfund, EPCRA, RMP and Oil Information hotline at (800) 424–9346 or, in Washington, DC, local area (703) 412–9810.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA; 42 U.S.C. 9601–9675), as amended by section 202 of the Superfund Amendments and Reauthorization Act of 1986 (SARA; 42 U.S.C 11011 *et seq.*), requires the Secretary of Transportation to regulate hazardous substances listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5128). PHMSA carries

out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a), as amended by Section 202 of SARA.

In carrying out the statutory mandate, PHMSA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. In accordance with CERCLA requirements, EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before PHMSA can amend the list of hazardous substances in the HMR. PHMSA periodically revises the list of hazardous substances and RQs in the HMR (49 CFR Parts 171–180) as adjustments are made by EPA.

This final rule revises the “List of Hazardous Substances and Reportable Quantities” that appears in Table 1 of Appendix A to § 172.101 to be consistent with EPA’s List of Hazardous Substances and Reportable Quantities in 40 CFR 302.4 (Table 302.4). The changes made in this final rule are based on several EPA final rules that added, corrected, or deleted (removed) entries to Table 302.4. In addition, this final rule revises the “List of Hazardous Substances and Reportable Quantities” to correct typographical errors or insert inadvertent omissions from previous PHMSA rulemakings that revised the list based on previous EPA rule changes.

This final rule will enable shippers and carriers to identify CERCLA hazardous substances, comply with all applicable HMR and EPA requirements, and make required notifications if a release of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a release of a hazardous substance is subject to EPA notification requirements under 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard under 33 CFR 153.203.

II. Recent Revisions to EPA Table 302.4

This final rule revises the “List of Hazardous Substances and Reportable Quantities” that appears in Table 1 of

Appendix A to § 172.101 to be consistent with revisions made in recent EPA rules that followed our last reprint of Table 1. The EPA changes to Table 302.4 are discussed as follows. (See the tables below for a listing of hazardous substances added and deleted by the EPA rules discussed below.)

On July 9, 2002, EPA issued a direct final rule (67 FR 45314) correcting errors and removing obsolete or redundant language in its Table 302.4. The majority of the errors were either typographical or the result of inadvertent omissions. Specifically, errors included unintentional discrepancies between an individual hazardous substance name appearing in Table 302.4 and the same name as it appears in other statutes (*i.e.*, Resource Conservation and Recovery Act (RCRA) section 3001, Clean Water Act (CWA) sections 307 and 311, and Clean Air Act (CAA) section 112) and their implementing regulations. EPA made corrections to the names of a number of hazardous substances to make them consistent with names that appear in these other regulatory lists. Many of these corrections are simple and involve, for example, the deletion of an unnecessary hyphen or the addition of parentheses. EPA added synonyms for six hazardous substances to Table 302.4 to be consistent with a February 9, 1995 final rule (60 FR 7824) that added a number of synonyms to RCRA regulations for those same substances. The hazardous substances and the respective synonyms that were added are “Carbaryl; (1-Naphthalenol, methylcarbamate)”, “Carbofuran; (7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate)”, “Mercaptodimethur; (Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate)”, “Mexacarbate; (Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester))”, “Propoxur (Baygon); (Phenol, 2-(1-methylethoxy)-, methylcarbamate)”, and “Triethylamine; (Ethanamine, N,N-diethyl-).” EPA also added the entries “Bis(chloromethyl) ether” and “Bromomethane” as synonyms to be consistent with substances listed in section 112 of the CAA. Additionally, EPA removed a number of hazardous

substances from Table 302.4 in the interest of avoiding duplicative entries and deleted a number of synonyms of hazardous substances because the synonyms are not listed in RCRA, CWA, CAA, or their implementing regulations. Please refer to the July 9, 2002 **Federal Register** noted above for a complete explanation of the additions and deletions. This rule revises the entries in Table 1 of Appendix A to § 172.101 of the HMR for consistency with the revisions in EPA’s July 9, 2002 final rule. However, we are retaining the entry for “Methyl chloroformate” and adding the footnote “@” because “Methyl chloroformate” is also listed as a proper shipping name in the Hazardous Materials Table (HMT). The footnote “@” signifies that the entry is added by PHMSA because it is a synonym for a listed hazardous substance and appears in the HMT as a proper shipping name.

On February 24, 2005, EPA issued a final rule (70 FR 9138) that added an entry for the K181 waste code (nonwastewaters from the production of dyes and/or pigments) to Table 302.4 and assigned the waste a statutory one-pound RQ. This rule adds K181 to the “List of Hazardous Substances and Reportable Quantities.”

On August 16, 2006, EPA issued a final rule (71 FR 47106) that adjusted the RQs for 34 hazardous substances from their statutory one-pound RQs. Specifically, the rule adjusted RQs for 28 individual carbamates, five carbamate-related waste codes (K156, K157, K158, K159, and K161), and the K178 waste code (inorganic manufacturing process waste). With the exception of K156, K157, K158, and K178, these materials have not been previously listed in the HMR as hazardous substances. This rule adds the 30 previously unlisted hazardous substances to the HMR and adjusts the RQs for consistency with EPA Table 302.4.

The following tables identify hazardous substances added or deleted in this final rule as well as a **Federal Register** reference to the EPA rule each revision is based upon:

A. Hazardous Substances Added to Table 1 of Appendix A to § 172.101

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)	EPA final rule
A2213	5000 (2270)	71 FR 47106
Aldicarb sulfone	100 (45.4)	71 FR 47106
Barban	10 (4.54)	71 FR 47106
Bendiocarb	100 (45.4)	71 FR 47106
Bendiocarb phenol	1000 (454)	71 FR 47106
Benomyl	10 (4.54)	71 FR 47106

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)	EPA final rule
1,3-Benzodioxol-4-ol, 2,2-dimethyl-	1000 (454)	71 FR 47106
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	100 (45.4)	71 FR 47106
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	10 (4.54)	71 FR 47106
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	10 (4.54)	67 FR 45314
Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1)	100 (45.4)	71 FR 47106
Bis(chloromethyl) ether	10 (4.54)	67 FR 45314
Bromomethane	1000 (454)	67 FR 45314
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10 (4.54)	71 FR 47106
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester	10 (4.54)	71 FR 47106
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester	10 (4.54)	71 FR 47106
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	1000 (454)	71 FR 47106
Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester	1 (0.454)	71 FR 47106
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	100 (45.4)	71 FR 47106
Carbamic acid, methyl-, 3-methylphenyl ester	1000 (454)	71 FR 47106
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)] bis-, dimethyl ester	10 (4.54)	71 FR 47106
Carbamic acid, phenyl-, 1-methylethyl ester	1000 (454)	71 FR 47106
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	100 (45.4)	71 FR 47106
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	5000 (2270)	71 FR 47106
Carbendazim	10 (4.54)	71 FR 47106
Carbofuran phenol	10 (4.54)	71 FR 47106
Carbosulfan	1000 (454)	71 FR 47106
Cresol (cresylic acid)	100 (45.4)	67 FR 45314
m-Cumenyl methylcarbamate	10 (4.54)	71 FR 47106
Diethylene glycol, dicarbamate	5000 (2270)	71 FR 47106
Dimetilan	1 (0.454)	71 FR 47106
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl] oxime	100 (45.4)	71 FR 47106
Ethanamine, N,N-diethyl-	5000 (2270)	67 FR 45314
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	5000 (2270)	71 FR 47106
Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester	100 (45.4)	71 FR 47106
Ethanimidothioic acid, N,N'[[thiobis(methylimino) carbonyloxy]]bis-, dimethyl ester	100 (45.4)	71 FR 47106
Ethanol, 2,2'-oxybis-, dicarbamate	5000 (2270)	71 FR 47106
Formetate hydrochloride	100 (45.4)	71 FR 47106
Formparanate	100 (45.4)	71 FR 47106
Isolan	100 (45.4)	71 FR 47106
3-Isopropylphenyl N-methylcarbamate	10 (4.54)	71 FR 47106
Manganese, bis(dimethylcarbamodithioato-S,S')-	10 (4.54)	71 FR 47106
Manganese dimethylthiocarbamate	10 (4.54)	71 FR 47106
Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino) carbonyl]oxy]phenyl]-, monohydrochloride	100 (45.4)	71 FR 47106
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]-	100 (45.4)	71 FR 47106
Metolcarb	1000 (454)	71 FR 47106
1-Naphthalenol, methylcarbamate	100 (45.4)	67 FR 45314
Oxamyl	100 (45.4)	71 FR 47106
Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)	1000 (454)	67 FR 45314
Phenol, (3,5-dimethyl)-4-(methylthio)-, methylcarbamate	10 (4.54)	67 FR 45314
Phenol, 2-(1-methylethoxy)-, methylcarbamate	100 (45.4)	67 FR 45314
Phenol, 3-(1-methylethyl)-, methyl carbamate	10 (4.54)	71 FR 47106
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	1000 (454)	71 FR 47106
Physostigmine	100 (45.4)	71 FR 47106
Physostigmine salicylate	100 (45.4)	71 FR 47106
Promecarb	1000 (454)	71 FR 47106
Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime	100 (45.4)	71 FR 47106
Propham	1000 (454)	71 FR 47106
Prosulfocarb	5000 (2270)	71 FR 47106
Pyrrolo[2,3-b] indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-	100 (45.4)	71 FR 47106
Thiodicarb	100 (45.4)	71 FR 47106
Thiophanate-methyl	10 (4.54)	71 FR 47106
Tirpate	100 (45.4)	71 FR 47106
Triallate	100 (45.4)	71 FR 47106
Zinc, bis(dimethylcarbamodithioato-S,S')-	10 (4.54)	71 FR 47106
Ziram	10 (4.54)	71 FR 47106
K159	10 (4.54)	71 FR 47106
K161	1 (0.454)	71 FR 47106
K181	1 (0.454)	70 FR 9138

B. Hazardous Substances Deleted From
Table 1 of Appendix A to § 172.101

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)	EPA final rule
Arsenic acid	1 (0.454)	67 FR 45314
Benzene, m-dimethyl .....	.....	67 FR 45314
Benzene, o-dimethyl .....	.....	67 FR 45314
Benzene, p-dimethyl .....	.....	67 FR 45314
Benzene, hydroxy-	1000 (454)	67 FR 45314
Benzo[j,k]fluorine	100 (45.4)	67 FR 45314
1,2-Benzphenanthrene	100 (45.4)	67 FR 45314
Calcium cyanide	10 (4.54)	67 FR 45314
Camphene, octachloro-	1 (0.454)	67 FR 45314
4-Chloro-m-cresol	5000 (2270)	67 FR 45314
Copper cyanide	10 (4.54)	67 FR 45314
m-Cresylic acid .....	.....	67 FR 45314
o-Cresylic acid .....	.....	67 FR 45314
p-Cresylic acid .....	.....	67 FR 45314
Cyanogen bromide	1000 (454)	67 FR 45314
Cyanogen chloride	10 (4.54)	67 FR 45314
1,4-Diethylenedioxiide	100 (45.4)	67 FR 45314
Hexachlorocyclohexane (gamma isomer)	1 (0.454)	67 FR 45314
Hydrogen sulfide	100 (45.4)	67 FR 45314
Muscimol	1000 (454)	67 FR 45314
Nickel carbonyl	10 (4.54)	67 FR 45314
Nickel cyanide	10 (4.54)	67 FR 45314
1,10-(1,2-Phenylene) pyrene	100 (45.4)	67 FR 45314
Potassium cyanide	10 (4.54)	67 FR 45314
Selenium sulfide	10 (4.54)	67 FR 45314
Silver cyanide	1 (0.454)	67 FR 45314
Sodium cyanide	10 (4.54)	67 FR 45314
Tetrachloroethene	100 (45.4)	67 FR 45314
Thallium (I) chloride	100 (45.4)	67 FR 45314
Trichloroethene	100 (45.4)	67 FR 45314
2,4,5-Trichlorophenol .....	.....	67 FR 45314
2,4,6-Trichlorophenol .....	.....	67 FR 45314
Zinc cyanide	10 (4.54)	67 FR 45314
Zinc phosphide	100 (45.4)	67 FR 45314

III. PHMSA Revisions Based on Previous EPA Rule Revisions to Table 302.4

This final rule also makes corrections to the “List of Hazardous Substances and Reportable Quantities” appearing in Table 1 of Appendix A to § 172.101 to be consistent with revisions made in past EPA final rules that pre-date the rules discussed in section II. The corrections to the “List of Hazardous Substances and Reportable Quantities” are explained as follows:

(1) “Acetic acid, (2,4,5-trichlorophenoxy)-” and “Carbamodithioic acid, 1,2-ethanediybis-, salts & esters” were added to EPA Table 302.4 as new names for previously listed hazardous substances by a December 27, 1989 EPA final rule (54 FR 53057) but were inadvertently not added into the HMR. This rule adds “Acetic acid, (2,4,5-trichlorophenoxy)-” and “Carbamodithioic acid, 1,2-ethanediybis-, salts & esters” to the HMR.

(2) “Diamine” and “1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene” were no longer

listed in Table 302.4 as synonyms for hazardous substances by an August 14, 1989 EPA final rule (54 FR 33425) but inadvertently remained in the HMR. This rule deletes “Diamine” and “1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene” from the HMR.

(3) “3,4-Benzacridine”, “Carbamide, thio-”, “Carbamimidoseleonic acid”, “Carbon bisulfide”, “Ethanoyl chloride”, “Ethylenebisdithiocarbamic acid”, “Methanoic acid”, and “Methylene oxide” were deleted from Table 302.4 as synonyms by a December 27, 1989 EPA final rule (54 FR 53057) but inadvertently remained in the HMR. This rule deletes the synonyms from the HMR.

(4) “Methiocarb” was added to Table 302.4 as a synonym by a February 9, 1995 EPA final rule (60 FR 7824) but was inadvertently not added into the HMR. This rule adds “Methiocarb” to the HMR.

(5) “Aroclors”, “Chlorinated Camphene”, “DEHP”, “Dibromoethane”, “Hexone”, “Iodomethane”, “Lindane (all isomers)”, “PCBs”, “PCNB”, “Quinone”, “Quintobenzene”, “TCDD”, “2,4-Toluene diamine”, “2,4-Toluene

diisocyanate”, and “Urethane” were added to Table 302.4 as synonyms by a June 12, 1995 EPA final rule (60 FR 30926) but were inadvertently not added into the HMR. This rule adds the synonyms to the HMR.

(6) “beta-Propiolactone” was added as a new entry to Table 302.4 by a June 12, 1995 EPA final rule (60 FR 30926) but was inadvertently not added into the HMR. This rule adds “beta-Propiolactone” to the HMR.

(7) The entry for “1,4-Diethylenedioxiide” was corrected by adding “1,4-Diethyleneoxide” as a synonym to Table 302.4 by July 12, 1995 **Federal Register** corrections (60 FR 35991) but “1,4-Diethyleneoxide” was inadvertently not added into the HMR. This rule adds “1,4-Diethyleneoxide” to the HMR.

IV. PHMSA Changes to Table 1 of Appendix A to § 172.101

This final rule makes several non-substantive changes to the “List of Hazardous Substances and Reportable Quantities” that appears in Table 1 of Appendix A to § 172.101 of the HMR. Most of the changes correct typographical errors (i.e., incorrect RQs) and insert inadvertent omissions from

printings of previous PHMSA rulemakings and the CFR. The changes include the removal of descriptive language for waste codes found in Table 1 as well as the removal of the entry "Tetrachloroethane @" because it does not also appear in the HMT as a proper shipping name. The waste code descriptions are readily available in EPA's List of Hazardous Substances and Reportable Quantities in 40 CFR 302.4. In the interest of relieving the burden of tracking EPA revisions to waste code descriptions for consistency purposes, limiting the potential for errors in the text when printing the descriptions, and space savings, we believe the waste code descriptions do not need to be duplicated in the HMR.

Several hazardous substances in Table 1 are listed with an incorrect RQ and are being corrected by this final rule. The changes are discussed as follows:

(1) The RQ for "[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-" (and its synonym "3,3'-Dimethoxybenzidine") was incorrectly changed from 1 to 10 pounds rather than to 100 pounds in the August 21, 1989 PHMSA final rule (HM-145G; 54 FR 34666). This rule corrects the RQ for "[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-" and its synonym to 100 pounds.

(2) The RQ for "Diethylamine" was incorrectly changed to 1000 in the November 7, 1990 PHMSA final rule (HM-145I; 55 FR 46794). This rule corrects the RQ for "Diethylamine" to 100 pounds.

(3) The F004 waste code is based on two solvents: "Cresols/Cresylic Acid" and "Nitrobenzene." The August 2, 1995 PHMSA final rule (HM-145K; 60 FR 39608) inadvertently revised the RQ for "Nitrobenzene" from 1000 to 100 pounds rather than for "Cresols/Cresylic Acid." This final rule corrects the RQ for "Cresols/Cresylic Acid" from 1000 to 100 pounds and the RQ for "Nitrobenzene" to 1000 pounds.

(4) The RQs for "Acetic acid, thallium(1+) salt" and "1-Acetyl-2-thiourea" were incorrectly printed starting with the 1996 edition of the CFR. This rule corrects the RQs to 100 and 1000 pounds, respectively.

(5) The RQ for "Methyl chloromethyl ether @" was inadvertently not revised to 10 pounds in the March 5, 2002 PHMSA final rule (HM-145M; 67 FR 9926). The RQs for synonyms "Chloromethyl methyl ether" and "Methane, chloromethoxy-" were revised without revising the RQ for "Methyl chloromethyl ether @." This rule corrects the RQ for "Methyl chloromethyl ether @" to 10 pounds.

Several hazardous substances were inadvertently omitted from Table 1. The

omissions as well as other corrections to Table 1 are explained as follows:

(1) "1-Chloro-2,3-epoxypropane", "Dimethyl aminoazobenzene", "2,6-Dinitrophenol", "2-Methyl aziridine", and "m-Nitrophenol" were inadvertently omitted from the HMR through reprintings of the list in previous PHMSA rulemakings. This rule returns these entries to the HMR.

(2) The entry for "DDE" (and its RQ of 5000 pounds) was inadvertently omitted from the HMR starting with the 2000 edition of the CFR. This rule returns "DDE" and its RQ of 5000 pounds to the HMR. In addition, to provide clarification that there should be two listings of "DDE" with different RQs, CAS numbers are being added to the respective "DDE" entries. Also, the footnote "#" is added to the end of Table 1 of Appendix A to § 172.101 to provide a reference to the EPA rationale for having two entries with different RQs for the hazardous substance "DDE."

(3) "1-Naphthalenamine" and "2-Naphthalenamine" were inadvertently omitted from the HMR by including their respective synonyms, "1-Naphthylamine" and "2-Naphthylamine", instead. This rule adds "1-Naphthalenamine" and "2-Naphthalenamine" to the HMR and deletes "1-Naphthylamine" and "2-Naphthylamine" from the HMR.

Because this rulemaking makes numerous changes to the "List of Hazardous Substances and Reportable Quantities" found in Table 1 of Appendix A to § 172.101, we are reprinting it in its entirety.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact associated with this final rule should be minimal for shippers and carriers for several reasons: (1) This rule does not impose new requirements on shippers or carriers of hazardous substances, but merely lists and makes corrections to hazardous substances already subject to regulation by EPA; (2) to the extent that new hazardous substances are added to the HMR requiring compliance with regulations pertaining to transport of the hazardous substances, most of the new entries already meet an existing hazard class definition and are currently

subject to the HMR. For example, carbamates are widely used as ingredients in pesticides. Shippers and carriers would incur some increased costs from additional hazard communication requirements (e.g., "RQ" on shipping papers and marking of packages) but minimal compared to costs of compliance with regulations for a hazardous substance that previously had not been regulated and; (3) additional hazardous substances added into the HMR in this final rule were inadvertent omissions or are synonyms of hazardous substances already subject to the requirements.

In consideration of the changes to the RQs for several hazardous substances in this rule, we reviewed the "Economic Impact Analysis (EIA) of Proposed Reportable Quantity Adjustments for Carbamates Added as RCRA Hazardous Wastes and CERCLA Hazardous Substances, Volume VII," dated December 2002 prepared by the Environmental Protection Agency (EPA) in support of its related final rule. A copy of that document is available for review in the EPA docket (EPA-HQ-SFUND-2002-0010-0052).

According to the EPA EIA, upward RQ adjustments for hazardous substances reduce the required telephone notification of releases and reduce government and industry time spent on recordkeeping. The effects of these actions taken together can be categorized as "cost savings." Conversely, downward RQ adjustments would produce increases in these same actions and therefore result in additional costs. Likewise, from an HMR compliance cost perspective, upward RQ adjustments are expected to reduce costs by reducing the number of shipments subject to the hazard communication requirements for RQs or subject to the HMR in general (by being a hazardous material based solely on being defined as a hazardous substance) while downward RQ adjustments are expected to increase costs. The majority of the RQ adjustments (based on EPA adjustments) in this rule are upwards adjustments leading to an overall cost savings.

This final rule will also enhance transportation safety and environmental protection because shippers, carriers, and emergency response personnel will be able to identify specific hazardous substances and take appropriate actions to comply with the applicable packaging and hazard communication requirements and to respond to transportation incidents involving hazardous substances.

B. Executive Order 13132

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

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This rule is required by statute. Federal hazardous materials transportation law provides at Sec. 5125(b)(2) that, if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for these requirements is April 7, 2008.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order

13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking (NPRM). Because this rule was not preceded by an NPRM, no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designation reflected in this rule.

E. Paperwork Reduction Act

This final rule does not impose any new information collection burden.

F. Regulation Identifier Number (RIN)

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

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and, thus, does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment.

Releases of hazardous substances (e.g., carbamates) have the potential to cause damage to the human environment. Releases can occur during

any stage of transportation (i.e., loading, transport, unloading, etc.). When a release occurs, it may result in increased risk to public health and the environment such as increased human exposure to carcinogens or adverse impacts to vegetation and wildlife surrounding the location of the release.

Revisions made to the "List of Hazardous Substances and Reportable Quantities" found in Table 1 of Appendix A to § 172.101 in this final rule enhance environmental protection. Listing of hazardous substances in the HMR and the correct RQs promotes better identification of these materials, leading to greater compliance with the reporting requirements and effective emergency response to incidents involving these materials, thereby lessening the potential for damage to the human environment. Further, the adjustment of an RQ should not have any significant influence on the number of releases that occur for that substance. EPA considers inherent substance-specific risks as part of its RQ adjustment methodology. It is assumed that releases of hazardous substances below an (adjusted) RQ, under most release circumstances, would not pose a sufficient risk to the human environment to warrant a government response. We conclude there are no significant environmental impacts associated with this final rule.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Hazardous substances, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

- 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

- 2. In Appendix A to § 172.101, Table 1 is revised to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
A2213	5000 (2270)
Acenaphthene	100 (45.4)
Acenaphthylene	5000 (2270)
Acetaldehyde	1000 (454)
Acetaldehyde, chloro-	1000 (454)
Acetaldehyde, trichloro-	5000 (2270)
Acetamide	100 (45.4)
Acetamide, N-(aminothioxomethyl)-	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	100 (45.4)
Acetamide, N-9H-fluoren-2-yl-	1 (0.454)
Acetamide, 2-fluoro-	100 (45.4)
Acetic acid	5000 (2270)
Acetic acid, (2,4-dichlorophenoxy)-, salts & esters	100 (45.4)
Acetic acid, ethyl ester	5000 (2270)
Acetic acid, fluoro-, sodium salt	10 (4.54)
Acetic acid, lead(2+) salt	10 (4.54)
Acetic acid, thallium(1+) salt	100 (45.4)
Acetic acid, (2,4,5-trichlorophenoxy)-	1000 (454)
Acetic anhydride	5000 (2270)
Acetone	5000 (2270)
Acetone cyanohydrin	10 (4.54)
Acetonitrile	5000 (2270)
Acetophenone	5000 (2270)
2-Acetylaminofluorene	1 (0.454)
Acetyl bromide	5000 (2270)
Acetyl chloride	5000 (2270)
1-Acetyl-2-thiourea	1000 (454)
Acrolein	1 (0.454)
Acrylamide	5000 (2270)
Acrylic acid	5000 (2270)
Acrylonitrile	100 (45.4)
Adipic acid	5000 (2270)
Aldicarb	1 (0.454)
Aldicarb sulfone	100 (45.4)
Aldrin	1 (0.454)
Allyl alcohol	100 (45.4)
Allyl chloride	1000 (454)
Aluminum phosphide	100 (45.4)
Aluminum sulfate	5000 (2270)
4-Aminobiphenyl	1 (0.454)
5-(Aminomethyl)-3-isoxazolol	1000 (454)
4-Aminopyridine	1000 (454)
Amitrole	10 (4.54)
Ammonia	100 (45.4)
Ammonium acetate	5000 (2270)
Ammonium benzoate	5000 (2270)
Ammonium bicarbonate	5000 (2270)
Ammonium bichromate	10 (4.54)
Ammonium bifluoride	100 (45.4)
Ammonium bisulfite	5000 (2270)
Ammonium carbamate	5000 (2270)
Ammonium carbonate	5000 (2270)
Ammonium chloride	5000 (2270)
Ammonium chromate	10 (4.54)
Ammonium citrate, dibasic	5000 (2270)
Ammonium dichromate®	10 (4.54)
Ammonium fluoborate	5000 (2270)
Ammonium fluoride	100 (45.4)
Ammonium hydroxide	1000 (454)
Ammonium oxalate	5000 (2270)
Ammonium picrate	10 (4.54)
Ammonium silicofluoride	1000 (454)
Ammonium sulfamate	5000 (2270)
Ammonium sulfide	100 (45.4)
Ammonium sulfite	5000 (2270)
Ammonium tartrate	5000 (2270)
Ammonium thiocyanate	5000 (2270)
Ammonium vanadate	1000 (454)
Amyl acetate	5000 (2270)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
iso-Amyl acetate .....	.....
sec-Amyl acetate .....	.....
tert-Amyl acetate .....	.....
Aniline	5000 (2270)
o-Anisidine	100 (45.4)
Anthracene	5000 (2270)
Antimony cent;	5000 (2270)
Antimony pentachloride	1000 (454)
Antimony potassium tartrate	100 (45.4)
Antimony tribromide	1000 (454)
Antimony trichloride	1000 (454)
Antimony trifluoride	1000 (454)
Antimony trioxide	1000 (454)
Argentate(1-), bis(cyano-C)-, potassium	1 (0.454)
Aroclor 1016	1 (0.454)
Aroclor 1221	1 (0.454)
Aroclor 1232	1 (0.454)
Aroclor 1242	1 (0.454)
Aroclor 1248	1 (0.454)
Aroclor 1254	1 (0.454)
Aroclor 1260	1 (0.454)
Aroclors	1 (0.454)
Arsenic cent;	1 (0.454)
Arsenic acid H ₃ AsO ₄	1 (0.454)
Arsenic disulfide	1 (0.454)
Arsenic oxide As ₂ O ₃	1 (0.454)
Arsenic oxide As ₂ O ₅	1 (0.454)
Arsenic pentoxide	1 (0.454)
Arsenic trichloride	1 (0.454)
Arsenic trioxide	1 (0.454)
Arsenic trisulfide	1 (0.454)
Arsine, diethyl-	1 (0.454)
Arsinic acid, dimethyl-	1 (0.454)
Arsonous dichloride, phenyl-	1 (0.454)
Asbestos cent; cent;	1 (0.454)
Auramine	100 (45.4)
Azaserine	1 (0.454)
Aziridine	1 (0.454)
Aziridine, 2-methyl-	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha,8beta,8aalpha, 8balph)]-	10 (4.54)
Barban	10 (4.54)
Barium cyanide	10 (4.54)
Bendiocarb	100 (45.4)
Bendiocarb phenol	1000 (454)
Benomyl	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	10 (4.54)
Benz[c]acridine	100 (45.4)
Benzal chloride	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	5000 (2270)
Benz[a]anthracene	10 (4.54)
1,2-Benzanthracene	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	1 (0.454)
Benzenamine	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N dimethyl-	100 (45.4)
Benzenamine, 4-chloro-	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	10 (4.54)
Benzenamine, 2-methyl-	100 (45.4)
Benzenamine, 4-methyl-	100 (45.4)
Benzenamine, 4,4'-methylenebis[2-chloro-	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	100 (45.4)
Benzenamine, 4-nitro-	5000 (2270)
Benzene	10 (4.54)
Benzenoacetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester	10 (4.54)
Benzene, 1-bromo-4-phenoxy-	100 (45.4)
Benzenobutanoic acid, 4-[bis(2-chloroethyl)amino]-	10 (4.54)
Benzene, chloro-	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Benzene, (chloromethyl)-	100 (45.4)
Benzenediamine, ar-methyl-	10 (4.54)
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	100 (45.4)
1,2-Benzenedicarboxylic acid, dibutyl ester	10 (4.54)
1,2-Benzenedicarboxylic acid, diethyl ester	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	5000 (2270)
1,2-Benzenedicarboxylic acid, dioctyl ester	5000 (2270)
Benzene, 1,2-dichloro-	100 (45.4)
Benzene, 1,3-dichloro-	100 (45.4)
Benzene, 1,4-dichloro-	100 (45.4)
Benzene, 1,1'-(2,2-dichloroethylidene) bis[4-chloro-	1 (0.454)
Benzene, (dichloromethyl)-	5000 (2270)
Benzene, 1,3-diisocyanatomethyl-	100 (45.4)
Benzene, dimethyl-	100 (45.4)
1,3-Benzenediol	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino) ethyl]-	1000 (454)
Benzenethanamine, alpha,alpha-dimethyl-	5000 (2270)
Benzene, hexachloro-	10 (4.54)
Benzene, hexahydro-	1000 (454)
Benzene, methyl-	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	10 (4.54)
Benzene, 2-methyl-1,3-dinitro-	100 (45.4)
Benzene, (1-methylethyl)-	5000 (2270)
Benzene, nitro-	1000 (454)
Benzene, pentachloro-	10 (4.54)
Benzene, pentachloronitro-	100 (45.4)
Benzenesulfonic acid chloride	100 (45.4)
Benzenesulfonyl chloride	100 (45.4)
Benzene,1,2,4,5-tetrachloro-	5000 (2270)
Benzenethiol	100 (45.4)
Benzene,1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-	1 (0.454)
Benzene,1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	1 (0.454)
Benzene, (trichloromethyl)-	10 (4.54)
Benzene, 1,3,5-trinitro-	10 (4.54)
Benzidine	1 (0.454)
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts	100 (45.4)
Benzo[a]anthracene	10 (4.54)
1,3-Benzodioxole, 5-(1-propenyl)-1	100 (45.4)
1,3-Benzodioxole, 5-(2-propenyl)-	100 (45.4)
1,3-Benzodioxole, 5-propyl-	10 (4.54)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-	1000 (454)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	100 (45.4)
Benzo[b]fluoranthene	1 (0.454)
Benzo(k)fluoranthene	5000 (2270)
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	10 (4.54)
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	10 (4.54)
Benzoic acid	5000 (2270)
Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1)	100 (45.4)
Benzonitrile	5000 (2270)
Benzo[rs]pentaphene	10 (4.54)
Benzo[ghi]perylene	5000 (2270)
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts	100 (45.4)
Benzo[a]pyrene	1 (0.454)
3,4-Benzopyrene	1 (0.454)
p-Benzoquinone	10 (4.54)
Benzotrichloride	10 (4.54)
Benzoyl chloride	1000 (454)
Benzyl chloride	100 (45.4)
Beryllium ^{cent} :	10 (4.54)
Beryllium chloride	1 (0.454)
Beryllium fluoride	1 (0.454)
Beryllium nitrate	1 (0.454)
Beryllium powder ^{cent} :	10 (4.54)
alpha-BHC	10 (4.54)
beta-BHC	1 (0.454)
delta-BHC	1 (0.454)
gamma-BHC	1 (0.454)
2,2'-Bioxirane	10 (4.54)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Biphenyl	100 (45.4)
[1,1'-Biphenyl]-4,4'-diamine	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-	100 (45.4)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethyl-	10 (4.54)
Bis(2-chloroethoxy) methane	1000 (454)
Bis(2-chloroethyl) ether	10 (4.54)
Bis(chloromethyl) ether	10 (4.54)
Bis(2-ethylhexyl) phthalate	100 (45.4)
Bromoacetone	1000 (454)
Bromoform	100 (45.4)
Bromomethane	1000 (454)
4-Bromophenyl phenyl ether	100 (45.4)
Brucine	100 (45.4)
1,3-Butadiene	10 (4.54)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	10 (4.54)
1-Butanol	5000 (2270)
2-Butanone	5000 (2270)
2-Butanone, 3,3-dimethyl-1(methylthio)-, O [(methylamino carbonyl) oxime]	100 (45.4)
2-Butanone peroxide	10 (4.54)
2-Butenal	100 (45.4)
2-Butene, 1,4-dichloro-	1 (0.454)
2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy] methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*,3R*),7aalpha]]-	10 (4.54)
Butyl acetate	5000 (2270)
iso-Butyl acetate .....	.....
sec-Butyl acetate .....	.....
tert-Butyl acetate .....	.....
n-Butyl alcohol	5000 (2270)
Butylamine	1000 (454)
iso-Butylamine .....	.....
sec-Butylamine .....	.....
tert-Butylamine .....	.....
Butyl benzyl phthalate	100 (45.4)
n-Butyl phthalate	10 (4.54)
Butyric acid	5000 (2270)
iso-Butyric acid .....	.....
Cacodylic acid	1 (0.454)
Cadmium ^{cent} ;	10 (4.54)
Cadmium acetate	10 (4.54)
Cadmium bromide	10 (4.54)
Cadmium chloride	10 (4.54)
Calcium arsenate	1 (0.454)
Calcium arsenite	1 (0.454)
Calcium carbide	10 (4.54)
Calcium chromate	10 (4.54)
Calcium cyanamide	1000 (454)
Calcium cyanide Ca(CN) ₂	10 (4.54)
Calcium dodecylbenzenesulfonate	1000 (454)
Calcium hypochlorite	10 (4.54)
Captan	10 (4.54)
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10 (4.54)
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester	10 (4.54)
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester	10 (4.54)
Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	1000 (454)
Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester	1 (0.454)
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	100 (45.4)
Carbamic acid, ethyl ester	100 (45.4)
Carbamic acid, methyl-, 3-methylphenyl ester	1000 (454)
Carbamic acid, methylnitroso-, ethyl ester	1 (0.454)
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)] bis-, dimethyl ester	10 (4.54)
Carbamic acid, phenyl-, 1-methylethyl ester	1000 (454)
Carbamic chloride, dimethyl-	1 (0.454)
Carbamodithioic acid, 1,2-ethanediybis-, salts & esters	5000 (2270)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	100 (45.4)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	100 (45.4)
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	5000 (2270)
Carbaryl	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Carbendazim	10 (4.54)
Carbofuran	10 (4.54)
Carbofuran phenol	10 (4.54)
Carbon disulfide	100 (45.4)
Carbonic acid, dithallium(1+) salt	100 (45.4)
Carbonic dichloride	10 (4.54)
Carbonic difluoride	1000 (454)
Carbonochloridic acid, methyl ester	1000 (454)
Carbon oxyfluoride	1000 (454)
Carbon tetrachloride	10 (4.54)
Carbonyl sulfide	100 (45.4)
Carbosulfan	1000 (454)
Catechol	100 (45.4)
Chloral	5000 (2270)
Chloramben	100 (45.4)
Chlorambucil	10 (4.54)
Chlordane	1 (0.454)
Chlordane, alpha & gamma isomers	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	1 (0.454)
Chlorinated camphene	1 (0.454)
Chlorine	10 (4.54)
Chlornaphazine	100 (45.4)
Chloroacetaldehyde	1000 (454)
Chloroacetic acid	100 (45.4)
2-Chloroacetophenone	100 (45.4)
p-Chloroaniline	1000 (454)
Chlorobenzene	100 (45.4)
Chlorobenzilate	10 (4.54)
p-Chloro-m-cresol	5000 (2270)
Chlorodibromomethane	100 (45.4)
1-Chloro-2,3-epoxypropane	100 (45.4)
Chloroethane	100 (45.4)
2-Chloroethyl vinyl ether	1000 (454)
Chloroform	10 (4.54)
Chloromethane	100 (45.4)
Chloromethyl methyl ether	10 (4.54)
beta-Chloronaphthalene	5000 (2270)
2-Chloronaphthalene	5000 (2270)
2-Chlorophenol	100 (45.4)
o-Chlorophenol	100 (45.4)
4-Chlorophenyl phenyl ether	5000 (2270)
1-(o-Chlorophenyl)thiourea	100 (45.4)
Chloroprene	100 (45.4)
3-Chloropropionitrile	1000 (454)
Chlorosulfonic acid	1000 (454)
4-Chloro-o-toluidine, hydrochloride	100 (45.4)
Chlorpyrifos	1 (0.454)
Chromic acetate	1000 (454)
Chromic acid	10 (4.54)
Chromic acid H ₂ CrO ₄ , calcium salt	10 (4.54)
Chromic sulfate	1000 (454)
Chromium ^{cent} ;	5000 (2270)
Chromous chloride	1000 (454)
Chrysene	100 (45.4)
Cobaltous bromide	1000 (454)
Cobaltous formate	1000 (454)
Cobaltous sulfamate	1000 (454)
Coke Oven Emissions	1 (0.454)
Copper ^{cent} ;	5000 (2270)
Copper chloride ^{commat} ;	10 (4.54)
Copper cyanide Cu(CN)	10 (4.54)
Coumaphos	10 (4.54)
Creosote	1 (0.454)
Cresol (cresylic acid)	100 (45.4)
m-Cresol	100 (45.4)
o-Cresol	100 (45.4)
p-Cresol	100 (45.4)
Cresols (isomers and mixture)	100 (45.4)
Cresylic acid (isomers and mixture)	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Crotonaldehyde	100 (45.4)
Cumene	5000 (2270)
m-Cumenyl methylcarbamate	10 (4.54)
Cupric acetate	100 (45.4)
Cupric acetoarsenite	1 (0.454)
Cupric chloride	10 (4.54)
Cupric nitrate	100 (45.4)
Cupric oxalate	100 (45.4)
Cupric sulfate	10 (4.54)
Cupric sulfate, ammoniated	100 (45.4)
Cupric tartrate	100 (45.4)
Cyanides (soluble salts and complexes) not otherwise specified	10 (4.54)
Cyanogen	100 (45.4)
Cyanogen bromide (CN)Br	1000 (454)
Cyanogen chloride (CN)Cl	10 (4.54)
2,5-Cyclohexadiene-1,4-dione	10 (4.54)
Cyclohexane	1000 (454)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α , 2 α , 3 β -, 4 α , 5 α , 6 β)	1 (0.454)
Cyclohexanone	5000 (2270)
2-Cyclohexyl-4,6-dinitrophenol	100 (45.4)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	10 (4.54)
Cyclophosphamide	10 (4.54)
2,4-D Acid	100 (45.4)
2,4-D Ester	100 (45.4)
2,4-D, salts and esters	100 (45.4)
Daunomycin	10 (4.54)
DDD	1 (0.454)
4,4'-DDD	1 (0.454)
DDE (72-55-9) #	1 (0.454)
DDE (3547-04-4) #	5000 (2270)
4,4'-DDE	1 (0.454)
DDT	1 (0.454)
4,4'-DDT	1 (0.454)
DEHP	100 (45.4)
Diallate	100 (45.4)
Diazinon	1 (0.454)
Diazomethane	100 (45.4)
Dibenz[a,h]anthracene	1 (0.454)
1,2:5,6-Dibenzanthracene	1 (0.454)
Dibenzo[a,h]anthracene	1 (0.454)
Dibenzofuran	100 (45.4)
Dibenzo[a,i]pyrene	10 (4.54)
1,2-Dibromo-3-chloropropane	1 (0.454)
Dibromoethane	1 (0.454)
Dibutyl phthalate	10 (4.54)
Di-n-butyl phthalate	10 (4.54)
Dicamba	1000 (454)
Dichlobenil	100 (45.4)
Dichlone	1 (0.454)
Dichlorobenzene	100 (45.4)
1,2-Dichlorobenzene	100 (45.4)
1,3-Dichlorobenzene	100 (45.4)
1,4-Dichlorobenzene	100 (45.4)
m-Dichlorobenzene	100 (45.4)
o-Dichlorobenzene	100 (45.4)
p-Dichlorobenzene	100 (45.4)
3,3'-Dichlorobenzidine	1 (0.454)
Dichlorobromomethane	5000 (2270)
1,4-Dichloro-2-butene	1 (0.454)
Dichlorodifluoromethane	5000 (2270)
1,1-Dichloroethane	1000 (454)
1,2-Dichloroethane	100 (45.4)
1,1-Dichloroethylene	100 (45.4)
1,2-Dichloroethylene	1000 (454)
Dichloroethyl ether	10 (4.54)
Dichloroisopropyl ether	1000 (454)
Dichloromethane	1000 (454)
Dichloromethoxyethane	1000 (454)
Dichloromethyl ether	10 (4.54)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
2,4-Dichlorophenol	100 (45.4)
2,6-Dichlorophenol	100 (45.4)
Dichlorophenylarsine	1 (0.454)
Dichloropropane	1000 (454)
1,1-Dichloropropane .....	.....
1,3-Dichloropropane .....	.....
1,2-Dichloropropane	1000 (454)
Dichloropropane-Dichloropropene (mixture)	100 (45.4)
Dichloropropene	100 (45.4)
2,3-Dichloropropene .....	.....
1,3-Dichloropropene	100 (45.4)
2,2-Dichloropropionic acid	5000 (2270)
Dichlorvos	10 (4.54)
Dicofol	10 (4.54)
Dieldrin	1 (0.454)
1,2:3,4-Diepoxybutane	10 (4.54)
Diethanolamine	100 (45.4)
Diethylamine	100 (45.4)
N,N-Diethylaniline	1000 (454)
Diethylarsine	1 (0.454)
Diethylene glycol, dicarbamate	5000 (2270)
1,4-Diethyleneoxide	100 (45.4)
Diethylhexyl phthalate	100 (45.4)
N,N'-Diethylhydrazine	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	5000 (2270)
Diethyl-p-nitrophenyl phosphate	100 (45.4)
Diethyl phthalate	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	100 (45.4)
Diethylstilbestrol	1 (0.454)
Diethyl sulfate	10 (4.54)
Dihydrosafrole	10 (4.54)
Diisopropylfluorophosphate (DFP)	100 (45.4)
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	1 (0.454)
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-1 (0.454).	
2,7:3,6-Dimethanonaphth[2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha, 7beta, 7aalpha)-	1 (0.454)
2,7:3,6-Dimethanonaphth[2, 3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-, & metabolites	1 (0.454)
Dimethoate	10 (4.54)
3,3'-Dimethoxybenzidine	100 (45.4)
Dimethylamine	1000 (454)
Dimethyl aminoazobenzene	10 (4.54)
p-Dimethylaminoazobenzene	10 (4.54)
N,N-Dimethylaniline	100 (45.4)
7,12-Dimethylbenz[a]anthracene	1 (0.454)
3,3'-Dimethylbenzidine	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
Dimethylcarbonyl chloride	1 (0.454)
Dimethylformamide	100 (45.4)
1,1-Dimethylhydrazine	10 (4.54)
1,2-Dimethylhydrazine	1 (0.454)
Dimethylhydrazine, unsymmetrical [®]	10 (4.54)
alpha,alpha-Dimethylphenethylamine	5000 (2270)
2,4-Dimethylphenol	100 (45.4)
Dimethyl phthalate	5000 (2270)
Dimethyl sulfate	100 (45.4)
Dimetilan	1 (0.454)
Dinitrobenzene (mixed)	100 (45.4)
m-Dinitrobenzene .....	.....
o-Dinitrobenzene .....	.....
p-Dinitrobenzene .....	.....
4,6-Dinitro-o-cresol, and salts	10 (4.54)
Dinitrogen tetroxide [®]	10 (4.54)
Dinitrophenol	10 (4.54)
2,5-Dinitrophenol .....	.....
2,6-Dinitrophenol .....	.....
2,4-Dinitrophenol	10 (4.54)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Dinitrotoluene	10 (4.54)
3,4-Dinitrotoluene	10 (4.54)
2,4-Dinitrotoluene	100 (45.4)
2,6-Dinitrotoluene	1000 (454)
Dinoseb	5000 (2270)
Di-n-octyl phthalate	100 (45.4)
1,4-Dioxane	10 (4.54)
1,2-Diphenylhydrazine	100 (45.4)
Diphosphoramidate, octamethyl-	10 (4.54)
Diphosphoric acid, tetraethyl ester	5000 (2270)
Dipropylamine	10 (4.54)
Di-n-propylnitrosamine	1000 (454)
Diquat	1 (0.454)
Disulfoton	100 (45.4)
Dithiobiuret	100 (45.4)
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime	100 (45.4)
Diuron	1000 (454)
Dodecylbenzenesulfonic acid	1 (0.454)
Endosulfan	1 (0.454)
alpha-Endosulfan	1 (0.454)
beta-Endosulfan	1 (0.454)
Endosulfan sulfate	1 (0.454)
Endothall	1000 (454)
Endrin	1 (0.454)
Endrin aldehyde	1 (0.454)
Endrin, & metabolites	100 (45.4)
Epichlorohydrin	1000 (454)
Epinephrine	100 (45.4)
1,2-Epoxybutane	1000 (454)
Ethanal	5000 (2270)
Ethanamine, N,N-diethyl-	1 (0.454)
Ethanamine, N-ethyl-N-nitroso-	5000 (2270)
1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	1 (0.454)
Ethane, 1,2-dibromo-	1000 (454)
Ethane, 1,1-dichloro-	100 (45.4)
Ethane, 1,2-dichloro-	100 (45.4)
Ethanedinitrile	100 (45.4)
Ethane, hexachloro-	1000 (454)
Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	100 (45.4)
Ethane, 1,1'-oxybis-	10 (4.54)
Ethane, 1,1'-oxybis[2-chloro-	10 (4.54)
Ethane, pentachloro-	100 (45.4)
Ethane, 1,1,1,2-tetrachloro-	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	10 (4.54)
Ethanethioamide	1000 (454)
Ethane, 1,1,1-trichloro-	100 (45.4)
Ethane, 1,1,2-trichloro-	5000 (2270)
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	100 (45.4)
Ethanimidothioic acid, 2-(dimethylamino)-N-[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester	100 (45.4)
Ethanimidothioic acid, N-[(methylamino) carbonyl]oxy]-, methyl ester	100 (45.4)
Ethanimidothioic acid, N,N'[[thiobis[(methylimino)carbonyloxy]] bis-, dimethyl ester	1000 (454)
Ethanol, 2-ethoxy-	1 (0.454)
Ethanol, 2,2'-(nitrosoimino)bis-	5000 (2270)
Ethanol, 2,2'-oxybis-, dicarbamate	5000 (2270)
Ethanone, 1-phenyl-	1 (0.454)
Ethene, chloro-	1000 (454)
Ethene, (2-chloroethoxy)-	100 (45.4)
Ethene, 1,1-dichloro-	1000 (454)
Ethene, 1,2-dichloro-(E)	100 (45.4)
Ethene, tetrachloro-	100 (45.4)
Ethene, trichloro-	10 (4.54)
Ethion	5000 (2270)
Ethyl acetate	1000 (454)
Ethyl acrylate	1000 (454)
Ethylbenzene	100 (45.4)
Ethyl carbamate	100 (45.4)
Ethyl chloride	10 (4.54)
Ethyl cyanide	5000 (2270)
Ethylenebisdithiocarbamic acid, salts & esters	

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Ethylenediamine	5000 (2270)
Ethylenediamine-tetraacetic acid (EDTA)	5000 (2270)
Ethylene dibromide	1 (0.454)
Ethylene dichloride	100 (45.4)
Ethylene glycol	5000 (2270)
Ethylene glycol monoethyl ether	1000 (454)
Ethylene oxide	10 (4.54)
Ethylenethiourea	10 (4.54)
Ethylenimine	1 (0.454)
Ethyl ether	100 (45.4)
Ethylidene dichloride	1000 (454)
Ethyl methacrylate	1000 (454)
Ethyl methanesulfonate	1 (0.454)
Ethyl methyl ketone®	5000 (2270)
Famphur	1000 (454)
Ferric ammonium citrate	1000 (454)
Ferric ammonium oxalate	1000 (454)
Ferric chloride	1000 (454)
Ferric fluoride	100 (45.4)
Ferric nitrate	1000 (454)
Ferric sulfate	1000 (454)
Ferrous ammonium sulfate	1000 (454)
Ferrous chloride	100 (45.4)
Ferrous sulfate	1000 (454)
Fluoranthene	100 (45.4)
Fluorene	5000 (2270)
Fluorine	10 (4.54)
Fluoroacetamide	100 (45.4)
Fluoroacetic acid, sodium salt	10 (4.54)
Formaldehyde	100 (45.4)
Formetanate hydrochloride	100 (45.4)
Formic acid	5000 (2270)
Formparanate	100 (45.4)
Fulminic acid, mercury(2+)salt	10 (4.54)
Fumaric acid	5000 (2270)
Furan	100 (45.4)
2-Furancarboxyaldehyde	5000 (2270)
2,5-Furandione	5000 (2270)
Furan, tetrahydro-	1000 (454)
Furfural	5000 (2270)
Furfuran	100 (45.4)
Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-	1 (0.454)
D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino)-carbonyl]amino]-	1 (0.454)
Glycidylaldehyde	10 (4.54)
Guanidine, N-methyl-N'-nitro-N-nitroso-	10 (4.54)
Guthion	1 (0.454)
Heptachlor	1 (0.454)
Heptachlor epoxide	1 (0.454)
Hexachlorobenzene	10 (4.54)
Hexachlorobutadiene	1 (0.454)
Hexachlorocyclopentadiene	10 (4.54)
Hexachloroethane	100 (45.4)
Hexachlorophene	100 (45.4)
Hexachloropropene	1000 (454)
Hexaethyl tetraphosphate	100 (45.4)
Hexamethylene-1,6-diisocyanate	100 (45.4)
Hexamethylphosphoramide	1 (0.454)
Hexane	5000 (2270)
Hexone	5000 (2270)
Hydrazine	1 (0.454)
Hydrazinecarbothioamide	100 (45.4)
Hydrazine, 1,2-diethyl-	10 (4.54)
Hydrazine, 1,1-dimethyl-	10 (4.54)
Hydrazine, 1,2-dimethyl-	1 (0.454)
Hydrazine, 1,2-diphenyl-	10 (4.54)
Hydrazine, methyl-	10 (4.54)
Hydrochloric acid	5000 (2270)
Hydrocyanic acid	10 (4.54)
Hydrofluoric acid	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Hydrogen chloride	5000 (2270)
Hydrogen cyanide	10 (4.54)
Hydrogen fluoride	100 (45.4)
Hydrogen phosphide	100 (45.4)
Hydrogen sulfide H ₂ S	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	10 (4.54)
Hydroquinone	100 (45.4)
2-Imidazolidinethione	10 (4.54)
Indeno(1,2,3-cd)pyrene	100 (45.4)
Iodomethane	100 (45.4)
1,3-Isobenzofurandione	5000 (2270)
Isobutyl alcohol	5000 (2270)
Isodrin	1 (0.454)
Isolan	100 (45.4)
Isophorone	5000 (2270)
Isoprene	100 (45.4)
Isopropanolamine dodecylbenzenesulfonate	1000 (454)
3-Isopropylphenyl N-methylcarbamate	10 (4.54)
Isosafrole	100 (45.4)
3(2H)-Isoxazolone, 5-(aminomethyl)-	1000 (454)
Kepone	1 (0.454)
Lasiocarpine	10 (4.54)
Lead ^{cent} :	10 (4.54)
Lead acetate	10 (4.54)
Lead arsenate	1 (0.454)
Lead, bis(acetato-O)tetrahydroxytri-	10 (4.54)
Lead chloride	10 (4.54)
Lead fluoborate	10 (4.54)
Lead fluoride	10 (4.54)
Lead iodide	10 (4.54)
Lead nitrate	10 (4.54)
Lead phosphate	10 (4.54)
Lead stearate	10 (4.54)
Lead subacetate	10 (4.54)
Lead sulfate	10 (4.54)
Lead sulfide	10 (4.54)
Lead thiocyanate	10 (4.54)
Lindane	1 (0.454)
Lindane (all isomers)	1 (0.454)
Lithium chromate	10 (4.54)
Malathion	100 (45.4)
Maleic acid	5000 (2270)
Maleic anhydride	5000 (2270)
Maleic hydrazide	5000 (2270)
Malononitrile	1000 (454)
Manganese, bis(dimethylcarbamodithioato-S,S')	10 (4.54)
Manganese dimethyldithiocarbamate	10 (4.54)
MDI	5000 (2270)
MEK	5000 (2270)
Melphalan	1 (0.454)
Mercaptodimethur	10 (4.54)
Mercuric cyanide	1 (0.454)
Mercuric nitrate	10 (4.54)
Mercuric sulfate	10 (4.54)
Mercuric thiocyanate	10 (4.54)
Mercurous nitrate	10 (4.54)
Mercury	1 (0.454)
Mercury, (acetato-O)phenyl-	100 (45.4)
Mercury fulminate	10 (4.54)
Methacrylonitrile	1000 (454)
Methanamine, N-methyl-	1000 (454)
Methanamine, N-methyl-N-nitroso-	10 (4.54)
Methane, bromo-	1000 (454)
Methane, chloro-	100 (45.4)
Methane, chloromethoxy-	10 (4.54)
Methane, dibromo-	1000 (454)
Methane, dichloro-	1000 (454)
Methane, dichlorodifluoro-	5000 (2270)
Methane, iodo-	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Methane, isocyanato-	10 (4.54)
Methane, oxybis(chloro-	10 (4.54)
Methanesulfonyl chloride, trichloro-	100 (45.4)
Methanesulfonic acid, ethyl ester	1 (0.454)
Methane, tetrachloro-	10 (4.54)
Methane, tetranitro-	10 (4.54)
Methanethiol	100 (45.4)
Methane, tribromo-	100 (45.4)
Methane, trichloro-	10 (4.54)
Methane, trichlorofluoro-	5000 (2270)
Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino) carbonyl] oxy] phenyl]-, monohydrochloride	100 (45.4)
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino) carbonyl] oxy] phenyl]-	100 (45.4)
6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	1 (0.454)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1 (0.454)
Methanol	5000 (2270)
Methapyrilene	5000 (2270)
1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	1 (0.454)
Methiocarb	10 (4.54)
Methomyl	100 (45.4)
Methoxychlor	1 (0.454)
Methyl alcohol	5000 (2270)
Methylamine <small>commat</small> ;	100 (45.4)
2-Methyl aziridine	1 (0.454)
Methyl bromide	1000 (454)
1-Methylbutadiene	100 (45.4)
Methyl chloride	100 (45.4)
Methyl chlorocarbonate	1000 (454)
Methyl chloroform	1000 (454)
Methyl chloroformate <small>commat</small> ;	1000 (454)
Methyl chloromethyl ether <small>commat</small> ;	10 (4.54)
3-Methylcholanthrene	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	10 (4.54)
Methylene bromide	1000 (454)
Methylene chloride	1000 (454)
4,4'-Methylenedianiline	10 (4.54)
Methylene diphenyl diisocyanate	5000 (2270)
Methyl ethyl ketone	5000 (2270)
Methyl ethyl ketone peroxide	10 (4.54)
Methyl hydrazine	10 (4.54)
Methyl iodide	100 (45.4)
Methyl isobutyl ketone	5000 (2270)
Methyl isocyanate	10 (4.54)
2-Methylacetonitrile	10 (4.54)
Methyl mercaptan	100 (45.4)
Methyl methacrylate	1000 (454)
Methyl parathion	100 (45.4)
4-Methyl-2-pentanone	5000 (2270)
Methyl tert-butyl ether	1000 (454)
Methylthiouracil	10 (4.54)
Metolcarb	1000 (454)
Mevinphos	10 (4.54)
Mexacarbate	1000 (454)
Mitomycin C	10 (4.54)
MNNG	10 (4.54)
Monoethylamine	100 (45.4)
Monomethylamine	100 (45.4)
Naled	10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	10 (4.54)
1-Naphthalenamine	100 (45.4)
2-Naphthalenamine	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	100 (45.4)
Naphthalene	100 (45.4)
Naphthalene, 2-chloro-	5000 (2270)
1,4-Naphthalenedione	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt ..	10 (4.54)
1-Naphthalenol, methylcarbamate	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Naphthenic acid	100 (45.4)
1,4-Naphthoquinone	5000 (2270)
alpha-Naphthylamine	100 (45.4)
beta-Naphthylamine	10 (4.54)
alpha-Naphthylthiourea	100 (45.4)
Nickel ^{cent} ;	100 (45.4)
Nickel ammonium sulfate	100 (45.4)
Nickel carbonyl Ni(CO) ₄ , (T-4)-	10 (4.54)
Nickel chloride	100 (45.4)
Nickel cyanide Ni(CN) ₂	10 (4.54)
Nickel hydroxide	10 (4.54)
Nickel nitrate	100 (45.4)
Nickel sulfate	100 (45.4)
Nicotine, & salts	100 (45.4)
Nitric acid	1000 (454)
Nitric acid, thallium (1+) salt	100 (45.4)
Nitric oxide	10 (4.54)
p-Nitroaniline	5000 (2270)
Nitrobenzene	1000 (454)
4-Nitrobiphenyl	10 (4.54)
Nitrogen dioxide	10 (4.54)
Nitrogen oxide NO	10 (4.54)
Nitrogen oxide NO ₂	10 (4.54)
Nitroglycerine	10 (4.54)
Nitrophenol (mixed)	100 (45.4)
m-Nitrophenol	.....
o-Nitrophenol	100 (45.4)
p-Nitrophenol	100 (45.4)
2-Nitrophenol	100 (45.4)
4-Nitrophenol	100 (45.4)
2-Nitropropane	10 (4.54)
N-Nitrosodi-n-butylamine	10 (4.54)
N-Nitrosodiethanolamine	1 (0.454)
N-Nitrosodiethylamine	1 (0.454)
N-Nitrosodimethylamine	10 (4.54)
N-Nitrosodiphenylamine	100 (45.4)
N-Nitroso-N-ethylurea	1 (0.454)
N-Nitroso-N-methylurea	1 (0.454)
N-Nitroso-N-methylurethane	1 (0.454)
N-Nitrosomethylvinylamine	10 (4.54)
N-Nitrosomorpholine	1 (0.454)
N-Nitrosopiperidine	10 (4.54)
N-Nitrosopyrrolidine	1 (0.454)
Nitrotoluene	1000 (454)
m-Nitrotoluene	.....
o-Nitrotoluene	.....
p-Nitrotoluene	.....
5-Nitro-o-toluidine	100 (45.4)
Octamethylpyrophosphoramidate	100 (45.4)
Osmium oxide OsO ₄ , (T-4)-	1000 (454)
Osmium tetroxide	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1000 (454)
Oxamyl	100 (45.4)
1,2-Oxathiolane, 2,2-dioxide	10 (4.54)
2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide	10 (4.54)
Oxirane	10 (4.54)
Oxiranecarboxyaldehyde	10 (4.54)
Oxirane, (chloromethyl)-	100 (45.4)
Paraformaldehyde	1000 (454)
Paraldehyde	1000 (454)
Parathion	10 (4.54)
PCBs	1 (0.454)
PCNB	100 (45.4)
Pentachlorobenzene	10 (4.54)
Pentachloroethane	10 (4.54)
Pentachloronitrobenzene	100 (45.4)
Pentachlorophenol	10 (4.54)
1,3-Pentadiene	100 (45.4)
Perchloroethylene	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Perchloromethyl mercaptan®	100 (45.4)
Phenacetin	100 (45.4)
Phenanthrene	5000 (2270)
Phenol	1000 (454)
Phenol, 2-chloro-	100 (45.4)
Phenol, 4-chloro-3-methyl-	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	100 (45.4)
Phenol, 2,4-dichloro-	100 (45.4)
Phenol, 2,6-dichloro-	100 (45.4)
Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	1 (0.454)
Phenol, 2,4-dimethyl-	100 (45.4)
Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)	1000 (454)
Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	10 (4.54)
Phenol, 2,4-dinitro-	10 (4.54)
Phenol, methyl-	100 (45.4)
Phenol, 2-methyl-4,6-dinitro-, & salts	10 (4.54)
Phenol, 2,2'-methylenebis[3,4,6-trichloro-	100 (45.4)
Phenol, 2-(1-methylethoxy)-, methylcarbamate	100 (45.4)
Phenol, 3-(1-methylethyl)-, methyl carbamate	10 (4.54)
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	1000 (454)
Phenol, 2-(1-methylpropyl)-4,6-dinitro-	1000 (454)
Phenol, 4-nitro-	100 (45.4)
Phenol, pentachloro-	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	10 (4.54)
Phenol, 2,4,5-trichloro-	10 (4.54)
Phenol, 2,4,6-trichloro-	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	1 (0.454)
p-Phenylenediamine	5000 (2270)
Phenyl mercaptan®	100 (45.4)
Phenylmercury acetate	100 (45.4)
Phenylthiourea	100 (45.4)
Phorate	10 (4.54)
Phosgene	10 (4.54)
Phosphine	100 (45.4)
Phosphoric acid	5000 (2270)
Phosphoric acid, diethyl 4-nitrophenyl ester	100 (45.4)
Phosphoric acid, lead(2+) salt (2:3)	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	10 (4.54)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	100 (45.4)
Phosphorothioic acid, O-[4-[(dimethylamino) sulfonyl]phenyl] O,O-dimethyl ester	1000 (454)
Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	100 (45.4)
Phosphorus	1 (0.454)
Phosphorus oxychloride	1000 (454)
Phosphorus pentasulfide	100 (45.4)
Phosphorus sulfide	100 (45.4)
Phosphorus trichloride	1000 (454)
Phthalic anhydride	5000 (2270)
Physostigmine	100 (45.4)
Physostigmine salicylate	100 (45.4)
2-Picoline	5000 (2270)
Piperidine, 1-nitroso-	10 (4.54)
Plumbane, tetraethyl-	10 (4.54)
POLYCHLORINATED BIPHENYLS	1 (0.454)
Potassium arsenate	1 (0.454)
Potassium arsenite	1 (0.454)
Potassium bichromate	10 (4.54)
Potassium chromate	10 (4.54)
Potassium cyanide K(CN)	10 (4.54)
Potassium hydroxide	1000 (454)
Potassium permanganate	100 (45.4)
Potassium silver cyanide	1 (0.454)
Promecarb	1000 (454)
Pronamide	5000 (2270)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime	100 (45.4)
Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl] oxime	1 (0.454)
1-Propanamine	5000 (2270)
1-Propanamine, N-propyl-	5000 (2270)
1-Propanamine, N-nitroso-N-propyl-	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	1 (0.454)
Propane, 1,2-dichloro-	1000 (454)
Propanedinitrile	1000 (454)
Propanenitrile	10 (4.54)
Propanenitrile, 3-chloro-	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	10 (4.54)
Propane, 2-nitro-	10 (4.54)
Propane, 2,2'-oxybis[2-chloro-	1000 (454)
1,3-Propane sultone	10 (4.54)
1,2,3-Propanetriol, trinitrate	10 (4.54)
Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	10 (4.54)
1-Propanol, 2-methyl-	5000 (2270)
2-Propanone	5000 (2270)
2-Propanone, 1-bromo-	1000 (454)
Propargite	10 (4.54)
Propargyl alcohol	1000 (454)
2-Propenal	1 (0.454)
2-Propenamide	5000 (2270)
1-Propene, 1,3-dichloro-	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	1000 (454)
2-Propenenitrile	100 (45.4)
2-Propenenitrile, 2-methyl-	1000 (454)
2-Propenoic acid	5000 (2270)
2-Propenoic acid, ethyl ester	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	1000 (454)
2-Propen-1-ol	100 (45.4)
Propham	1000 (454)
beta-Propiolactone	10 (4.54)
Propionaldehyde	1000 (454)
Propionic acid	5000 (2270)
Propionic anhydride	5000 (2270)
Propoxur (Baygon)	100 (45.4)
n-Propylamine	5000 (2270)
Propylene dichloride	1000 (454)
Propylene oxide	100 (45.4)
1,2-Propylenimine	1 (0.454)
2-Propyn-1-ol	1000 (454)
Prosulfocarb	5000 (2270)
Pyrene	5000 (2270)
Pyrethrins	1 (0.454)
3,6-Pyridazinedione, 1,2-dihydro-	5000 (2270)
4-Pyridinamine	1000 (454)
Pyridine	1000 (454)
Pyridine, 2-methyl-	5000 (2270)
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts	100 (45.4)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	10 (4.54)
Pyrrolidine, 1-nitroso-	1 (0.454)
Pyrrolo[2,3-b] indol-5-ol,1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-	100 (45.4)
Quinoline	5000 (2270)
Quinone	10 (4.54)
Quintobenzene	100 (45.4)
RADIONUCLIDES	See Table 2
Reserpine	5000 (2270)
Resorcinol	5000 (2270)
Saccharin & salts	100 (45.4)
Safrole	100 (45.4)
Selenious acid	10 (4.54)
Selenious acid, dithallium (1+) salt	1000 (454)
Selenium ^{cent} ;	100 (45.4)
Selenium dioxide	10 (4.54)
Selenium oxide	10 (4.54)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Selenium sulfide SeS ₂	10 (4.54)
Selenourea	1000 (454)
L-Serine, diazoacetate (ester)	1 (0.454)
Silver ^{cent} ;	1000 (454)
Silver cyanide Ag(CN)	1 (0.454)
Silver nitrate	1 (0.454)
Silvex (2,4,5-TP)	100 (45.4)
Sodium	10 (4.54)
Sodium arsenate	1 (0.454)
Sodium arsenite	1 (0.454)
Sodium azide	1000 (454)
Sodium bichromate	10 (4.54)
Sodium bifluoride	100 (45.4)
Sodium bisulfite	5000 (2270)
Sodium chromate	10 (4.54)
Sodium cyanide Na(CN)	10 (4.54)
Sodium dodecylbenzenesulfonate	1000 (454)
Sodium fluoride	1000 (454)
Sodium hydrosulfide	5000 (2270)
Sodium hydroxide	1000 (454)
Sodium hypochlorite	100 (45.4)
Sodium methylate	1000 (454)
Sodium nitrite	100 (45.4)
Sodium phosphate, dibasic	5000 (2270)
Sodium phosphate, tribasic	5000 (2270)
Sodium selenite	100 (45.4)
Streptozotocin	1 (0.454)
Strontium chromate	10 (4.54)
Strychnidin-10-one, & salts	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	100 (45.4)
Strychnine, & salts	10 (4.54)
Styrene	1000 (454)
Styrene oxide	100 (45.4)
Sulfur chlorides [®]	1000 (454)
Sulfuric acid	1000 (454)
Sulfuric acid, dimethyl ester	100 (45.4)
Sulfuric acid, dithallium (1+) salt	100 (45.4)
Sulfur monochloride	1000 (454)
Sulfur phosphide	100 (45.4)
2,4,5-T	1000 (454)
2,4,5-T acid	1000 (454)
2,4,5-T amines	5000 (2270)
2,4,5-T esters	1000 (454)
2,4,5-T salts	1000 (454)
TCDD	1 (0.454)
TDE	1 (0.454)
1,2,4,5-Tetrachlorobenzene	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1 (0.454)
1,1,1,2-Tetrachloroethane	100 (45.4)
1,1,2,2-Tetrachloroethane	100 (45.4)
Tetrachloroethylene	100 (45.4)
2,3,4,6-Tetrachlorophenol	10 (4.54)
Tetraethyl pyrophosphate	10 (4.54)
Tetraethyl lead	10 (4.54)
Tetraethyldithiopyrophosphate	100 (45.4)
Tetrahydrofuran	1000 (454)
Tetranitromethane	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	100 (45.4)
Thallic oxide	100 (45.4)
Thallium ^{cent} ;	1000 (454)
Thallium (I) acetate	100 (45.4)
Thallium (I) carbonate	100 (45.4)
Thallium chloride TlCl	100 (45.4)
Thallium (I) nitrate	100 (45.4)
Thallium oxide Tl ₂ O ₃	100 (45.4)
Thallium (I) selenite	1000 (454)
Thallium (I) sulfate	100 (45.4)
Thioacetamide	10 (4.54)
Thiodicarb	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Thiodiphosphoric acid, tetraethyl ester	100 (45.4)
Thiofanox	100 (45.4)
Thioimidodicarbonic diamide [(H ₂ N)C(S)] ₂ NH	100 (45.4)
Thiomethanol	100 (45.4)
Thioperoxydicarbonic diamide [(H ₂ N)C(S)] ₂ S ₂ , tetramethyl-	10 (4.54)
Thiophanate-methyl	10 (4.54)
Thiophenol	100 (45.4)
Thiosemicarbazide	100 (45.4)
Thiourea	10 (4.54)
Thiourea, (2-chlorophenyl)-	100 (45.4)
Thiourea, 1-naphthalenyl-	100 (45.4)
Thiourea, phenyl-	100 (45.4)
Thiram	10 (4.54)
Tirpate	100 (45.4)
Titanium tetrachloride	1000 (454)
Toluene	1000 (454)
Toluenediamine	10 (4.54)
2,4-Toluene diamine	10 (4.54)
Toluene diisocyanate	100 (45.4)
2,4-Toluene diisocyanate	100 (45.4)
o-Toluidine	100 (45.4)
p-Toluidine	100 (45.4)
o-Toluidine hydrochloride	100 (45.4)
Toxaphene	1 (0.454)
2,4,5-TP acid	100 (45.4)
2,4,5-TP esters	100 (45.4)
Triallate	100 (45.4)
1H-1,2,4-Triazol-3-amine	10 (4.54)
Trichlorfon	100 (45.4)
1,2,4-Trichlorobenzene	100 (45.4)
1,1,1-Trichloroethane	1000 (454)
1,1,2-Trichloroethane	100 (45.4)
Trichloroethylene	100 (45.4)
Trichloromethanesulfonyl chloride	100 (45.4)
Trichloromonofluoromethane	5000 (2270)
Trichlorophenol	10 (4.54)
2,3,4-Trichlorophenol .....	.....
2,3,5-Trichlorophenol .....	.....
2,3,6-Trichlorophenol .....	.....
3,4,5-Trichlorophenol .....	.....
2,4,5-Trichlorophenol	10 (4.54)
2,4,6-Trichlorophenol	10 (4.54)
Triethanolamine dodecylbenzenesulfonate	1000 (454)
Triethylamine	5000 (2270)
Trifluralin	10 (4.54)
Trimethylamine	100 (45.4)
2,2,4-Trimethylpentane	1000 (454)
1,3,5-Trinitrobenzene	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	1000 (454)
Tris(2,3-dibromopropyl) phosphate	10 (4.54)
Trypan blue	10 (4.54)
D002 Unlisted Hazardous Wastes Characteristic of Corrosivity	100 (45.4)
D001 Unlisted Hazardous Wastes Characteristic of Ignitability	100 (45.4)
D003 Unlisted Hazardous Wastes Characteristic of Reactivity	100 (45.4)
D004–D043 Unlisted Hazardous Wastes Characteristic of Toxicity:	
Arsenic (D004)	1 (0.454)
Barium (D005)	1000 (454)
Benzene (D018)	10 (4.54)
Cadmium (D006)	10 (4.54)
Carbon tetrachloride (D019)	10 (4.54)
Chlordane (D020)	1 (0.454)
Chlorobenzene (D021)	100 (45.4)
Chloroform (D022)	10 (4.54)
Chromium (D007)	10 (4.54)
o-Cresol (D023)	100 (45.4)
m-Cresol (D024)	100 (45.4)
p-Cresol (D025)	100 (45.4)
Cresol (D026)	100 (45.4)
2,4-D (D016)	100 (45.4)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
1,4-Dichlorobenzene (D027)	100 (45.4)
1,2-Dichloroethane (D028)	100 (45.4)
1,1-Dichloroethylene (D029)	100 (45.4)
2,4-Dinitrotoluene (D030)	10 (4.54)
Endrin (D012)	1 (0.454)
Heptachlor (and epoxide) (D031)	1 (0.454)
Hexachlorobenzene (D032)	10 (4.54)
Hexachlorobutadiene (D033)	1 (0.454)
Hexachloroethane (D034)	100 (45.4)
Lead (D008)	10 (4.54)
Lindane (D013)	1 (0.454)
Mercury (D009)	1 (0.454)
Methoxychlor (D014)	1 (0.454)
Methyl ethyl ketone (D035)	5000 (2270)
Nitrobenzene (D036)	1000 (454)
Pentachlorophenol (D037)	10 (4.54)
Pyridine (D038)	1000 (454)
Selenium (D010)	10 (4.54)
Silver (D011)	1 (0.454)
Tetrachloroethylene (D039)	100 (45.4)
Toxaphene (D015)	1 (0.454)
Trichloroethylene (D040)	100 (45.4)
2,4,5-Trichlorophenol (D041)	10 (4.54)
2,4,6-Trichlorophenol (D042)	10 (4.54)
2,4,5-TP (D017)	100 (45.4)
Vinyl chloride (D043)	1 (0.454)
Uracil mustard	10 (4.54)
Uranyl acetate	100 (45.4)
Uranyl nitrate	100 (45.4)
Urea, N-ethyl-N-nitroso-	1 (0.454)
Urea, N-methyl-N-nitroso-	1 (0.454)
Urethane	100 (45.4)
Vanadic acid, ammonium salt	1000 (454)
Vanadium oxide V ₂ O ₅	1000 (454)
Vanadium pentoxide	1000 (454)
Vanadyl sulfate	1000 (454)
Vinyl acetate	5000 (2270)
Vinyl acetate monomer	5000 (2270)
Vinylamine, N-methyl-N-nitroso-	10 (4.54)
Vinyl bromide	100 (45.4)
Vinyl chloride	1 (0.454)
Vinylidene chloride	100 (45.4)
Warfarin, & salts	100 (45.4)
Xylene	100 (45.4)
m-Xylene	1000 (454)
o-Xylene	1000 (454)
p-Xylene	100 (45.4)
Xylene (mixed)	100 (45.4)
Xylenes (isomers and mixture)	100 (45.4)
Xylenol	1000 (454)
Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha,18beta, 20alpha)	5000 (2270)
Zinc cent;	1000 (454)
Zinc acetate	1000 (454)
Zinc ammonium chloride	1000 (454)
Zinc, bis(dimethylcarbamodithioato-S,S')-	10 (4.54)
Zinc borate	1000 (454)
Zinc bromide	1000 (454)
Zinc carbonate	1000 (454)
Zinc chloride	1000 (454)
Zinc cyanide Zn(CN) ₂	10 (4.54)
Zinc fluoride	1000 (454)
Zinc formate	1000 (454)
Zinc hydrosulfite	1000 (454)
Zinc nitrate	1000 (454)
Zinc phenolsulfonate	5000 (2270)
Zinc phosphide Zn ₃ P ₂	100 (45.4)
Zinc silicofluoride	5000 (2270)
Zinc sulfate	1000 (454)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
Ziram	10 (4.54)
Zirconium nitrate	5000 (2270)
Zirconium potassium fluoride	1000 (454)
Zirconium sulfate	5000 (2270)
Zirconium tetrachloride	5000 (2270)
F001	10 (4.54)
(a) Tetrachloroethylene	100 (45.4)
(b) Trichloroethylene	100 (45.4)
(c) Methylene chloride	1000 (454)
(d) 1,1,1-Trichloroethane	1000 (454)
(e) Carbon tetrachloride	10 (4.54)
(f) Chlorinated fluorocarbons	5000 (2270)
F002	10 (4.54)
(a) Tetrachloroethylene	100 (45.4)
(b) Methylene chloride	1000 (454)
(c) Trichloroethylene	100 (45.4)
(d) 1,1,1-Trichloroethane	1000 (454)
(e) Chlorobenzene	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	5000 (2270)
(g) o-Dichlorobenzene	100 (45.4)
(h) Trichlorofluoromethane	5000 (2270)
(i) 1,1,2-Trichloroethane	100 (45.4)
F003	100 (45.4)
(a) Xylene	1000 (454)
(b) Acetone	5000 (2270)
(c) Ethyl acetate	5000 (2270)
(d) Ethylbenzene	1000 (454)
(e) Ethyl ether	100 (45.4)
(f) Methyl isobutyl ketone	5000 (2270)
(g) n-Butyl alcohol	5000 (2270)
(h) Cyclohexanone	5000 (2270)
(i) Methanol	5000 (2270)
F004	100 (45.4)
(a) Cresols/Cresylic acid	100 (45.4)
(b) Nitrobenzene	1000 (454)
F005	100 (45.4)
(a) Toluene	1000 (454)
(b) Methyl ethyl ketone	5000 (2270)
(c) Carbon disulfide	100 (45.4)
(d) Isobutanol	5000 (2270)
(e) Pyridine	1000 (454)
F006	10 (4.54)
F007	10 (4.54)
F008	10 (4.54)
F009	10 (4.54)
F010	10 (4.54)
F011	10 (4.54)
F012	10 (4.54)
F019	10 (4.54)
F020	1 (0.454)
F021	1 (0.454)
F022	1 (0.454)
F023	1 (0.454)
F024	1 (0.454)
F025	1 (0.454)
F026	1 (0.454)
F027	1 (0.454)
F028	1 (0.454)
F032	1 (0.454)
F034	1 (0.454)
F035	1 (0.454)
F037	1 (0.454)
F038	1 (0.454)
F039	1 (0.454)
K001	1 (0.454)
K002	10 (4.54)
K003	10 (4.54)
K004	10 (4.54)
K005	10 (4.54)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
K006	10 (4.54)
K007	10 (4.54)
K008	10 (4.54)
K009	10 (4.54)
K010	10 (4.54)
K011	10 (4.54)
K013	10 (4.54)
K014	5000 (2270)
K015	10 (4.54)
K016	1 (0.454)
K017	10 (4.54)
K018	1 (0.454)
K019	1 (0.454)
K020	1 (0.454)
K021	10 (4.54)
K022	1 (0.454)
K023	5000 (2270)
K024	5000 (2270)
K025	10 (4.54)
K026	1000 (454)
K027	10 (4.54)
K028	1 (0.454)
K029	1 (0.454)
K030	1 (0.454)
K031	1 (0.454)
K032	10 (4.54)
K033	10 (4.54)
K034	10 (4.54)
K035	1 (0.454)
K036	1 (0.454)
K037	1 (0.454)
K038	10 (4.54)
K039	10 (4.54)
K040	10 (4.54)
K041	1 (0.454)
K042	10 (4.54)
K043	10 (4.54)
K044	10 (4.54)
K045	10 (4.54)
K046	10 (4.54)
K047	10 (4.54)
K048	10 (4.54)
K049	10 (4.54)
K050	10 (4.54)
K051	10 (4.54)
K052	10 (4.54)
K060	1 (0.454)
K061	10 (4.54)
K062	10 (4.54)
K064	10 (4.54)
K065	10 (4.54)
K066	10 (4.54)
K069	10 (4.54)
K071	1 (0.454)
K073	10 (4.54)
K083	100 (45.4)
K084	1 (0.454)
K085	10 (4.54)
K086	10 (4.54)
K087	100 (45.4)
K088	10 (4.54)
K090	10 (4.54)
K091	10 (4.54)
K093	5000 (2270)
K094	5000 (2270)
K095	100 (45.4)
K096	100 (45.4)
K097	1 (0.454)
K098	1 (0.454)

TABLE 1 TO APPENDIX A.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
K099	10 (4.54)
K100	10 (4.54)
K101	1 (0.454)
K102	1 (0.454)
K103	100 (45.4)
K104	10 (4.54)
K105	10 (4.54)
K106	1 (0.454)
K107	10 (4.54)
K108	10 (4.54)
K109	10 (4.54)
K110	10 (4.54)
K111	10 (4.54)
K112	10 (4.54)
K113	10 (4.54)
K114	10 (4.54)
K115	10 (4.54)
K116	10 (4.54)
K117	1 (0.454)
K118	1 (0.454)
K123	10 (4.54)
K124	10 (4.54)
K125	10 (4.54)
K126	10 (4.54)
K131	100 (45.4)
K132	1000 (454)
K136	1 (0.454)
K141	1 (0.454)
K142	1 (0.454)
K143	1 (0.454)
K144	1 (0.454)
K145	1 (0.454)
K147	1 (0.454)
K148	1 (0.454)
K149	10 (4.54)
K150	10 (4.54)
K151	10 (4.54)
K156	10 (4.54)
K157	10 (4.54)
K158	10 (4.54)
K159	10 (4.54)
K161	1 (0.454)
K169	10 (4.54)
K170	1 (0.454)
K171	1 (0.454)
K172	1 (0.454)
K174	1 (0.454)
K175	1 (0.454)
K176	1 (0.454)
K177	5000 (2270)
K178	1000 (454)
K181	1 (0.454)

cent; The RQ for these hazardous substances is limited to those pieces of the metal having a diameter smaller than 100 micrometers (0.004 inches).

cent; cent; The RQ for asbestos is limited to friable forms only.

commat; Indicates that the name was added by PHMSA because (1) the name is a synonym for a specific hazardous substance and (2) the name appears in the Hazardous Materials Table as a proper shipping name.

To provide consistency with EPA regulations, two entries with different CAS numbers are provided. Refer to the EPA Table 302.4—List of Hazardous Substances and Reportable Quantities for an explanation of the two entries.

* * * * *

Issued in Washington, DC on December 27, 2007 under authority delegated in 49 CFR part 1.

Stacey L. Gerard,

Acting Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 07-6297 Filed 1-4-08; 8:45 am]

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Proposed Rules

Federal Register

Vol. 73, No. 4

Monday, January 7, 2008

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08–2–000]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act

December 21, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Commission proposes to require both interstate and certain major non-interstate pipelines to post capacity, daily scheduled flow information and daily actual flow information. This proposal incorporates one contained in an earlier Notice of Proposed Rulemaking to require the posting of capacity and daily actual flow information by some intrastate pipelines, with some changes. Under this proposal, interstate pipelines would be required to post daily actual flow information in addition to their currently required posting of capacity and daily scheduling information. Non-interstate pipelines would be required to post daily scheduled flow information in addition to the earlier Notice of Proposed Rulemaking proposal to require posting capacity and daily actual flow information. The posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act.

DATES: Comments are due February 21, 2008. Reply comments are due March 24, 2008.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site:* <http://ferc.gov>

Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the

preamble. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

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Eric Ciccoretta (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8493, Eric.Ciccoretta@ferc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary of Proposal

1. On April 19, 2007, the Commission issued a Notice of Proposed Rulemaking (Initial NOPR) to implement section 23 of the Natural Gas Act, which was added to the act by the Energy Policy Act of 2005 (EPAct 2005).¹ In the Initial NOPR, the Commission proposed an annual reporting requirement for certain natural gas sellers and buyers and a daily posting requirement for intrastate pipelines.² The Commission also asked in the Initial NOPR whether posting requirements for interstate pipeline should be changed.³

2. Concurrently, the Commission is issuing a Final Rule with respect to the annual reporting requirement. With respect to the pipeline posting proposal,

based on Staff experience as well as the comments received, the Commission has determined to issue the instant notice of proposed rulemaking (NOPR) to develop the record more fully with respect to the posting proposal. The Initial NOPR may not have given sufficient notice to interstate pipelines of changes that seem necessary to implement adequately section 23 of the Natural Gas Act. In addition, the Commission believes that more information regarding the technical implementation of daily posting of actual flow information by interstate pipelines is required in order to consider the costs and benefits of such a regulatory change. For those purposes, the Commission incorporates by reference the Initial NOPR and all comments filed in response to the Initial NOPR in Docket No. RM07–10–000 with respect to the pipeline posting proposal.

3. The Commission intends the instant proposal to make available the information needed to track daily flows of natural gas adequately throughout the United States. Specifically, the Commission proposes to require both interstate pipelines and major non-interstate pipelines⁴ to post daily information regarding their capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments. The proposal would result in both interstate and non-interstate pipelines posting the same types of information.

4. For interstate pipelines, this proposal would add to the existing posting requirements in § 284.13(d) a requirement to post daily actual flow volume.⁵ To bring the requirements for major non-interstate pipelines into alignment with the existing and proposed posting requirements for interstate pipelines, this proposal adds to the proposal in the Initial NOPR a requirement that major non-interstate pipelines post daily scheduled flow volumes.⁶ For the purposes of this NOPR, a “major non-interstate pipeline” is defined as one that is not a “natural gas company” under section 1 of the Natural Gas Act⁷ and that flows greater

¹ *Transparency Provisions of Section 23 of the Natural Gas Act*, 72 FR 20791 (Apr. 26, 2007), FERC Stats. and Regs. ¶ 32,614 (2007). Congress enacted section 23 of the Natural Gas Act as part of the Energy Policy Act of 2005, Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

² Initial NOPR at P 1–2.

³ Initial NOPR at P 43.

⁴ In the Initial NOPR, the Commission used the term “intrastate pipeline;” herein, the Commission uses the term “non-interstate pipeline”—a point explained further below.

⁵ Proposed 18 CFR 284.13(d).

⁶ Proposed 18 CFR 284.14(a).

⁷ 15 U.S.C. 717.

than 10 million (10,000,000) MMBtus of natural gas per year, with two exceptions.⁸ The first exception is non-interstate pipelines that fall entirely upstream of a processing plant.⁹ The second exception is non-interstate pipelines that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.¹⁰

5. With these proposed additions of flow information from major non-interstate pipelines to the information already available from interstate pipelines, market observers, such as the Commission, state commissions and market participants, could develop a better understanding of the supply and demand conditions that directly affect the U.S. wholesale natural gas markets. Market participants would have a better basis for evaluating the prices at which they transact. Consequently, this proposal to increase information from non-interstate pipelines and from interstate pipelines would directly “facilitate price transparency for the sale * * * of physical natural gas in interstate commerce” as authorized in the natural gas transparency provisions.¹¹

6. The Commission’s proposal would apply to major non-interstate pipelines even though section 1 of the Natural Gas Act¹² excludes them from the Commission’s ratemaking authority under sections 4 and 5 of the Natural Gas Act¹³ and the Commission’s certificate authority under section 7 of the Natural Gas Act.¹⁴ As discussed below, Congress placed market participants, which include non-interstate pipelines, within the Commission’s transparency authority under section 23 of the Natural Gas Act to ensure “the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce.”¹⁵ Aware that the pre-EPA 2005 limits on the Commission’s authority would have left gaps in the transparency of the wholesale, physical natural gas markets, Congress did not restrict the Commission’s transparency authority to those same limits in enacting section 23 of the Natural Gas Act. As we stated in the Initial NOPR: “While distinctions between intrastate

and interstate natural gas markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation.”¹⁶ Congress was aware of the legal distinctions between natural gas markets in enacting EPA 2005 and, in choosing to use the term “any market participant” indicated that these distinctions should not apply to the Commission’s transparency authority. At the same time, by not amending section 1 of the Natural Gas Act, Congress retained the legal distinctions between intrastate and interstate pipelines for the purposes of delineating the entities subject to the Commission’s authority over ratemaking in sections 4 and 5 and over certification of construction and sales of new facilities and transportation services in section 7 of the act.

7. The Commission issues this NOPR in order to solicit further comment on requiring actual flow information from both interstate and non-interstate pipelines and to consider whether the posting requirements for both interstate and non-interstate pipelines should be similar. In the Initial NOPR, the Commission did not propose to require the posting of actual flow information by interstate pipelines, but it did seek comment on such posting.¹⁷ Further comment in response to the instant NOPR will allow the Commission to give more consideration to requiring actual flow information on interstate pipelines, in particular the technical issues associated with quick posting of that information. In addition, the Commission seeks further comment regarding how the posting requirements should apply to storage facilities and regarding its daily pipeline posting proposal for major non-interstate pipelines.

8. To address implementation issues associated with the posting proposal, such as obtaining and posting actual flow information and obtaining and posting information from storage facilities, the Commission directs Staff to conduct a technical conference before comments on this NOPR are due.

II. The Commission’s Transparency Authority Over Non-Interstate Pipelines Under Section 23 of the Natural Gas Act

9. At the outset, the Commission addresses the jurisdictional issues raised by its proposal in the Initial NOPR. In the Initial NOPR, the Commission explained how section 23 of the Natural Gas Act authorizes the

Commission to require an intrastate pipeline to post information regarding its transportation of natural gas, even though section 1 of the Natural Gas Act excludes such companies from the Commission’s authority to regulate transportation of natural gas under sections 4, 5, and 7 of the Natural Gas Act.¹⁸

A. Comments

1. Comments: Section 23 of the Natural Gas Act

10. The Texas Pipeline Association (TPA)¹⁹ argued that, contrary to the Commission’s explanation, the plain language of section 23 of the Natural Gas Act shows that the term “market participant” is limited to those entities that participate in wholesale interstate natural gas markets and does not include intrastate pipelines.²⁰ TPA concluded that the plain language of section 23 of the Natural Gas Act does not support the Commission’s assertion of authority to collect information from intrastate pipelines because they do not participate in markets for the sale or transportation of natural gas in interstate commerce.²¹

11. Enterprise Products Partners L.P. (Enterprise) also asserted that an entity must be participating in the interstate market to be a “market participant” under section 23 of the Natural Gas Act. Enterprise reasoned that an entity subject to the Commission’s authority under section 23 but not to its authority under other sections of the Natural Gas Act is an entity that “participat[es] in the interstate market (whether by buying, selling, shipping or trading physical natural gas) but not already subject to [Natural Gas Act] jurisdiction as natural gas companies.”²² According to Enterprise, the Commission’s proposal to impose posting requirements on intrastate pipelines bears no relation to Congress’s intention to restrict the Commission’s jurisdiction to entities participating in the interstate market.²³

12. Similarly, the Railroad Commission of Texas argued that the term “market participant” does not indicate that Congress contemplated the expansion of Commission authority to

¹⁸ Initial NOPR at P 11–18, 21–24, & 37.

¹⁹ Eight entities expressed support for the Texas Pipeline Association’s comments: Atmos Energy Corporation, Copano Energy, L.L.C., Crosstex Energy Services, LP, DCP Midstream, LLC, Enbridge Energy Co., Inc., Gas Processors Association, Kinder Morgan Texas Intrastate Pipeline Group, Targa Resources, Inc.

²⁰ Comments of TPA at 16–17.

²¹ *Id.*

²² Comments of Enterprise at 13.

²³ *Id.*

⁸ Proposed 18 CFR 284.1.

⁹ Proposed 18 CFR 284.14(b)(1).

¹⁰ Proposed 18 CFR 284.14(b)(2).

¹¹ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 7171–2(a)(1) (2000 & Supp. V 2005).

¹² 15 U.S.C. 717.

¹³ 15 U.S.C. 717c; 15 U.S.C. 717d.

¹⁴ 15 U.S.C. 717f.

¹⁵ Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 7171–2(a)(2) (2000 & Supp. V 2005).

¹⁶ Initial NOPR at P 20.

¹⁷ Initial NOPR at P 43.

include intrastate pipelines as asserted by the Commission.²⁴ The Railroad Commission of Texas explained that there is no reference at all in the relevant statutory provisions or legislative history of EAct 2005 to intrastate pipelines, the intrastate natural gas market or intrastate gas flows and no express indication that the Commission's authority was being extended in any manner over "intrastate" market participants.²⁵

13. One commenter, Enterprise, contended that the Commission does not have the authority to require posting of information by intrastate pipelines because Congress limited the information that may be collected from market participants to "information about natural gas sold at wholesale and in interstate commerce."²⁶ Enterprise interpreted Congress's use of the word "about" as limiting language and asserted that Congress deliberately chose the word "about" as opposed to "affect" or "at least impacts" in order to stress that the Commission does not have the authority to compel reporting for any activity that might have some impact on the interstate wholesale natural gas markets.²⁷

2. Comments: Section 1(b) of the Natural Gas Act

14. TPA argued that section 1(b) of the Natural Gas Act precludes the Commission from prescribing rules under its section 23 authority that apply to intrastate transportation or sale of natural gas.²⁸ TPA asserted that Congress has consistently respected the distinction between interstate and intrastate pipelines which first appeared in section 1(b) of the Natural Gas Act and was recognized by Congress in amendments to the Natural Gas Act and in the Natural Gas Policy Act of 1978.²⁹ TPA referred to numerous appellate court decisions that recognized this distinction in reviewing the Commission's jurisdiction.³⁰

15. Several commenters argued that if Congress intended the transparency provisions to cover intrastate pipelines, it would have amended section 1 of the Natural Gas Act.³¹ TPA argued that if

Congress intended to expand the Commission's authority over intrastate transportation of natural gas, it would have amended section 1(b) to include new posting obligations for intrastate pipelines for all daily flows and capacity at major points.³² TPA explained that, in EAct 2005, Congress amended section 1(b) of the Natural Gas Act to include application to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation.³³ TPA contended that without a similar amendment to section 1(b) to provide for the posting of information Congress cannot "cross the jurisdictional line" by imposing a posting requirement on intrastate pipelines.³⁴

3. Comments: Section 1(c) of the Natural Gas Act

16. Several commenters, such as the Railroad Commission of Texas, asserted that the Commission's proposal to require intrastate pipelines to post information impermissibly intrudes on states' regulation of natural gas transportation.³⁵ Cranberry Pipeline Corporation argued that the Commission cannot have jurisdiction over intrastate transactions when those transactions are already subject to the jurisdiction of the state regulatory commission.³⁶ Similarly, DCP argued that the Commission ignored section 1(c) of the Natural Gas Act which exempts intrastate transportation because it is viewed as a matter of local concern subject to regulation by the states.³⁷

4. Comments: Other

17. TPA argued that there is no indication in the legislative history of section 23 that Congress intended to modify the Commission's jurisdiction to include intrastate transportation.³⁸ Atmos Energy Corporation (Atmos) and the Railroad Commission of Texas similarly stated that there is no reference at all in the relevant statutory provisions or legislative history of EAct 2005 to intrastate pipelines, the intrastate natural gas market or

intrastate gas flows and certainly no express indication that the FERC's authority was being extended in any manner over "intrastate" market participants.³⁹

18. DCP Midstream, LLC argued that intrastate pipelines should not be held to the same reporting burden as interstate pipelines because intrastate pipelines have not submitted to the jurisdiction of the Commission. The burdens that an interstate pipeline assumes, DCP contended, accompany a certificate of public convenience and necessity and should not be imposed on an intrastate pipeline. DCP asserted that the Commission's policy historically has been that only gas pipelines that affirmatively accepted a jurisdictional certificate to provide transportation in interstate commerce would be subject to Commission regulation, such as daily scheduled volume or pipeline capacity reporting.⁴⁰

19. Atmos argued that the Commission's interpretation of Natural Gas Act section 23 is inconsistent with the Commission's prior analysis of its own jurisdiction in Order No. 670⁴¹ and Order No. 636.⁴² Atmos pointed to Order No. 670, in which the Commission interpreted the phrase "any entity" from section 4A of the Natural Gas Act to encompass any person or form of organization, regardless of its legal status, function or activities, and further concluded that this language did not specifically exclude entities engaged in non-jurisdictional activities.⁴³ Atmos also described the Commission interpreting the phrase "in connection with" from section 4A so as to conclude that not every common-law fraud that touches a jurisdictional transaction would constitute market manipulation.⁴⁴ According to Atmos, in Order No. 670, the Commission further determined, that had Congress intended to expand the Commission's jurisdiction

³⁹ Comments of Atmos at 12 (internal citations omitted); Comments of the Railroad Commission of Texas at 6-7 (internal citations omitted).

⁴⁰ Comments of DCP Midstream, LLC at 9-10.

⁴¹ *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006) (Order No. 670).

⁴² *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997) (Order No. 636).

⁴³ Comments of Atmos at 9.

⁴⁴ *Id.* at 9-10.

²⁴ Comments of Railroad Commission of Texas at 6-7; *see also* Comments of Atmos Pipeline-Texas at 6-7.

²⁵ Comments of Railroad Commission of Texas at 7.

²⁶ Comments of Enterprise Products Partners, L.P. at 11 (emphasis in original).

²⁷ *Id.* at 11-12.

²⁸ Comments of TPA at 7; *see also* Comments of Louisiana Office of Conservation at 5.

²⁹ Comments of TPA at 9.

³⁰ *Id.* at 11 (citations omitted).

³¹ Comments of TPA at 10-11; Comments of Enterprise at 15; Comments of Louisiana Office of

Conservation at 5; Comments of Railroad Commission of Texas at 6-7.

³² Comments of TPA at 10-11.

³³ *Id.* (citing EAct 2005 section 311 (amending section 1(b) of the Natural Gas Act)).

³⁴ Comments of TPA at 11.

³⁵ Comments of Railroad Commission of Texas at 8-9; *see also* Reply Comments of the RRC of Texas at 8; Reply Comments of the Texas Pipeline Association at 12.

³⁶ Comments of Cranberry Pipeline Corporation at 8 (internal citations omitted).

³⁷ Comments of DCP Midstream, LLC at 7 (internal citations omitted).

³⁸ Comments of TPA at 21.

so significantly as to give it anti-manipulation authority over non-jurisdictional transactions such as first sales of natural gas, sales of imported natural gas, sales of imported liquefied natural gas, or sales and transportation by entities exempt from Commission regulation under Natural Gas Act section 1(b), then it would have done so explicitly.⁴⁵

20. As to Order No. 636, Atmos argued that the Commission's assertion of transparency authority over intrastate pipelines is contrary to its holdings in that order, in which the Commission held that a non-interstate pipeline "providing service under section 311 of the [Natural Gas Policy Act of 1978] is not required to meet the service requirements of the Commission's Order No. 636 such as offering firm service, having a capacity release program, *posting available capacity electronically*, offering flexible receipt and delivery points, or unbundling distinct services."⁴⁶ By contrast, the pipeline posting proposal, asserted Atmos, would not only extend daily posting requirements to section 311 transportation by intrastate pipelines, but also to transportation that is purely intrastate in nature.⁴⁷

21. Some commenters, such as the Railroad Commission of Texas, expressed concern that a requirement for intrastate pipelines to post information would lead to further regulation of those intrastate pipelines.⁴⁸

B. Discussion

22. The Commission proposes here to require major non-interstate pipelines to post information regarding capacity, scheduled flow volumes, and actual flow volumes.⁴⁹ This proposal would impose posting requirements on major non-interstate pipelines in a limited way. The Commission does not intend to regulate the intrastate operations of those non-interstate pipelines; nor do we intend to regulate the rates or terms and conditions of intrastate service for those non-interstate pipelines. The Commission proposes to require those non-interstate pipelines only to post information.

23. In the Initial NOPR, the Commission used the term "intrastate

pipeline." In this proposal, the Commission uses the term "non-interstate pipeline." The latter term more accurately describes the scope of the proposed rule, which is issued pursuant to section 23 of the Natural Gas Act.⁵⁰ This section applies to both interstate and non-interstate pipelines, a point explained further below, and does not use the term "intrastate pipeline." In this NOPR, the Commission proposes to collect important information about the physical, natural gas market from certain pipelines in the continental United States regardless of whether the pipeline is an intrastate pipeline, a Hinshaw pipeline, or any other type of pipeline that is not an interstate pipeline under the Natural Gas Act. The subjects of the posting requirement proposed herein are set by their participation in the physical, natural gas market not by their legal status under section 1 of the Natural Gas Act.⁵¹

24. The proposed posting requirements for non-interstate pipelines are consistent with Congress's intent as expressed in section 23 of the Natural Gas Act. There, Congress permitted the Commission to impose on a broad set of market participants requirements for a limited purpose, i.e., to obtain and disseminate "information about the availability and prices of natural gas at wholesale and in interstate commerce."⁵² At the same time, as the Commission explicitly acknowledges, Congress did not expand the Commission's authority to impose on the same set of market participants requirements related to the Commission's traditional regulatory activities, e.g., ratemaking under sections 4 and 5 of the Natural Gas Act and certification of construction and sales and transportation services under section 7 of the Natural Gas Act.

25. Congress placed non-interstate pipelines within the Commission's transparency authority under section 23 of the Natural Gas Act in order to ensure—for the entirety of the wholesale, physical natural gas market—transparency of price and availability, including transparency of market price formation. Aware that the pre-EPA 2005 limits on the Commission's authority would have left gaps in the transparency of the wholesale, physical natural gas markets, Congress did not restrict the Commission's transparency authority to those same limits in enacting section 23 of the Natural Gas Act. As we stated in

the Initial NOPR, "While distinctions between intrastate and interstate markets may be meaningful from a legal perspective, they are not meaningful from the perspective of market price formation."⁵³ Congress was aware of the legal distinctions between non-interstate and interstate natural gas markets in enacting EPA Act 2005. In choosing to use the term "any market participant" and focusing section 23 on "information about the availability and prices of natural gas at wholesale and in interstate commerce," Congress indicated that these distinctions should not apply to the Commission's transparency authority. At the same time, by not amending section 1, Congress retained the legal distinctions between intrastate and interstate markets for the purposes of delineating the entities subject to the Commission's authority over ratemaking in sections 4 and 5 and over construction of natural gas facilities in section 7 of the Natural Gas Act.

1. Discussion: Section 23 of the Natural Gas Act

26. The language in section 23 of the Natural Gas Act supports the Commission's authority to require non-interstate pipelines to post information about capacity, scheduled flow volumes and actual flow volumes. In section 23(a)(1), Congress directed the Commission to "facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce * * *."⁵⁴ In section 23(a)(2), Congress authorized the Commission to "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce * * *."⁵⁵ Congress expressly delegated to the Commission the task of adopting rules to give life to this provision⁵⁶ and, in section 23(a)(3), provided that the Commission may "obtain the information" about the availability and prices of natural gas sold at wholesale and in interstate commerce from "any market participant."⁵⁷

27. Congress could have limited the Commission's transparency authority to obtaining information from any "natural gas company" subject to the Commission's traditional regulatory authority. It did not do so. Instead, in using the broad new term "any market participant," Congress deliberately

⁴⁵ *Id.* at 9 (internal citations omitted).

⁴⁶ *Id.* at 15 (emphasis in original).

⁴⁷ *Id.* at 12 (internal citations omitted). Atmos stated that it would not object if the Commission limits the posting requirements applicable to intrastate pipelines to section 311 transportation or other activity regulated under the Natural Gas Policy Act of 1978. *Id.*

⁴⁸ Comments of the Railroad Commission of Texas at 8–9.

⁴⁹ Proposed 18 CFR 284.14(a).

⁵⁰ 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

⁵¹ 15 U.S.C. 717.

⁵² Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

⁵³ Initial NOPR at P 20.

⁵⁴ 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

⁵⁵ 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

⁵⁶ *Id.*

⁵⁷ 15 U.S.C. 717t–2(a)(3) (2000 & Supp. V 2005).

expanded the universe subject to the Commission's transparency authority beyond "natural gas compan[ies]." ⁵⁸ The term "any market participant" is not defined in the Natural Gas Act; however, it is not on its face limited to entities made subject to the Natural Gas Act under section 1. ⁵⁹ Indeed, the language of section 23 indicates that entities excluded from the Commission's authority under section 1 of the Natural Gas Act would be included in section 23. First, in section 23, Congress did not reference the limitations of section 1 explicitly (discussed further below).

Second, in section 23, Congress did not use the term "natural gas company" from section 2(6), which is defined as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." ⁶⁰ This limiting term is used in section 1 of the Natural Gas Act to limit the Commission's authority, for instance, under sections 4, 5, and 7 of the Natural Gas Act. ⁶¹ These approaches would have been the simplest ways for Congress to have indicated an intent to limit the Commission's transparency authority in the same manner it limited the Commission's comprehensive regulatory authority in other sections of the Natural Gas Act. Thus, commenters' arguments that the Commission has authority to obtain information only from those subject to the Commission's authority under section 1 of the Natural Gas Act are inconsistent with the language of the statute.

28. In granting the Commission broad authority to obtain information, the Congress not only used the new term "market participant" but it also specifically referred to "any" market participant, instead of limiting the Commission's authority to obtain information from market participants subject to the Commission's traditional Natural Gas Act jurisdiction. The word "any" gives the term it modifies (in this case, "market participant") an expansive meaning. ⁶²

⁵⁸ Contrary to the assertions of Bridgeline Holdings, L.P. (Bridgeline), Comments of Bridgeline at 6, this grant of transparency authority is not an implied grant.

⁵⁹ Initial NOPR at P 12.

⁶⁰ 15 U.S.C. 717a(6).

⁶¹ 15 U.S.C. 717c, 717d & 717f.

⁶² *Norfolk S. Rwy. Co. v. Kirby*, 543 U.S. 14, 31–32 (2004) (the word "any" gives the word it modifies an expansive reading); *Department of Housing and Urban Dev. v. Rucker*, 535 U.S. 125, 130–31 (2002); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (one must give effect to each word in a statute so that none is rendered superfluous); *United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("any" is an expansive term, meaning "one or some indiscriminately of whatever kind,"); *New York v. EPA*, 443 F.3d 880, 885–87 (D.C. Cir. 2006) (the

29. In addition, in section 23(d)(2), Congress created a *de minimis* exception to the other provisions in section 23. Specifically, Congress instructed the Commission to create a *de minimis* exception for gatherers and producers, which section 1(b) of the Natural Gas Act explicitly excludes from Commission's traditional regulation. If, as some commenters asserted, Congress did not intend to give the Commission authority over any entity excluded by section 1(b) of the Natural Gas Act, a *de minimis* exception would have been unnecessary; in other words, section 23(d)(2) would have been surplusage. Congress is not presumed to enact surplus language. ⁶³ To avoid this improper result, the Commission interprets section 23 of the Natural Gas Act to give effect to the *de minimis* language by interpreting the term "any market participant" to include those entities otherwise excluded from the Commission's Natural Gas Act jurisdiction by section 1(b) of the act.

30. The Commission disagrees that the term "about" in section 23 is a limiting term as asserted by Enterprise. In the Initial NOPR, the Commission described the information proposed to be collected from intrastate pipelines as information "about" interstate, wholesale natural gas markets because the flows on intrastate pipelines affect interstate, wholesale natural gas markets. ⁶⁴ The Commission used the term "pertains" as a synonym for "about." Indeed, contrary to Enterprise's reading, we read the term "about" as broader than the terms "affect" or "impacts." Information may be "about" a subject without "affecting" it; hence, flow information may be "about natural gas sold at wholesale and in interstate commerce" even if it does not "affect" such natural gas (even though it normally does).

31. More specifically, as explained below, the information that would be posted by major non-interstate pipelines is "information about the availability and prices of natural gas sold at wholesale and in interstate commerce." ⁶⁵ There is a relationship between capacity and flow information on non-interstate pipelines and the interstate, natural gas market because

word "any" is broadly construed to reflect Congress' intent that all types of physical changes are subject to the Clean Air Act's New Source Review program).

⁶³ *City of Roseville v. Norton*, 348 F.3d 1020, 1028 (D.C. Cir. 2003) (citing *Babbitt v. Sweet Home Chapter of Community for a Great Oregon*, 515 U.S. 687, 698 (1995)).

⁶⁴ Initial NOPR at P 15.

⁶⁵ Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

non-interstate flows affect the supply and demand fundamentals that underlie the market. As explained below, posted flow information from only interstate pipelines cannot provide a complete picture of natural gas flows in the United States—or even of those flows directly relevant to the pricing of natural gas flowing in interstate commerce. ⁶⁶ To avoid such incompleteness, the Commission sets forth the proposal to require major non-interstate pipelines to post flow information. This proposal would provide a complete picture of natural gas supply and demand fundamentals without the gaps that would appear were the non-interstate pipelines excluded by section 1 of the Natural Gas Act also excluded by section 23 of the Natural Gas Act. In enacting section 23 of the Natural Gas Act, Congress sought to avoid any such gaps in the transparency of the physical natural gas markets by avoiding the legal distinctions set forth in section 1 of the Natural Gas Act.

2. Discussion: Section 1(b) of the Natural Gas Act

32. The Commission disagrees with commenters who argued that section 1(b) of the Natural Gas Act precludes the Commission from imposing the daily posting requirement on intrastate pipelines. Section 1(b) of the Natural Gas Act provides that the "provisions of this chapter * * * shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale * * *" and that such provisions "shall not apply to any other transportation or sale of natural gas." ⁶⁷ These arguments ignore the fact that, in section 23, Congress provided the Commission a new and broad grant of authority that goes beyond prior Commission jurisdiction over natural gas companies to facilitate transparency in the wholesale natural gas markets.

33. In stating that the Commission may obtain information from "any market participant," ⁶⁸ Congress contemplated that the transparency provisions would differ from other provisions of the Natural Gas Act as to the entities covered by the Commission's authority. Commenters' reliance on section 1 of the Natural Gas Act, therefore, improperly ignores the intent of Congress to subject a different set of entities to the Commission's

⁶⁶ See below at P 50–59.

⁶⁷ Section 1(b) of the Natural Gas Act, 15 U.S.C. 717(b).

⁶⁸ Section 23(a)(3) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(3) (2000 & Supp. V 2005).

transparency authority as evidenced by Congress's use of the term "any market participant." In light of this intent, commenters' reliance on case law setting forth the limits on the Commission's authority under section 1 of the Natural Gas Act is misplaced.

34. The Commission does not find persuasive the argument that Congress could have expressed its intent to subject intrastate pipelines to the Commission's transparency authority only by amending section 1 of the Natural Gas Act. First, altering the exceptions in section 1, as commenters suggested, is not the only way to alter the statute to give the Commission transparency authority. Indeed, it would have been more cumbersome for the Congress to take that approach. Instead of that approach, the Commission interprets the addition of section 23 as providing the Commission transparency authority over non-interstate pipelines. This latter interpretation is the more reasonable interpretation of section 23 and reflects Congress's intent to subject non-interstate pipelines to only the Commission's transparency authority. Second, it could be stated equally that if Congress intended to exclude intrastate (or non-interstate) pipelines from the Commission's authority under section 23 of the Natural Gas Act, it would have used the term "natural gas company" in section 23, instead of the term "any market participant."

35. Commenters' arguments that section 23 should be interpreted consistent with pre-EPA 2005 case law are likewise misplaced. Those cases apply the jurisdictional limits set forth in section 1 of the Natural Gas Act. These arguments run afoul of the principle of statutory construction that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute."⁶⁹ Thus, Congress was presumably aware that prior to the enactment of section 23, the Natural Gas Act, as explained by TPA, "limit[ed] the gathering of intrastate data to gathering it from companies falling under the Commission's jurisdiction."⁷⁰ In using the term "any market participant," Congress signaled its intent to expand the Commission's transparency authority beyond the universe of natural

gas companies to which it would otherwise be limited.⁷¹

3. Discussion: Section 1(c) of the Natural Gas Act

36. Several commenters, including a state commission, contended that the pipeline posting proposal as applied to intrastate pipelines would improperly interfere with states' regulation of intrastate pipelines as set forth in section 1(c) of the Natural Gas Act, commonly known as the Hinshaw amendment. Section 1(c) of the Natural Gas Act reads:

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.⁷²

The Commission's proposal does not impermissibly interfere with states' regulation of Hinshaw pipelines. Under the Commission's proposal, states will continue to regulate the rates and services of those companies. As stated, section 23 of the Natural Gas Act does not authorize the Commission to undertake such comprehensive regulation and the Commission does not propose to do so. The Commission would require only that non-interstate pipelines, including Hinshaw pipelines, post information regarding their flows. Section 1(c) of the Natural Gas Act, in light of the later enacted EPA 2005, does not preclude such a posting requirement.

4. Discussion: Other

37. The Commission disagrees with DCP's argument that the burden of a posting requirement is related to the Commission's grant of a certificate of convenience and necessity under section 7 of the Natural Gas Act. DCP's argument ignores the mandate Congress set forth in the transparency provisions for the Commission to facilitate transparency. Nothing in section 23 indicates or even implies that the

Commission's transparency authority depends on whether a market participant has a certificate of public convenience and necessity. Indeed, the use of the modifier "any," as discussed above, demonstrates that Congress had no intention to limit the Commission authority to disseminate adequate information about the natural gas market.

38. Contrary to commenters' assertions, the Commission's interpretation of section 23 is consistent with the Commission's interpretation of section 4A of the Natural Gas Act, which Congress also enacted in EPA 2005. In Order No. 670, the Commission stated that Congress chose the undefined term "any entity" in section 4A as a broader term than the existing defined term of "natural gas company."⁷³ Similarly, in interpreting section 23, Congress chose the undefined term "any market participant" in section 23 as a broader term than the existing defined term "natural gas company." Also, in Order No. 670, to determine the transactions subject to the Commission's market manipulation authority, the Commission interpreted the section 4A phrase "in connection with" broadly.⁷⁴ To delineate what type of information the Commission could obtain and disseminate, in section 23 of the Natural Gas Act, Congress used the term "about," which is a concept similarly as broad as the concept described by the phrase "in connection with."

39. The Commission's interpretation of section 23 is also consistent with its holdings in Order No. 636.⁷⁵ As described in subsequent orders, the Commission has not "requir[ed] intrastate pipelines to introduce all the

⁷³ Order No. 670 at P 18.

⁷⁴ Section 4A of the Natural Gas Act reads:

It shall be unlawful for any entity, directly or indirectly, to use or employ, *in connection with* the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance * * * in contravention of [Commission] rules and regulations.

⁷⁵ 15 U.S.C. 717t-2c-1 (2000 & Supp. V 2005). In Order No. 670, the Commission observed that the Supreme Court interpreted the phrase "in connection with" broadly in interpreting section 10(b) of the Securities Exchange Act. As noted in that order, section 4A "closely track[s] the prohibited conduct language in section 10(b) of the Securities Exchange Act of 1934, Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and specifically dictate[s] that the terms 'manipulative or deceptive device or contrivance' are to be used 'as those terms are used in section 10(b) of the Securities Exchange Act of 1934.'" Order No. 670 at P 6.

⁷⁵ See, e.g., Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 30,406 (permitting, but not requiring intrastate pipelines, to offer open-access, contract storage).

⁶⁹ *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (internal citations omitted); *accord* 2A Norman J. Singer, Sutherland Statutory Construction sec. 45.12 (5th ed. 1992) ("legislative language will be interpreted on the assumption that the legislature was aware of * * * judicial decisions").

⁷⁰ Comments of Texas Pipeline Association at 13 (citing *Union Oil v. FPC*, 542 F.2d 1036, 1039 (9th Cir. 1976)).

⁷¹ TPA observed that courts have held that the Commission cannot exceed its statutory authority. Reply Comments of TPA at 16-17 (citing *Transmission Agency of Northern California v. FERC*, 495 F.3d 663 (D.C. Cir. 2007) and *United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996)). This is an unremarkable and unassailable conclusion, but one that provides no guidance where the issue is not whether the Commission may exceed its statutory authority but what is the extent of the Commission's transparency authority.

⁷² 15 U.S.C. 717(c).

features of open-access service that we have required of interstate pipelines” because requiring intrastate pipelines to do so “could make it unduly burdensome to participate in interstate markets, contrary to the intent of the [Natural Gas Policy Act of 1978].”⁷⁶ Here, the Commission proposes to impose only a posting burden on non-interstate pipelines that is equivalent to the posting requirements of interstate pipelines. In other respects, the burden on non-interstate pipelines remains far less than that on interstate pipelines in keeping with the Natural Gas Policy Act of 1978. While in the past, the Commission exempted intrastate pipelines from open-access requirements, such as electronic bulletin boards,⁷⁷ any change in that exemption would be justified in order to further the Commission’s transparency goals as set forth in section 23 of the Natural Gas Act.

40. Finally, the Commission recognizes commenters’ concern that the Commission’s proposal could appear to lead to further regulation. As explained above, however, the Commission’s transparency authority over non-interstate pipelines is limited to obtaining and disseminating information. The Commission has no interest in comprehensive regulation of non-interstate pipelines. The Commission reiterates, section 1 of the Natural Gas Act continues to exclude non-interstate pipelines from such comprehensive regulation.⁷⁸

III. Interstate Pipeline Posting Requirements

41. In the Initial NOPR, the Commission sought comment on whether it should revise its posting requirements applicable to interstate pipelines to require posting actual flow information.⁷⁹ The Commission raised the question because we proposed to require intrastate pipelines to post actual flow information, a requirement beyond that applied to interstate pipelines under § 284.13(d)(1) of the Commission’s regulations, and because posting of actual flow information could provide useful information regarding actual capacity use, for instance, by giving insight into the use of no-notice service.⁸⁰ In this regard, Commission Staff observed that its ability to monitor

flows in the interstate pipeline system is limited in certain locations, by the lack of actual flow information. In the case of “no-notice” service,⁸¹ specifically, interstate pipeline schedules do not reflect actual flows. Consequently, information about interstate flows in areas using no-notice service is less useful. In its comments on the Initial NOPR, the Natural Gas Supply Association (NGSA) observed that, “[o]n heating season peak days or days with wide intra-day weather swings, no-notice volumes can be significant; therefore, scheduled flow volumes are not a proxy for physical flow and, thus, do not necessarily provide an accurate picture of underlying market fundamentals.”⁸² Similarly, Commission Staff observed that the gap between scheduled and actual flows occurs most commonly in the northern tier of the country, particularly where a pipeline serves a local distribution company with significant space heating demand. In such circumstances, market observers find it more difficult to ascribe price behavior to physical changes in flows.

42. Public posting of information reflecting no-notice service could also prevent other forms of misconduct with direct effects on natural gas in interstate commerce. Commission investigations of interstate and intrastate pipeline activity resulted in two settlements in which the settling party admitted it sought to obtain and exploit non-public storage inventory information to gain a competitive advantage in wholesale gas markets.⁸³ Though this proposal would make public flow information, not storage information, the importance of the non-public information is analogous. These admissions indicate that the lack of public flow information provides the opportunity for parties to engage in manipulative or unduly discriminatory behavior. By making major non-interstate pipeline flow information public, such transparency could discourage market participants from engaging in such manipulative or unduly discriminatory activity.

43. In this NOPR, the Commission proposes to require interstate pipelines to post actual flow information in addition to the capacity and scheduled flow information that interstate

pipelines are currently required to post. Accordingly, the Commission proposes adding to § 284.13(d) this requirement: “An interstate pipeline must also provide in the same manner [as other information is provided] access to information on actual flowing volumes at receipt points, on the mainline, at delivery points, and in storage fields.”⁸⁴

44. In response to the Initial NOPR, several commenters supported requiring interstate pipelines to post actual flow volumes.⁸⁵ The NGSA asserted that posting of actual flow data “could lead to even more accurate and near real-time indication of underlying market supply and demand fundamentals”⁸⁶ The National Association of Royalty Owners (NARO) contended that requiring interstate pipelines to post actual flow volumes would allow an “apples to apples” comparison with the postings of intrastate pipelines.⁸⁷

45. The Interstate Natural Gas Association of America (INGAA) opposed any proposal for interstate pipelines to post actual flows. INGAA contended that: (1) Scheduled flows are adequate for market participants to estimate demand and supply conditions in order to price market transactions; (2) actual flows include operational data that is not relevant and may be counterproductive, such as flows reflecting maintenance activities, storage injection and withdrawal schedules, line pack management, balancing at interconnects, and blending to meet quality specifications not related to commercial flows and (3) the no-notice activity that would be captured by posting actual flows does not reflect trading activity, but rather reflects storage withdrawals.⁸⁸ Williston Basin Interstate Pipeline Company (Williston) indicated that scheduled flow volumes were adequate and actual volumes not necessary.⁸⁹

46. In order to effectively balance the benefits of the additional flow information with the costs of such a requirement, the Commission seeks further information regarding both the benefits of the additional information available if actual flow volumes were posted by interstate pipelines, and the costs imposed on interstate pipelines to develop and post that information. In providing comments on this proposal, the Commission encourages

⁷⁶ *EPGT Texas Pipeline, L.P.*, 99 FERC ¶ 61,295, at 62,252 (2002).

⁷⁷ Order No. 636-B, 61 FERC ¶ 61,272, at 61,992, n.26.

⁷⁸ 15 U.S.C. 717.

⁷⁹ Initial NOPR at P 43.

⁸⁰ Initial NOPR at P 43.

⁸¹ See 18 CFR 284.7(a)(4).

⁸² NGSA Comments at 10.

⁸³ *Dominion Resources, Inc.*, 108 FERC ¶ 61,110 (2004) (Dominion Resources, DTI and DEC admit that DTI violated section 161.3(f) of the Commission’s regulations, former 18 CFR 161.3(f) (2003)); *The Williams Companies, Inc.*, 111 FERC ¶ 61,392 (2005) (Transco admits that it violated section 161.3(f) of the Commission’s regulations, former 18 CFR 161.3(f) (2002)).

⁸⁴ Proposed 18 CFR 284.13(d).

⁸⁵ See, e.g., NGSA at 10; and Apache Corp. at 8–9.

⁸⁶ NGSA Comments at 10.

⁸⁷ NARO Comments at 4.

⁸⁸ INGAA Comments at 3–4.

⁸⁹ Williston Reply Comments at 4.

commenters to support their comments by providing specific examples.

47. Regarding benefits, is information lost by not providing actual flows? What is the extent of any such lost information? How extensive is the use of no-notice service? Is information regarding operational flows, such as flows reflecting maintenance activities, storage injection and withdrawal schedules, line pack management, balancing at interconnects, and blending to meet quality specifications, useful to understand supply and demand fundamentals? Does the no-notice activity that would be captured by posting actual flows reflect trading activity or does it reflect storage withdrawals? Can trading activity and storage withdrawals be considered as separate activities? How?

48. Regarding costs, how is actual flow information collected today for operational, balancing, billing or other purposes? What process changes, if any, would be required for interstate pipelines to post actual flow information? How much time after flow would be required before such information would be available for posting? Would posting actual volumes reveal any information that might be harmful to any competitive interests? How could it be harmful?

IV. Postings by Non-Interstate Pipelines

49. In the Initial NOPR, the Commission proposed to require certain intrastate pipelines to post daily information regarding the capacity and actual flows at major receipt and delivery points and mainline segments. In the instant NOPR, the Commission proposes to require non-interstate pipelines to post scheduled flow information in addition to capacity and actual flow information.⁹⁰ Only a "major non-interstate pipeline" would be required to post information. For the purposes of this NOPR, a "major non-interstate pipeline" is defined as one that is not a "natural gas company" under section 1 of the Natural Gas Act and that flows greater than 10 billion cubic feet of natural gas per year, with two exceptions.⁹¹ The first exception is non-interstate pipelines that fall entirely upstream of a processing plant.⁹² The second exception is non-interstate pipelines that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.⁹³

⁹⁰ Proposed 18 CFR 284.14(a).

⁹¹ Proposed 18 CFR 284.1.

⁹² Proposed 18 CFR 284.14(b)(1).

⁹³ Proposed 18 CFR 284.14(b)(2).

A. Rationale

50. Through the information that would be obtained from the daily posting requirement on major non-interstate pipelines, the Commission, market participants, and the public could obtain a picture of daily supply and demand conditions that directly affect U.S. wholesale natural gas markets—a picture that is currently incomplete without information from major non-interstate pipelines.⁹⁴ Consequently, this proposal to increase information from certain major non-interstate pipelines would directly "facilitate price transparency for the sale * * * of physical natural gas in interstate commerce" as authorized in the natural gas transparency provisions.⁹⁵

51. The posted information from major non-interstate pipelines would qualify as, in the words of the transparency provisions, "information about the availability and prices of natural gas sold at wholesale and in interstate commerce."⁹⁶ Notwithstanding their status under section 1 of the Natural Gas Act, most major non-interstate pipelines today transport or buy and sell wholesale natural gas that eventually enters or at least impacts the interstate natural gas market. Further, supply and demand in non-interstate markets have a direct effect on prices of gas destined for interstate markets because both intrastate and interstate consumers draw on the same sources of supply. This is the case because of the statutory, regulatory and market changes that have taken place in the last three decades.

52. In the Natural Gas Policy Act of 1978, Congress allowed an intrastate pipeline to transport natural gas in interstate commerce on behalf of any interstate pipeline or local distribution company served by an interstate pipeline, without losing its intrastate status.⁹⁷ Congress likewise permitted an intrastate pipeline to sell natural gas to any interstate pipeline or any local distribution company served by any interstate pipeline, without losing its intrastate status.⁹⁸ In addition, at the same time that the Commission issued

⁹⁴ In this section, the Commission reiterates its discussion from the Initial NOPR.

⁹⁵ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t-2(a)(1) (2000 & Supp. V 2005).

⁹⁶ Section 23(a)(2) of the Natural Gas Act, 15 U.S.C.A. 717t-2(a)(2) (2000 & Supp. V 2005).

⁹⁷ See section 311(a)(2) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3371(a)(2); see also 18 CFR part 284, subpart C (Certain Transportation by Intrastate Pipelines).

⁹⁸ See section 311(b) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3371(b); see also 18 CFR part 284, subpart D (Certain Sales by Intrastate Pipelines).

Order No. 636 in 1992, it promulgated a new subpart of Part 284 (revised several times in the past 15 years) that provides blanket authority to any person who is not an interstate pipeline (including intrastate pipelines) to make sales for resale of natural gas in interstate commerce.⁹⁹ This authorization is a limited jurisdiction sales certificate, which means that the holder does not become subject to the panoply of Natural Gas Act regulation by exercising its rights under the certificate.¹⁰⁰

53. The market understandably reacted to these statutory and regulatory changes since 1978. As relevant here, natural gas sold at or destined to be sold at wholesale in the interstate market is frequently exchanged or the transactions consummated at market hubs where interstate and non-interstate pipelines interconnect (e.g., Waha, Katy, Houston Ship Channel, and Carthage in Texas and at Henry Hub in Louisiana). Prices formed at these hubs are, in effect, prices for wholesale transactions in interstate commerce, even if a portion of the gas priced at each market hub is consumed intrastate. In addition, transfer of natural gas can take place directly between parties who ship gas on both interstate and non-interstate pipelines at any pipeline interconnection.

54. Currently, through the availability of information regarding daily scheduled flows of natural gas through interstate pipelines, market participants have an increased, daily understanding of natural gas markets, including regional conditions and the pipeline capacity available to resolve different geographic supply/demand balances. This is due in part to Order No. 637, where the Commission required posting of capacity and scheduled volume information on interstate pipelines with the direct intention of allowing shippers to monitor capacity availability.¹⁰¹ Accordingly, interstate pipelines must

⁹⁹ Order No. 636 FERC Stats. & Regs. ¶ 30,939, at 30,391.

¹⁰⁰ See 18 CFR part 284, subpart L (Certain Sales for Resale by Non-interstate Pipelines).

¹⁰¹ *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 FR 10156, at 10204–10205, (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,320–31,321 (2000); *order on reh'g*, Order No. 637–A, 65 FR 35706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000); *order on reh'g*, Order No. 637–B, 65 FR 47284 (Aug. 2, 2000), *affirmed in relevant part*, *Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom.*, *American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005) (Order No. 637).

post available capacity information, specifically:

The availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system; the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.¹⁰²

In Order No. 637, the Commission anticipated that such postings would provide useful information regarding supply and demand fundamentals: The changes to the Commission's reporting requirements will enhance the reliability of information about capacity availability and price that shippers need to make informed decisions in a competitive market as well as improve shippers' and the Commission's ability to monitor marketplace behavior to

detect, and remedy anticompetitive behavior.¹⁰³

55. Today, interested market participants as well as commercial vendors retrieve this information from the Web sites of interstate pipelines to obtain schedule information that is then used to estimate a variety of supply and demand conditions including geographic and industrial sector consumption, storage injections and withdrawals and regional production in almost real-time.¹⁰⁴ Market participants have come to rely on this information to help price transactions. Commission Staff has also come to rely on this information to perform its oversight and enforcement functions. In fact, market observers believe that posting of this information contributes to market transparency by revealing the underlying volumetric (or availability) drivers behind price movements.¹⁰⁵

56. Notwithstanding the contribution of posted interstate schedule information to the transparency of price and availability of natural gas, this information cannot provide a complete picture of natural gas flows in the United States—or even those flows directly relevant to the pricing of natural gas flowing in interstate commerce. Several major U.S. natural gas pricing points sit at the confluence of multiple interstate and non-interstate pipelines. A recent study by the U.S. Department of Energy's Energy Information Administration (EIA) identified twenty-eight national market centers or pricing hubs, of which thirteen are served by a combination of interstate and non-interstate pipelines.¹⁰⁶ The table below shows the capacity of interstate and non-interstate pipelines connected to each of these thirteen hubs.

TABLE 1.—INTER- AND INTRASTATE PIPELINE DELIVERY CAPACITY AT SELECTED U.S. NATURAL GAS PRICING POINTS

Hub name	State	Receipt and delivery capacity	
		Interstate pipelines (MMcfd)	Non-interstate pipelines (MMcfd)
Carthage	TX	1,120	1,355
Henry Hub	LA	2,770	1,215
Katy—Enstor	TX	1,370	3,815
Katy—DEFS	TX	260	2,360
Mid Continent	KS	1,112	627
Moss Bluff	TX	1,050	1,800
Nautilus	LA	1,200	1,350
Perryville	LA	3,652	350
Aqua Dulce	TX	855	835
Waha—Lone Star	TX	810	1,140
Waha—Encina	TX	525	800
Waha—El Paso	TX	1,165	1,660
Waha—DEFS	TX	300	1,850

Source: Unpublished Energy Information Administration update to March 2005 of information presented in Natural Gas Market Centers and Hubs: A 2003 Update, October 2003.

57. Many of these pricing points are closely connected to other regions of the United States, influencing prices across

the country. The figure below shows the location and flow patterns of natural gas moving between interstate and non-

interstate markets through several of these pricing points.

¹⁰² 18 CFR 284.13(d).

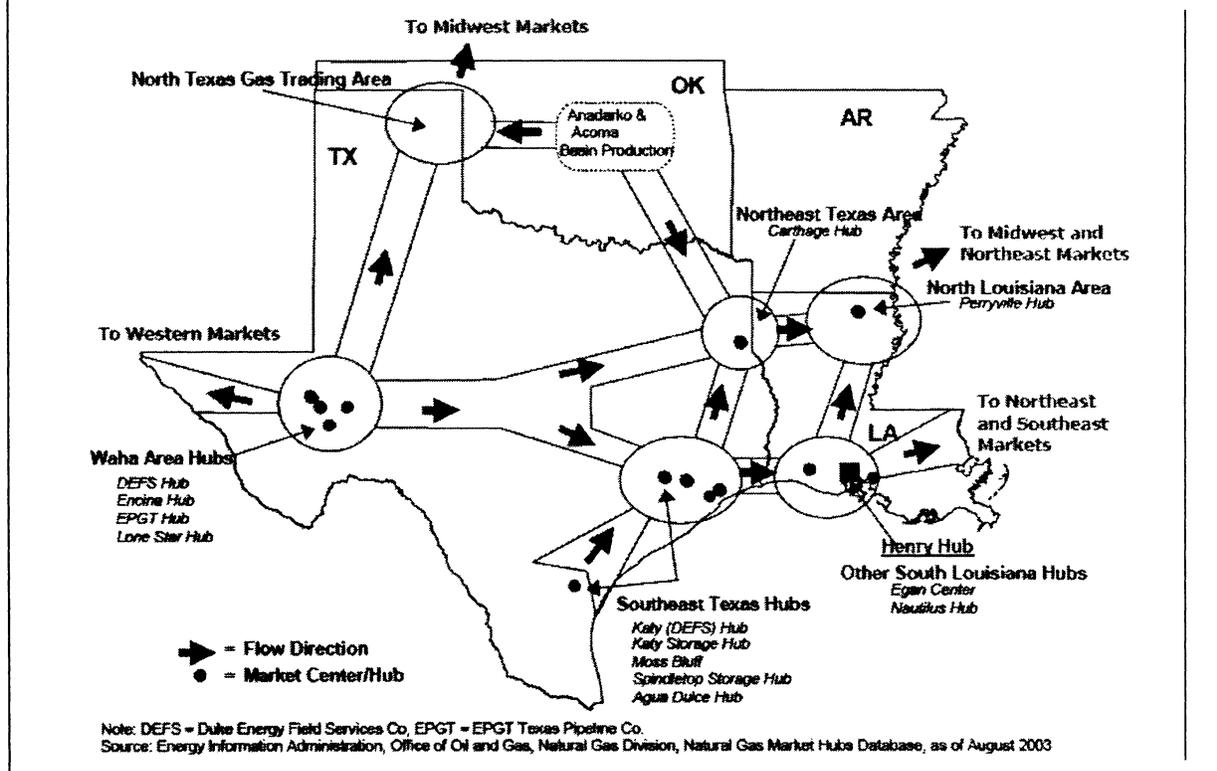
¹⁰³ Order No. 637, 65 FR at 10169.

¹⁰⁴ See, e.g., Comments of Bentek Energy, LLC., Docket No. AD06–11–000 (filed Oct. 10, 2006).

¹⁰⁵ See, e.g., Comments of Platt's, at 11–13, Docket No. AD06–11–000 (information regarding the supply and demand of natural gas explains prices and such information is available from interstate pipelines, but not intrastate pipelines).

¹⁰⁶ Department Of Energy, Energy Information Administration, *Natural Gas Market Centers And Hubs: A 2003 Update*, Oct. 2003, http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2003/market_hubs/mkthubs03.pdf

Figure 1
Texas and Louisiana Market Hubs and Their Connection to Other Regions in the United States



58. One pricing point directly connected to both interstate and non-interstate pipelines is Henry Hub, Louisiana, the location for delivery of natural gas under the New York Mercantile Exchange's (NYMEX) futures contract. Monthly settlement of NYMEX's Henry Hub natural gas future contract has become important in determining a variety of monthly index prices used to set natural gas prices in a variety of transactions, some in interstate commerce, particularly along the East Coast and Gulf Coast of the United States. The nature of this influence is detailed in Commission Staff's 2006 State of the Markets Report.¹⁰⁷

59. Further, purchasers of natural gas in interstate commerce draw on the same sources of supply as users and buyers of natural gas in intrastate commerce. For example, much of the recent Barnett Shale development in the

Fort Worth basin flows into intrastate systems before moving into interstate markets. In total, slightly more than forty percent of total on-shore production in Texas is connected to interstate pipelines, less than sixty percent in Louisiana and less than eighty percent in Oklahoma.¹⁰⁸ Though daily volume flowing from non-interstate into interstate pipelines can be estimated, the supply dynamics that make these volumes available cannot.

60. The daily posting of flow information by major non-interstate pipelines would provide several benefits to the functioning of natural gas markets in ways that would protect the integrity of physical, interstate natural gas markets, protect fair competition in those markets and consequently serve the public interest by better protecting consumers. First, by providing a more complete picture of supply and demand fundamentals, these postings would

improve market participants' ability to assess supply and demand and to price physical natural gas transactions. Second, during periods when the U.S. natural gas delivery system is disturbed, for instance due to hurricane damage to facilities in the Gulf of Mexico, these postings would provide market participants a clearer view of the effects on infrastructure, the industry, and the economy as a whole. Finally, these postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity, we discuss each of these points in turn.

61. First, the proposed daily capacity and volume postings by major non-interstate pipelines would improve market participants' ability to assess supply and demand and price physical natural gas transactions by providing a more complete picture of supply and demand fundamentals.¹⁰⁹ As discussed

¹⁰⁷ Federal Energy Regulatory Commission, 2006 State of the Markets Report at 48-50 (Jan. 2007), <http://www.ferc.gov/market-oversight/market-oversight.asp> (follow link to the State of the Markets Full Report).

¹⁰⁸ Bentek Energy, LLC analysis of supply scheduled into interstate pipelines compared with EIA data from its table Natural Gas Gross Withdrawals and Production for Texas and Oklahoma available at http://tonto.eia.doe.gov/dnav/ng/ng_prod_sum_dcu_NUS_m.htm.

¹⁰⁹ See, e.g., Comments of Platt's at 11, Docket No. AD06-11-000 (filed Nov. 1, 2006) (explaining that, to understand prices, "the marketplace must look to * * * information on [the] availability of and demand for natural gas * * *").

above and noted in comments filed in these proceedings, interstate pipeline information does not provide a complete picture of the supply and demand fundamentals that apply to interstate commerce because much of the natural gas in the U.S. is moved through the non-interstate pipeline system.¹¹⁰

62. Second, the proposed daily non-interstate pipeline capacity and volume postings would provide market participants—and the Commission in its market oversight efforts—a clearer view of the effects on infrastructure, the industry, and the economy as a whole during periods when the U.S. natural gas delivery system is disturbed. For example, after landfall of hurricanes Katrina and Rita in late 2005, even the most interested of governmental and commercial market observers were not able to obtain complete information regarding the output by potentially-damaged production facilities.¹¹¹ By monitoring receipt and delivery points for production facilities on interstate pipelines, market observers were able to obtain only a limited sense of production facility output.¹¹² Similarly, market participants, state commissions and other market observers were unable to assess effects on natural gas consumption in the Gulf Coast, including consumption by the petrochemical industry, for some period. The significance and duration of these effects on this industry—vulnerable to energy price and availability disruptions—remain unclear. This proposal would allow interested governmental and private parties to gain a much better picture of disruptions in natural gas flows in the case of future hurricanes in the Gulf region.¹¹³

¹¹⁰ See Comments of Platt's at 13, Docket No. AD06–11–000 (filed Nov. 1, 2006) (stating that much of the fundamental supply and demand data is missing from natural gas markets and advocating for reporting by intrastate pipelines).

¹¹¹ See, e.g., Comments of Public Service Commission of New York (NYPSC) at 2; Comments of Bentek Energy LLC at 15–16 21–22; Comments of APGA at 3–4; Comments of NARO at 2; Transcript of the Oct. 13, 2006 Technical Conference (Tr.), at 25, *Transparency Provisions of the Energy Policy Act of 2005*, Docket No. AD06–11–000 (Comments of Sheila Rappazzo, Chief of Policy Section of the Office of Gas and Water of the New York State Department of Public Service).

¹¹² Tr. 25 (Comments of Sheila Rappazzo) (describing how after the 2005 hurricanes data availability differed widely).

¹¹³ Along these lines, this proposal is consistent with a recent Commission final rule and a proposed survey by EIA. On August 23, 2006, the Commission revised its reporting regulations to require jurisdictional natural gas companies to report damage to facilities due to a natural disaster or terrorist activity that results in a reduction in pipeline throughput or storage deliverability.

63. Third, the proposed daily non-interstate pipeline capacity and volume postings would allow the Commission and other market observers to identify and remedy potentially manipulative activity more actively by tracking price movement in the context of natural gas flows.¹¹⁴ In particular, information regarding availability on non-interstate pipelines could be used to track manipulative or unduly discriminatory behavior intended to cause harm to consumers by distorting market prices in interstate commerce. For example, Commission Staff overseeing markets routinely check for unused interstate pipeline capacity between geographically distinct markets with substantially different prices as a sign that flows may be managed to manipulate prices. Given the importance of non-interstate pipeline connections to thirteen major pricing hubs, including Henry Hub, as discussed above, the lack of flow information on non-interstate pipelines hinders the Commission's market oversight and enforcement efforts.

64. This benefit comports with EPA Act 2005, in which Congress directed the Commission to facilitate price transparency in physical, interstate natural gas markets “with due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.”¹¹⁵ By this language, Congress intended that the improvement of Commission market oversight activities is a legitimate justification for proposing rules under the natural gas transparency provisions. Monitoring and preventing manipulative or unduly discriminatory activity would meet the Commission's responsibility for ensuring the integrity of the physical interstate natural gas markets. The proposal to make non-interstate pipeline information available to the public would assist the Commission in fulfilling that responsibility.

Revision of Regulations to Require Reporting of Damage to Natural Gas Pipeline Facilities, Order No. 682, 71 FR 51098 (Aug. 29, 2006), FERC Stats. and Regs. ¶ 31,227 (2006), *order on reh'g*, 118 FERC ¶ 61,118 (2007). On January 30, 2007, EIA proposed to survey natural gas processing plants “to monitor their operational status and assess operations of processing plants during a period when natural gas supplies are disrupted.” *Agency Information Collection Activities*, 72 FR 4248 (Jan. 30, 2007). The purpose of the survey would be to “inform the public, industry, and the government about the status of supply and delivery activities in the area affected by the disruption.” *Id.*

¹¹⁴ See Comments of NGA at 8–10.

¹¹⁵ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

B. Revisions to the Proposal Set Forth in the Initial NOPR

65. The Commission has developed a more particular definition of the types of non-interstate pipelines that would be required to post. The Commission is not interested in burdening smaller non-interstate pipelines like gathering systems, or individual consumers to post daily information regarding capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments. Consequently, the Commission has altered its proposal from the initial NOPR that used the term “intrastate pipeline” to the current proposal which defines “major non-interstate pipeline” to capture directly U.S. wholesale natural gas transportation systems of significant size and contribution to overall wholesale gas flows across the United States. The Commission seeks comment on this proposal. In providing comments, again, the Commission encourages commenters to support their comments by providing specific examples.

66. The Commission also proposes to limit the daily posting requirement by limiting the definition of “major non-interstate pipeline” based on whether the non-interstate pipeline flows more than 10 million MMBtus of natural gas per year. The intention is to focus on non-interstate pipelines of significant size and that consequently make a significant contribution to wholesale U.S. natural gas flows. Too low a limit would pick up non-interstate pipelines too small to contribute to wholesale market flows of natural gas. Too high a limit would lose information about flows that affect wholesale pricing, either directly by losing information at major hubs, or less directly by missing important components of wholesale demand or supply not attached to interstate pipelines. By way of contrast, Platts reports that total reporting for its next-month indices at all geographical locations across the country over the past 12 months (November 2006 through October 2007) totaled only a little more than 8 billion cubic feet last year.¹¹⁶ Thus, by rough comparison, movements of that size on a pipeline could easily affect wholesale prices in any particular location. According to EIA statistics from its 2005 Form 176 filings by companies that do business (at least in part) as intrastate pipelines, the 10 million MMBtu threshold would

¹¹⁶ As reported on the natural gas.org informational Web site, maintained by the Natural Gas Supply Association, <http://www.naturalgas.org/business/marketactivity.asp> (as of November 29, 2007).

capture 102 pipelines.¹¹⁷ The number of these non-interstate pipelines qualifying as major non-interstate pipelines required to post information would be further reduced by the other criteria, such as excluding non-interstate pipelines that fall entirely upstream of processing plants and those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.

67. The Commission seeks comment on these criteria. For the volume criterion, are average flows of 10 billion cubic feet of natural gas per year too low a threshold for non-interstate pipelines to require posting at major points and mainline segments? Too high?

68. The Commission would exempt from the daily posting requirement two types of non-interstate pipelines that meet the volume criterion. First, a major non-interstate pipeline that lies entirely upstream of a processing plant would be exempt.¹¹⁸ The Commission seeks comment on its proposed exemption of a non-interstate pipeline that lies entirely upstream of processing plants. If these non-interstate pipelines were excluded from the pipeline posting requirement, would significant information useful for determining price and availability of natural gas likely be lost?

69. Second, the Commission proposes to exempt any major non-interstate pipeline that makes greater than ninety-five percent (95%) of its deliveries directly to end-users. The Commission seeks comment on this exemption.¹¹⁹ If these non-interstate pipelines were excluded from the pipeline posting requirement, would significant information useful for determining price and availability of natural gas likely be lost? Overall, are there any other categories of major non-interstate pipelines that should be exempt from the daily posting requirements?

70. The comments on the Initial NOPR inform the Commission's revised proposal to limit posting to major non-interstate pipelines. In its comments on the Initial NOPR, affiliates Agave Energy Corp. and Yates Petroleum Corp. (Agave-Yates) urged the Commission to limit the requirement for daily posting of flow data to those intrastate pipelines with receipt or delivery points connected to the 13 major market hubs served by both interstate and intrastate pipelines.¹²⁰ Bentek Energy LLC

(Bentek) proposed determining on a case by case basis which intrastate pipelines should post.¹²¹ As for this approach, Bentek observed that it "would solve the issue of small regional pipelines being too small to meet a threshold applied nationally, but would require considerable analysis by the Commission to implement [including] ongoing analysis as pricing points change periodically."¹²² The Commission seeks further comment on which non-interstate pipelines should be subject to the daily posting proposal.

71. The Commission seeks comment on whether this proposal would meet the three purposes discussed above. Specifically, would the proposal: (1) Provide a more complete picture of supply and demand fundamentals and improve market participants' ability to assess supply and demand and to price physical natural gas transactions; (2) provide, during periods when the U.S. natural gas delivery system is disturbed, for instance due to hurricane damage to facilities in the Gulf of Mexico, a clearer view of the effects on infrastructure, the industry, and the economy as a whole; and (3) allow the Commission and other market observers to identify and remedy potentially manipulative activity?¹²³ Alternatively, would these three purposes be met if the Commission limited the pipeline posting proposal to those non-interstate pipelines with receipt or delivery points connected to the 13 major market hubs served by both interstate and intrastate pipelines?

72. In the Initial NOPR, the Commission sought comment on how to define "major" receipt and delivery points and mainline segments on intrastate pipelines for the purpose of any posting requirement. Developing an operational definition of "major" receipt and delivery points and mainline segments on major non-interstate pipelines is crucial to making the proposal work effectively and reasonably. The Commission stated that it "does not wish to include extremely small points connected to one or a few customers, which it would consider burdensome and possibly even anti-competitive in certain cases."¹²⁴

73. Commenters provided suggestions for which receipt and delivery points on non-interstate pipelines should be subject to the posting requirement. The NARO commented that it would like to see as many points posted as possible explaining that more than ninety percent of flows in Texas occur in

pipelines that move more than 5,000 MMBtu/day.¹²⁵ The Texas Alliance of Energy Producers (Texas Alliance) said that the definition of "major points" should capture flows at locations used to establish market prices (i.e., index points), with the definition crafted to capture enough points to reduce the opportunity for market manipulation.¹²⁶ The Petroleum Association of Wyoming (PAW) said the definition of "major points" should be limited to those on interstate pipelines.¹²⁷ Copano Energy LLC, in its reply comments, said that (at most) the posting requirement should apply to major market hubs and centers identified by the Energy Information Administration and other current market hubs or centers for which a daily price is published by a nationally recognized industry publication.¹²⁸ Crosstex Energy Services stated that the Commission should, at most, require the posting of available capacity and scheduled flow volumes (not actual flow information) at receipt and delivery points (not segments) at the 13 major interstate/intrastate pricing hubs identified in the NOPR as directly affecting interstate pricing.¹²⁹ The Kinder Morgan Texas Intrastate Pipeline Group (Kinder Morgan) stated that posting of scheduled quantities at major hub points where index prices are published would be less burdensome than the NOPR proposal.¹³⁰

74. Comments on the Initial NOPR on how to define "major" receipt and delivery points and mainline segments, in many cases, focused less on developing effective operational definitions than they did on jurisdictional and burden issues. The goal of the pipeline posting proposal is to allow the development of a more complete and more immediate picture of wholesale natural gas flows across the United States, regardless of the traditional regulatory authority under which a particular pipeline operates, at a reasonable cost. To accomplish this task, the Commission needs to develop a stronger record about the possible measurement points on major non-interstate pipelines that could contribute valuable information at a reasonable trade-off with costs of implementation. Consequently, the Commission seeks further comment on which points should be posted by major non-interstate pipelines. In order to effectively balance the benefits of a

¹¹⁷ See Comments of Bentek Energy, LLC, Attachment A, Docket Nos. RM07-10-000 and AD06-11-000 (filed Aug. 21, 2006).

¹¹⁸ Proposed 18 CFR 284.214(b)(1).

¹¹⁹ Proposed 18 CFR 284.214(b)(2).

¹²⁰ Comments of Agave-Yates at 9-10; Reply Comments of Agave-Yates at 1-2.

¹²¹ Reply Comments of Bentek Energy LLC at 6.

¹²² Reply Comments of Bentek Energy LLC at 6.

¹²³ See, *supra*, at P 61-64.

¹²⁴ Initial NOPR at P 39.

¹²⁵ NARO Comments at 2-3.

¹²⁶ Texas Alliance Comments at 12.

¹²⁷ PAW Comments at 2.

¹²⁸ Copano Reply Comments at 3.

¹²⁹ Crosstex Reply Comments at 8.

¹³⁰ Kinder Morgan Reply Comments at 12.

better understanding of national natural gas flows based on more detailed flow information against the costs of the equipment and systems necessary to deliver that information, the Commission seeks comment regarding how to determine the points at which it should require posting of flow information. Again, the Commission encourages commenters to support their assertions with specific examples.

75. In particular, related to Kinder Morgan's comments, could sufficient information be developed with posting only of flows in and out of major pipeline hubs? In that case, how should those hubs be determined? Should they be limited only to those hubs for which index prices are produced? By looking only at flows into and out of major pipeline hubs for which index prices are produced, would market participants lose information important to the assessment of national supply and demand balances lost? What other criteria could be used to make the determination of points to be posted? Is a volumetric limit sufficient? If a line sees flows in both directions during the day, is a net directional flow for the day valuable, or confusing?

V. Storage Information and Non-Public Postings

76. Prompted by comments of storage providers in response to the Initial NOPR, the Commission seeks comment on how its posting proposal herein would affect storage providers. By way of background, in its comments, Enstor Operating Company (Enstor), an independent gas storage service provider with market-based rates, said it should not be required to post information regarding scheduled flows because gas storage information is readily available.¹³¹ If required to post information, the Commission should provide for non-public reporting and analysis of flow data and disseminate such information to the public only in aggregated form.¹³² Enstor stated that if its flow information were public, it would lose negotiating strength in the marketplace because its customers with multiple service options would know storage capacity available at its facility, even though it would have no knowledge of such customers' needs and limited knowledge about capacity levels at competing, regulated storage facilities.¹³³ Enstor cautioned that

release of flow data from individual storage facilities would lead to the practice of reading other market participants' movements and buying or selling in front of anticipated future movements to take advantage of resulting price swings, which would raise prices.¹³⁴ Without non-public treatment of its flow data, Enstor contended that its margins would be squeezed and it would make less money.¹³⁵ Enstor added that aggregated information disseminated by the Commission would be more useful to end-users than disaggregated data.¹³⁶

77. In order to assess the concerns expressed by Enstor (notably the only storage provider to raise this concern), the Commission seeks comments on the following questions. Regarding flows of gas in the United States, does existing gas storage information provide the same value of the information that would be collected in the Commission's proposal? Interested commenters should compare the benefits of requiring storage providers to post flow information publicly with the benefits and costs of providing information to the public only in aggregated form. Those who address this issue should address whether non-public reporting to the Commission would support the goals of the natural gas transparency provisions to "facilitate price transparency for the sale * * * of physical natural gas in interstate commerce"?¹³⁷ Further, commenters addressing the application of the pipeline posting proposal to storage facility should answer the following questions: Can individual storage facilities lose negotiating strength when its customers know the supply of available storage capacity? Would release of flow data from individual storage facilities lead to increased prices? How many storage facilities would likely face this situation if required to post flow information? Would fewer storage facilities face this situation if the pipeline posting proposal were modified to reduce the number of points to be posted, for example, by limiting posting to lines running into or out of major pipeline hubs?

VI. Information Collection Statement

78. The Office of Management and Budget (OMB) regulations require it to

approve certain reporting and recordkeeping (information collection) requirements imposed by an agency.¹³⁸ In this NOPR, the Commission makes two proposals that would require the posting or collection of information, one for interstate and one for major non-interstate pipelines.¹³⁹ The Commission is submitting notification of these proposed information collection requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.¹⁴⁰

79. One proposal, to require interstate pipelines to post actual flow information, would impose an additional information collection burden on interstate pipelines. The other proposal, to require major non-interstate pipelines to post actual flow information, would impose an additional information collection burden on major non-interstate pipelines. Interstate and major non-interstate pipelines already collect flow information for major receipt and delivery points. Certain non-interstate pipelines have asserted in the Initial NOPR that costs would be quite high if additional equipment was needed to meet quick posting deadlines. However, given that this information is used in their business within fairly quick periods, the Commission still believes that the burden that would be imposed by this proposed requirement is largely for the collection and posting of this information in the required format.¹⁴¹

80. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Public Reporting Burden:

The start-up and annual burden estimates for complying with this proposed rule are as follows:

¹³⁸ 5 CFR 1320.11.

¹³⁹ The OMB regulations cover both the collection of information and the posting of information. 5 CFR 1320.3(c). Thus, the proposal to post information would create an information collection burden.

¹⁴⁰ 44 U.S.C. 3507(d).

¹⁴¹ See 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.")

¹³¹ Comments of Enstor at 4.

¹³² Comments of Enstor at 9.

¹³³ Comments of Enstor at 8; Reply Comments of Enstor at 5.

¹³⁴ Reply Comments of Enstor at 6.

¹³⁵ Reply Comments of Enstor at 8.

¹³⁶ Reply Comments of Enstor at 10.

¹³⁷ Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 7171-2(a)(1) (2000 & Supp. V 2005).

Data collection	Number of respondents ¹⁴²	Number of daily postings per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent (hours)
Part 284 FERC-551					
Major Non-Interstate Pipeline Postings	102	365	365	37,230	2,080
Additional Interstate Pipeline Postings	109	365	365	39,785	520
Total	211	.....	.....	77,015	.....

The total annual hours for collection (including recordkeeping) for all

respondents is estimated to be 77,015 hours.

respondent is projected to be the following (savings in parenthesis):

Information Posting Costs: The average annualized cost for each

	Annualized capital/startup costs (10 year amortization)	Annual costs	Annualized costs total
FERC-551			
Major Non-Interstate Pipeline Postings	\$20,800	\$36,500	\$57,300
Additional Interstate Pipeline Postings	5,200	36,500	41,700

Title: FERC-551.
Action: Proposed Information Posting and Information Filing.
OMB Control No: 1902-0243.
Respondents: Business or other for profit.

Frequency of Responses: Daily posting requirements and annual filing requirements.

Necessity of the Information: The daily posting of additional flow information by interstate and major non-interstate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, state commissions, the FERC and the public. The posting would contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements; it would provide a better picture of disruptions in natural gas flows in the case of disturbances to the pipeline system; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

Internal Review: The Commission has reviewed the requirements pertaining to natural gas pipelines and determined they are necessary to provide price and availability information regarding the sale of natural gas in interstate markets.

81. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information posting requirements. The Commission seeks comment on these estimates.

82. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502-8415, fax: (202) 208-2425, e-mail: Michael.Miller@ferc.gov. Comments on the requirements of the proposed rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission].

83. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal

Energy Regulatory Commission] (202)395-4650 or oir_submission@omb.eop.gov.

VII. Environmental Analysis

84. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁴³ The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that require no construction of facilities.¹⁴⁴ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Regulatory Flexibility Act

85. The Regulatory Flexibility Act of 1980 (RFA)¹⁴⁵ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA requires consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on such entities. The RFA does not, however,

¹⁴² The Commission estimated the number of respondents for major non-interstate pipelines from EIA information. See Department of Energy, Energy Information Administration, *U.S. Intrastate Natural Gas Pipeline Systems*, http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/PIPEintra.xls. The Commission estimated the number of respondents that would be

interstate pipelines also from EIA information. See Department of Energy, Energy Information Administration, *Thirty Largest U.S. Interstate Natural Gas Pipeline Systems*, 2005, http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/MajorInterstatesTable.html (Listing thirty largest

interstate pipelines and referencing seventy-nine other interstate pipelines).

¹⁴³ Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

¹⁴⁴ 18 CFR 380.4(a)(5) and (a)(27).

¹⁴⁵ 5 U.S.C. 601-612.

mandate any particular outcome in a rulemaking. At a minimum, agencies are to consider the following alternatives: establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities; use of performance rather than design standards; and exemption for certain or all small entities from coverage of the rule, in whole or in part. The proposal to require daily postings by interstate and non-interstate pipelines will not impact small entities. Natural gas pipelines are classified under NAICS code, 486210, Pipeline Transportation of Natural Gas.¹⁴⁶ A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than \$6.5 million.¹⁴⁷ The Commission does not believe that any pipeline that would be required to post under the proposal in this NOPR has receipts less than \$6.5 million. Thus, the daily posting proposal will not impact small entities.

IX. Comment Procedures

86. The Commission incorporates by reference the comments filed in Docket No. RM07-10-000 into the instant docket and will consider them in this proceeding. In addition, the Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 21, 2008. Reply comments are due March 24, 2008. Comments must refer to Docket No. RM08-2-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

87. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be

¹⁴⁶ This industry comprises establishments primarily engaged in the pipeline transportation of natural gas from processing plants to local distribution systems. 2002 North American Industry Classification System (NAICS) Definitions, <http://www.census.gov/epcd/naics02/def/ND486210.HTM>.

¹⁴⁷ See U.S. Small Business Administration, *Table of Small Business Size Standards*, http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_ssttd_tablepdf.pdf (effective July 31, 2006).

filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

88. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

X. Document Availability

89. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

90. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

91. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 284

Continental Shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.
Nathaniel J. Davis, Sr.,
Deputy Secretary.

For the reasons discussed in the preamble, the Federal Energy Regulatory Commission proposes to amend 18 CFR chapter I as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

2. In § 284.1, paragraph (d) is added to read as follows:

§ 284.1 Definitions.

* * * * *

(d) *Major non-interstate pipeline* means a pipeline that fits the following criteria:

(1) It is not a "natural gas company" under section 1 of the Natural Gas Act; and

(2) It flows annually more than 10 million (10,000,000) MMBtus of natural gas measured in average receipts or in deliveries for the past 3 years.

3. In § 284.13, the heading of paragraph (d) is revised and two sentences are added to the end of paragraph (d)(1) to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(d) *Capacity and flow information.* (1) * * * An interstate pipeline must also provide in the same manner access to information on actual flowing volumes at receipt points, on the mainline, at delivery points, and in storage fields. This information must be posted within 24 hours from the close of the gas day on which gas flows, i.e., on or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

* * * * *

4. Section 284.14 is added to read as follows:

§ 284.14 Flow information of major non-interstate pipelines.

(a) *Daily posting requirement.* A major non-interstate pipeline must provide on a daily basis on an Internet Web site and in downloadable file formats, in conformity with § 284.12 of this chapter, equal and timely access to information relevant to the capacity of major points and mainline segments and the amount scheduled at each such major point or mainline *segment* whenever capacity is scheduled. A major non-interstate pipeline must also provide in the same manner access to information on actual flowing volumes at major points and mainline segments. This information must be posted within 24 hours from the close of the gas day on which gas

flows, i.e., on or before 9:00 a.m. central clock time for flows occurring on the gas day that ended 24 hours before.

(b) *Exemptions to daily posting requirement.* The following categories of major non-interstate pipelines are exempt from the reporting requirement of paragraph (a) of this section:

(1) Those that fall entirely upstream of a processing plant; and

(2) Those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users.

(3) To determine eligibility for the exemption in paragraph (b)(2) of this section, a major non-interstate pipeline must measure volumes by average deliveries over the preceding three calendar years.

[FR Doc. E7-25435 Filed 1-4-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-143326-05]

RIN 1545-BE95

S Corporation Guidance Under AJCA of 2004 and GOZA of 2005; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that provide guidance regarding certain changes made to the rules governing S corporations under the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005.

DATES: The public hearing, originally scheduled for January 16, 2008, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the *Federal Register* on Friday, September 28, 2007 (72 FR 55132), announced that a public hearing was scheduled for January 16, 2008, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the

public hearing is under section 361 of the Internal Revenue Code.

The public comments and outlines of oral testimony were due on December 27, 2007. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, January 2, 2008, no one has requested to speak. Therefore, the public hearing scheduled for January 16, 2008, is cancelled.

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8-24 Filed 1-4-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-136596-07]

RIN 1545-BH12

Guidance Regarding Marketing of Refund Anticipation Loans (RALs) and Certain Other Products in Connection With the Preparation of a Tax Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This document describes rules that the Treasury Department and the IRS are considering proposing, in a notice of proposed rulemaking, regarding the disclosure and use of tax return information by tax return preparers. The rules would apply to the marketing of refund anticipation loans (RALs) and certain other products in connection with the preparation of a tax return and, as an exception to the general principle that taxpayers should have control over their tax return information that is reflected in final regulations published in T.D. 9375, which is published elsewhere in this issue of the *Federal Register*, provide that a tax return preparer may not obtain a taxpayer's consent to disclose or use tax return information for the purpose of soliciting taxpayers to purchase such products. This document invites comments from the public regarding these contemplated rules. All materials submitted will be available for public inspection and copying.

DATES: Written or electronic comments must be received by April 7, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-136596-07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-136596-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-136596-07).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, Kelly Banks at (202) 622-7180; concerning the proposals, Lawrence Mack at (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document describes rules that the Treasury Department and the IRS are considering proposing in a notice of proposed rulemaking regarding the marketing of refund anticipation loans (RALs) and certain other products identified below in connection with the preparation of a tax return.

The proposed rules would amend the Regulations on Procedure and Administration (26 CFR part 301) under section 7216 of the Internal Revenue Code. Section 7216 was enacted by section 316 of the Revenue Act of 1971, Public Law 92-178 (85 Stat. 529, 1971), and has been amended several times since 1971. Section 7216 imposes criminal penalties on tax return preparers who knowingly or recklessly make unauthorized disclosures or uses of information furnished to them in connection with the preparation of an income tax return. In addition, tax return preparers are subject to civil penalties under section 6713 for disclosure or use of this information unless an exception under the rules of section 7216(b) applies to the disclosure or use.

A notice of proposed rulemaking (REG-137243-02) was published in the *Federal Register* (70 FR 72954) on December 8, 2005. Concurrent with publication of the proposed regulations, the IRS published Notice 2005-93, 2005-52 I.R.B. 1204 (December 7, 2005), setting forth a proposed revenue procedure that would provide guidance to tax return preparers regarding the format and content of consents to use and consents to disclose tax return information under § 301.7216-3.

Among other recommendations received in response to the notice of

proposed rulemaking published on December 8, 2005, a number of commentators recommended that the regulations prohibit or substantially restrict the disclosure or use of tax return information for marketing purposes. As described in the preamble of the final regulations published in T.D. 9375, which is published elsewhere in this issue of the **Federal Register**, these commentators specifically recommended banning tax return preparers from disclosing or using tax return information for the purpose of soliciting refund anticipation loans (RALs) and similar products. The Treasury Department and the IRS did not adopt this recommendation in the final regulations that are being published concurrently with this ANPRM because of the significant policy issues that need to be considered and because they had not previously proposed a rule regarding the use or disclosure of tax return information for purposes of marketing of RALs and similar products.

This ANPRM addresses two major areas of concern that have been raised and describes rules that the Treasury Department and the IRS are considering proposing regarding the marketing of RALs and certain other products identified below in connection with the preparation of a tax return. It also solicits comments on specific issues as described herein.

Concerns Raised by RALs and Certain Other Products

Financial Incentive To Inflate Refunds

The Treasury Department and the IRS are concerned that RALs and certain other products may provide tax preparers with a financial incentive to take improper tax return positions in order to inappropriately inflate refund claims. In general, RAL amounts are capped by the amount of the refund claimed on a tax return. Therefore, a preparer who inappropriately inflates the amount of a refund is able, directly or indirectly through arrangement with a RAL provider, to collect a higher fee. Additionally, a significant number of RALs are made to taxpayers who claim the earned income tax credit (EITC). The Treasury Department and the IRS are concerned that the financial benefits of selling a RAL to a taxpayer can create an incentive for the preparer to not fully comply with due diligence requirements designed to ensure the accuracy of EITC claims. See section 6695(g).

Even when a flat fee is charged for RALs, it may be possible that a financial incentive to inappropriately inflate the amount of a refund exists. As an

example, some merchants who offer tax preparation services may encourage customers to obtain RALs and spend the funds on the merchant's products or services. To the extent that the preparer prepares a return that claims an inappropriately large refund, the taxpayer is enabled to purchase more of the merchant's products or services.

The Treasury Department and the IRS are concerned that overall tax compliance suffers when tax advisors or tax preparers benefit directly from maximizing a refund in preparing a tax return. Treasury Department Circular 230 restricts the ability of tax practitioners to charge contingent fees in certain circumstances when there are tax administration concerns. See 31 CFR 10.27. The Treasury Department and the IRS are considering whether similar restrictions should be placed on use or disclosure of tax return information by preparers who receive a financial benefit from the sale of an ancillary product, such as a RAL, rather than directly from the determination of a taxpayer's tax liability.

There are two other products that potentially raise similar concerns—refund anticipation checks (RACs) and audit insurance. A RAC is a post-refund product that allows taxpayers to pay for return preparation services out of their refunds. As with a RAL, a taxpayer will only qualify to purchase a RAC if a refund is claimed on the return. Audit insurance is a type of insurance that covers professional fees and other expenses incurred in responding to or defending against an audit by the IRS. Taxpayers who purchase audit insurance may be encouraged to take aggressive tax reporting positions if they believe the insurance will provide protection against the risk of an adjustment. The Treasury Department and the IRS generally believe that arrangements that create financial incentives for taxpayers or tax preparers to exploit the audit selection process undermine tax compliance.

Potential for Inappropriate Use by Tax Preparers

In responding to the proposed regulations, some commentators expressed concern that tax preparers are inappropriately profiting from marketing RALs and certain other products to relatively unsophisticated taxpayers who do not comprehend the full costs of the products. These commentators noted that RALs are marketed primarily to low-income taxpayers who receive the EITC, that these taxpayers generally have relatively low levels of financial expertise, and that these taxpayers are more likely than

other taxpayers to rely on the advice of their preparers. These commentators urged the IRS to amend the proposed regulations to protect these taxpayers from exploitation. The National Taxpayer Advocate also expressed similar concerns. See National Taxpayer Advocate FY 2007 Objectives Report to Congress, vol. II, *The Role of the IRS in the Refund Anticipation Loan Industry*, at 18 (June 30, 2006).

As a general rule, the Treasury Department and the IRS believe that taxpayers should have the ability to control the use or disclosure of their tax return information. Taxpayer control, however, must be balanced against the ability of the government to effectively administer the internal revenue laws, which includes guarding against (1) the potential lessening of tax compliance, (2) the potential exploitation of taxpayers described by certain commentators, and (3) the potential existence of inappropriate financial incentives for tax preparers to inflate tax refunds.

Explanation of Contemplated Rules

Sections 7216 and 6713 provide a broad prohibition against the disclosure and use of tax return information by return preparers. Statutory exceptions are provided for a "disclosure" pursuant to any other provision of the Internal Revenue Code or an order of a court and for a "use" by a preparer to assist the taxpayer in preparing his or her state and local tax returns and declarations of estimated tax. The statutory language also authorizes the Secretary to prescribe regulations permitting additional exceptions. Thus, tax return preparers may use or disclose tax return information beyond the statutory exceptions only if, and to the extent that, Treasury regulations expressly authorize such acts.

Among other exceptions, the regulations under section 7216 generally provide that preparers may use or disclose tax return information if the taxpayer provides consent. As a general rule, taxpayers should have the ability to control the use or disclosure of their tax return information. To address the tax administration concerns described above, the Treasury Department and the IRS are considering proposing regulations that would create an exception from the general consent framework prescribed by § 301.7216-3 for RALs, RACs, audit insurance, and similar products. This exception would effectively separate the act of return preparation from the act of marketing or purchasing certain financial products by prohibiting the use of information obtained during the tax-preparation

process for the non-tax administration purpose of marketing: (i) a RAL or a substantially similar product or service; (ii) a RAC or a substantially similar product or service; or (iii) audit insurance or a substantially similar product or service.

Proposed Effective Date

The Treasury Department and the IRS anticipate that these new proposed rules would apply for returns filed on or after January 1st of the year following the date of publication in the **Federal Register** as final or temporary regulations.

Request for Comments

Before a notice of proposed rulemaking is issued, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

Specifically, comments are encouraged on the following questions:

1. If RALs and certain other products create a direct financial incentive for preparers to inflate tax refunds, are there alternative approaches that would eliminate or reduce this incentive?
2. If the marketing of RALs and certain other products exploit or have the potential to exploit certain taxpayers, is the approach described in this ANPRM better viewed as protecting taxpayers from exploitation or as restricting taxpayers' ability to control their tax return information? If the latter, is there an alternative approach that would address the concerns described above?
3. Should RACs be treated the same way as RALs and audit insurance, or do RACs present lesser concerns?
4. Are there other products that present significant concerns for tax compliance or taxpayer exploitation that should be addressed by regulation?

Drafting Information

The principal author of this advance notice of proposed rulemaking is Dillon Taylor, formerly of the Office of the Associate Chief Counsel (Procedure and Administration). For further information, contact Lawrence Mack of the Office of Associate Chief Counsel (Procedure and Administration) at 202-622-4940 (not a toll-free call).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 08-2 Filed 1-3-08; 8:58 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2007-0195]

RIN 1625-AA87

Security Zone; Waters Surrounding U.S. Forces Vessel SBX-1, HI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent 500-yard moving security zone around the U.S. Forces vessel SBX-1 during transit within the Honolulu Captain of the Port Zone. This zone is necessary to protect the SBX-1 from threats associated with vessels and persons approaching too close during transit. Entry of persons or vessels into this security zone would be prohibited unless authorized by the Captain of the Port (COTP).

DATES: Comments and related material must reach the Coast Guard on or before February 6, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2007-0195 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 20590-0001.

(3) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax:* 202-493-2251.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) Jasmin Parker, U.S. Coast Guard Sector Honolulu at (808) 842-2600.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking 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 the docket number for this rulemaking (USCG-2007-0195), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG-2007-0195) 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>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The U.S. Forces vessel SBX-1 will enter the Honolulu Captain of the Port Zone and transit to Pearl Harbor, HI for maintenance at least once each year. The SBX-1 is easy to recognize because it contains a large white object shaped like an egg supported by a platform that is larger than a football field. The platform in turn is supported by six pillars similar to those on large oil-drilling platforms.

The Coast Guard's reaction to such transits thus far has been to await a final voyage plan and then establish a security zone using a temporary final rule applicable to that particular voyage. Such action diminishes the public's opportunity for formal comment and imposes a pressing administrative burden each time the SBX-1 arrives. This permanent SBX-1 security zone proposal affords solicitation of public comments and promotes relief from the emergency rulemakings currently necessary to protect these transits.

Discussion of Proposed Rule

Our proposed security zone would be established permanently. It would be automatically activated, meaning it would be subject to enforcement, whenever the U.S. Forces vessel SBX-1 is in U.S. navigable waters within the Honolulu Captain of the Port (COTP) Zone (see 33 CFR 3.70-10). The security zone would include all waters extending 500 yards in all directions from the SBX-1, from the surface of the water to the ocean floor.

The security zone would move with the SBX-1 while it is in transit. The zone would become fixed around the SBX-1 while it is anchored, position-keeping, or moored, and it would remain activated until the SBX-1 either departs U.S. navigable waters within the Honolulu COTP zone or enters the Honolulu Naval Defensive Sea Area established by Executive Order 8987 (6 FR 6675, December 24, 1941).

The general regulations governing security zones contained in 33 CFR 165.33 would apply. Entry into, transit through, or anchoring within the zone while it is activated and enforced would

be prohibited unless authorized by the COTP or a designated representative thereof. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, could enforce the zone. The COTP could waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the security zone is unnecessary or impractical for the purpose of maritime security. Vessels or persons violating this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the constricted geographic area affected by it, and its ability to move with the protected vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little or no impact to small entities due to the narrowly tailored scope of this proposed security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any *policy or action of the Coast Guard*.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and either preempts State law or imposes a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of the rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary "Environmental Analysis Check List" supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new § 165.1411 to read as follows:

§ 165.1411 Security zone; waters surrounding U.S. Forces vessel SBX–1, HI.

(a) *Location.* The following area, in U.S. navigable waters within the Honolulu Captain of the Port Zone (see 33 CFR 3.70–10), from the surface of the water to the ocean floor, is a security zone: All waters extending 500 yards in all directions from U.S. Forces vessel SBX–1. The security zone moves with the SBX–1 while it is in transit and becomes fixed when the SBX–1 is anchored, position-keeping, or moored.

(b) *Regulations.* The general regulations governing security zones contained in 33 CFR 165.33 apply. Entry into, transit through, or anchoring within, this zone while it is activated, and thus subject to enforcement, is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(c) *Suspension of Enforcement.* The Coast Guard will suspend enforcement of the security zone described in this section whenever the SBX–1 is within

the Honolulu Defensive Sea Area (see 6 FR 6675).

(d) *Informational notice.* The Captain of the Port of Honolulu will cause notice of the enforcement of the security zone described in this section to be made by broadcast notice to mariners. The SBX–1 is easy to recognize because it contains a large white object shaped like an egg supported by a platform that is larger than a football field. The platform in turn is supported by six pillars similar to those on large oil-drilling platforms.

(e) *Authority to enforce.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the security zone described in this section.

(f) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the security zone is unnecessary or impractical for the purpose of maritime security.

(g) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: December 6, 2007.

V.B. Atkins

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. E8–19 Filed 1–4–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC62

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service, U.S. Department of Agriculture (USDA), is proposing to establish a State-specific rule to provide management direction for conserving and enhancing the roadless characteristics for designated roadless areas in Idaho. The agency is particularly interested in receiving public input regarding the following topics: to what extent should the Forest Service allow building roads for the purpose of conducting limited forest health activities in areas designated as backcountry; are the limitations on sale

of common variety minerals and discretionary mineral leasing appropriate; and will the proposed mechanism for administrative corrections and modifications be sufficient to accommodate future adjustments necessary due to changed circumstances or public need?

DATES: Comments must be received in writing by April 7, 2008.

ADDRESSES: Comments may be sent via email to IDcomments@fsroadless.org. Comments also may be submitted via the world wide web/Internet at <http://www.regulations.gov>. Written comments concerning this notice should be addressed to Roadless Area Conservation-Idaho, P.O. Box 162909, Sacramento, CA 95816-2909, or via facsimile to 916-456-6724.

All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at <http://roadless.fs.fed.us>.

A copy of the draft environmental impact statement (DEIS), the DEIS summary, and other information related to this rulemaking is available at the national roadless Web site (<http://www.roadless.fs.fed.us>) as well as by calling the number listed below, under the "for further information" heading. Reviewers may request printed copies or compact disks of the DEIS and the summary by writing to the Rocky Mountain Research Station, Publication and Distribution, 240 West Prospect Road, Fort Collins, CO 80526-2098. Fax orders will be accepted at 970-498-1122. Order by e-mail from rschneider@fs.fed.us. When ordering, requesters must specify if they wish to receive the summary or full set of documents and if the material should be provided in print or on disk.

FOR FURTHER INFORMATION CONTACT: Brad Gilbert, Idaho Roadless Rule Team Leader, at (208) 765-7438. Individuals using 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:

Background

As a leader in natural resource conservation, the Forest Service provides direction for the management and use of the Nation's forests, rangelands, and aquatic ecosystems. The Forest Service is charged to collaborate cooperatively with states, Tribes, and other interested parties regarding the

use and management of the National Forest System (NFS).

State of Idaho Petition

On June 23, 2005, the State of Idaho (hereafter referred to as State) announced it would submit a petition pursuant to the State Petitions Rule (70 FR 25654), requesting specific regulatory protections and certain management flexibility for the approximately 9.3 million acres of NFS inventoried roadless areas in Idaho. As part of that announcement, the State invited affected county commissioners, Tribes, and members of the public to develop specific recommendations for the NFS inventoried roadless areas in their respective areas. Additionally, over 50 public meetings were held and the public was encouraged to send individual comments directly to the Governor's office for consideration.

Idaho's petition, under the State Petition Rule, was submitted to the Secretary of Agriculture for consideration on September 20, 2006. Subsequently, Idaho submitted a new petition on October 5, 2006, under section 553(e) of the Administrative Procedure Act and Department regulations at 7 CFR § 1.28. The Department has also received rulemaking petitions from the Nez Perce Tribe and other organizations and individuals requesting reinstatement of the 2001 rule.

The Roadless Area Conservation National Advisory Committee (RACNAC) (72 FR 13469) reviewed the Idaho petition on November 29 and 30, 2006, in Washington, DC. Governor James Risch, on behalf of the State of Idaho, discussed his views on the scope and intent of the petition during the first day of the meeting. The committee also heard comments from other State and Forest Service officials, and members of the public.

On December 19, 2006, the committee issued a unanimous consensus-based recommendation that the Secretary direct the Forest Service, with the State as a cooperating agency, to proceed with rulemaking.

On December 22, 2006, the Secretary accepted the petition based on the advisory committee's review and report, and directed the Forest Service to initiate rulemaking.

The USDA is committed to conserving and managing inventoried roadless areas. The Department considers the proposed rule the most appropriate solution to address the challenges of inventoried roadless area management on NFS lands in the State of Idaho. Additional information, maps, and other materials concerning the Idaho Roadless

Areas, as well as other roadless areas, can be found at <http://roadless.fs.fed.us/>. Collaborating and cooperating with states and other interested parties regarding the long-term strategy for the conservation and management of inventoried roadless areas allows recognition of both national values and local situations.

The State of Idaho petition included specific information and recommendations for the management of individual inventoried roadless areas in the State. This site-specific knowledge provided by the State and its citizens aids the USDA and Forest Service in accomplishing their objectives and is reflected in this proposed rulemaking. Additionally, the State of Idaho examined roadless areas sharing boundaries or overlapping with neighboring states and determined the need to coordinate with Montana and Utah to insure consistency of management themes assigned to these inventoried roadless areas. Lastly, the Forest Service and the State anticipate collaborating on implementing this proposed rulemaking. This commitment is reflected in the Governor's Roadless Rule Implementation Commission (Idaho Executive Order 2006-43), which is charged with the responsibility of working with the Forest Service to accomplish collaborative implementation of this proposed rule. The Executive Order can be found on the State of Idaho's roadless Web site http://gov.idaho.gov/roadless_petition.htm.

National Forest System Land Inventories in Idaho

This rulemaking relies on the most recent inventory available for each national forest and grassland in the State to identify the inventoried roadless areas addressed by this rulemaking. Since 2001 the Agency has continued with forest plan revisions within Idaho and have continued to review and update their inventories using new technologies such as geographic information systems (GIS) providing better and more reliable data than was previously available. Therefore, the proposed rule is based on the most recent and reliable information available for land and resource management planning as well as using other assessments and the inventory contained in the 2000 Roadless Rule Final Environmental Impact Statement where that remained the best available information. Using these inventories, the Forest Service has identified 9.3 million acres of inventoried roadless areas that are the subject of this rulemaking.

Proposed Roadless Area Conservation Rule for Idaho

The Department believes this proposed Roadless Area Conservation Rule for Idaho represents a unique opportunity to resolve collaboratively and to provide certainty to the roadless issue in the State. First, the proposed rule enables the Forest Service to account for comments of those most affected or concerned about the contents of state-specific rulemaking. Second, it allows the Agency to consider the unique characteristics of each inventoried roadless area in the State. Third, it balances the integrity and natural beauty of these roadless areas with responsible stewardship.

During his presentation to the RACNAC, Governor Risch expressed the need for stewardship of Idaho Roadless Areas focusing on limited forest health activities. Clarifying what *stewardship* means is vital to understanding the petition and subsequent rulemaking. The proposed rule clarifies this by providing discretion for conducting activities that maintain forest health by reducing the significant risk of wildland fire (also known as wildfire) to communities, municipal water supplies, threatened and endangered species, and to protect ecosystem components in the same manner as provided in the Healthy Forests Restoration Act (HFRA). All project activity will be subject to appropriate National Environmental Policy Act (NEPA) compliance

procedures and public comment opportunities.

The Department and the State believe a reduction in significant risk situations before they become imminent threats to local communities and water supplies can be better achieved by providing flexibility beyond the restrictions imposed by the January 12, 2001 Roadless Area Conservation final rule (2001 rule) (66 FR 3244). Implementing these limited, but necessary projects allows the Forest Service to be a good neighbor for adjacent landowners and communities and to help insure continued forest health and protection for life and property.

The Forest Service, in cooperation with the State, has completed a review of the social, economic, and environmental characteristics and values associated with the inventoried roadless areas in the State. With public input, the Agency has considered the question of how these roadless lands should be managed within the scope of the Agency's authority. Consistent with the 2001 rule's approach, the management direction proposed by these regulations would take precedence over any inconsistent regulatory provision or land and resource management plan. It is also consistent with the Secretary's authority to establish regulations to carry out the statutory requirements for planning and the Forest Service's practice that forest plans must yield to management

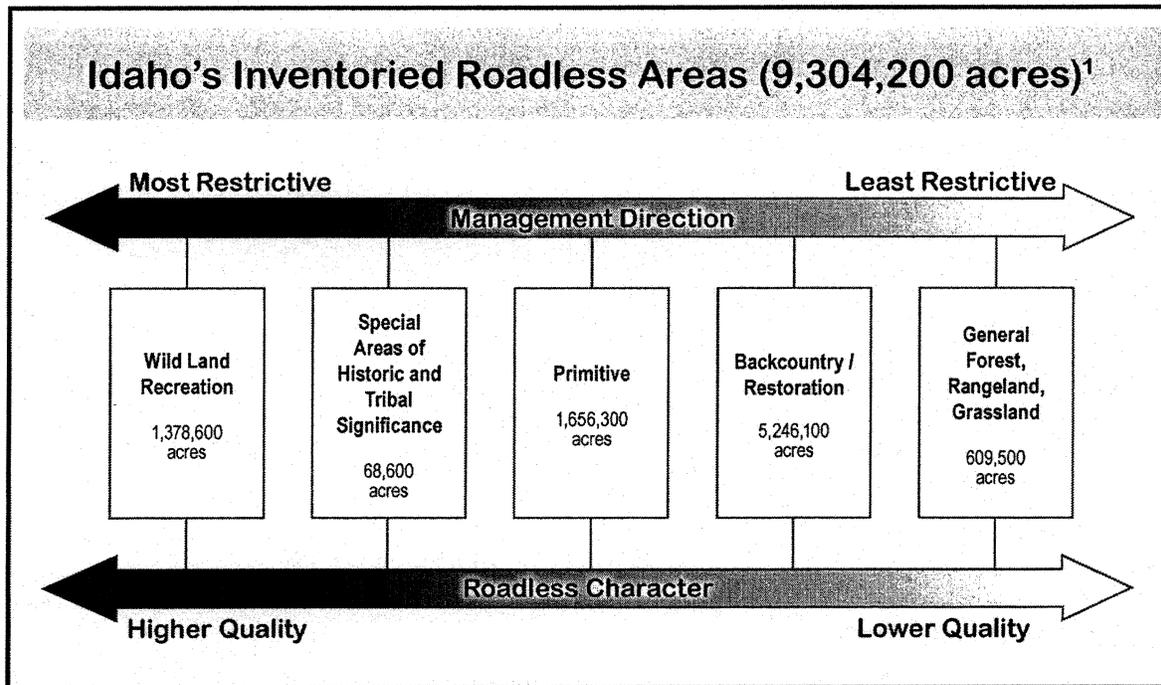
direction of a higher order. Forest plan management direction that is consistent with these provisions remains intact and effective.

Discussion of the Proposed Management Themes

The management themes described in Idaho's petition and reflected in Governor Risch's presentation before the RACNAC represent the foundation for this rulemaking, and are imperative to understanding the proposed rule. The proposed rule is structured around five themes: (1) Wild Land Recreation; (2) Special Areas of Historic or Tribal Significance; (3) Primitive; (4) Backcountry/Restoration; and (5) General Forest, Rangeland, and Grassland. These five themes were developed and refined through review of the existing and draft management prescriptions in each of Idaho's national forests.

Specifically, the proposed themes span a continuum (see Figure 1) that includes at one end, a restrictive approach emphasizing passive management and natural restoration, and on the other end, active management designed to accomplish sustainable forest, rangeland, and grassland management. This continuum accounts for stewardship of each roadless area's unique landscape and the quality of roadless characteristics in that area.

Figure 1. Roadless Area Conservation Rule for Idaho—Proposed Management Themes



¹ 345,100 acres of forest plan special areas will be managed in accordance with applicable current and future forest plans

Allocation to a specific theme is not intended to mandate or direct the Forest Service to propose or implement any action; rather, the themes provide an array of permitted and prohibited activities regarding road construction, discretionary mineral activities, and timber cutting. The themes also serve as a reference point for future discussions between the Forest Service, the State, the Tribes, and the public. Themes may also influence other future management choices such as forest plan revisions or use determinations that are beyond the scope of these regulations.

The State's petition identifies approximately 345,000 acres of roadless areas that are already part of other land classification systems (for example, Research Natural Areas) that are governed by specific agency directives and existing forest plan direction. The petition did not request the Forest Service impose additional or superseding management direction or restrictions for these forest plan special areas. Instead, the State identified a preference that these lands be administered under the laws, regulations, and other management direction unique to the special purpose of the applicable land classification. These lands are included in § 294.28 for the sake of completeness; however, the proposed rule does not recommend management direction for those lands.

The following describes the current and desired conditions for each management theme. While the ability of the Forest Service to conduct certain activities (road building, activities associated with mineral development, and timber cutting) typically varies from theme-to-theme, other activities (motorized travel, grazing activities, or use of motorized equipment and mechanical transport) are not changed by this proposed rule. While these other activities are not regulated by this proposed rule, such activities would be subject to future planning and decisionmaking processes of the Forest Service. Furthermore, when appropriate, wildland fire and prescribed fire are tools which would be available across all themes. Additionally, like the 2001 rule, timber cutting, sale, or removal in inventoried roadless areas is permitted when incidental to implementation of a management activity not otherwise prohibited by this proposed rule. Examples of these activities include, but are not limited to, trail construction or maintenance; removal of hazard trees adjacent to forest roads for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road

construction and reconstruction where allowed by this proposed rule.

Management Theme 1: Wild Land Recreation (WLR)

Current Condition: WLR areas were generally identified during the forest planning process as recommended for wilderness designation. These areas show little evidence of historic or human use. Natural conditions and processes are predominant. People visiting these areas can find outstanding opportunities for solitude and challenge.

Desired Condition: WLR areas show little evidence of human-caused disturbance and natural conditions and processes are predominant.

Management Theme 2: Special Areas of Historic or Tribal Significance (SAHTS)

Current Condition: SAHTS are relatively undisturbed by human management activities, and natural conditions and processes are predominant. This theme consists of three areas: (1) Pilot Knob (#849), Nez Perce National Forest; (2) Nimiipuu and Lewis and Clark National Historic Trials, which includes portions of Bighorn-Weitas (#306), Eldorado Creek (#312), Hoodoo (#301), North Lochsa Slope (#307), Weir-Post Office (#308), Clearwater National Forest; and (3) Pioneer Area—Mallard-Larkins (#300), Idaho Panhandle National Forest. The

Nez Perce Tribe and others expressed the desire to protect these areas specifically based on their historic or Tribal significance. The RACNAC recommended clarifying whether this theme would alter or apply to the management of other “special areas” embedded in roadless areas in individual forest plans (such as, Wilderness Study Areas, Recommended and/or Designated Scenic, Wild, and Recreational Rivers, Research Natural Areas). Those areas will not be subject to this proposed rule and will continue to be managed by individual forest plan direction or specific congressional direction provided by statute.

Desired Condition: SAHTS will continue to be relatively undisturbed by human management activities in order to maintain their unique Tribal or historic characteristics.

Management Theme 3: Primitive

Current Condition: The current condition of areas designated as primitive generally reflects the undeveloped character described for the WLR theme. However, these areas generally fall short of the Forest Service’s recommended wilderness suitability criteria.

Desired Condition: Primitive areas are relatively undisturbed by human management activities while allowing for limited forest health activities including preserving biological strongholds for a variety of species and protecting ecological integrity.

Management Theme 4: Backcountry/ Restoration (Backcountry)

Current Condition: Areas designated as backcountry generally reflect the undeveloped character found in all roadless areas. However, there may be portions within these areas that have evidence of human use and occupancy or past vegetation manipulation.

Desired Condition: Backcountry areas are managed to retain their undeveloped character, while providing a variety of recreation opportunities and allowing for limited forest health activities including preserving biological strongholds for a variety of species and maintaining or restoring the characteristics of ecosystem composition and structure.

Management Theme 5: General Forest, Rangeland, and Grassland (GFRG)

Current Condition: Areas designated as GFRG include locations that may display relatively more evidence of human use, including roads, facilities, evidence of vegetative manipulation, and mineral exploration/extraction.

Desired Condition: GFRG areas are managed to allow for a variety of goods and services, and conservation of natural resources.

Geothermal Energy

During the development of the proposed rule, consideration was given to whether the rule is overly restrictive regarding potential exploration and/or development of geothermal energy resources in areas designated as backcountry. While Idaho has high geothermal energy potential, site-specific information on this resource in Idaho Roadless Areas is currently limited (see discussion in DEIS). At this time the Department has chosen not to include a special exemption for geothermal energy resources.

The Department expects that more information about this energy resource will become available over the next 5 to 10 years. Once additional information becomes available, at that point, if necessary, the State or other parties can seek a change in the rule’s restrictions. A site-specific modification to the rule could then be proposed and reviewed under § 294.27(e)(2).

Specific Request for Public Comment

With regard to road construction, discretionary mineral activities, and timber cutting, Idaho’s proposed management continuum can be succinctly summarized as three themes; one theme more restrictive than the 2001 rule, one theme similar to the 2001 rule, and one theme less restrictive than the 2001 rule. The agency is particularly interested in receiving public input regarding the following topics: (1) To what extent should the Forest Service allow building roads for the purpose of conducting limited forest health activities in areas designated as backcountry; (2) are the limitations on sale of common variety minerals and discretionary mineral leasing appropriate; and (3) will the proposed mechanism for administrative corrections and modifications be sufficient to accommodate future adjustments necessary due to changed circumstances or public need? The following illustrates the additions and/or changes from the 2001 rule.

Limited Roads for Activities in Backcountry

The proposed regulation at § 294.23(b)(1)(i) allows limited road construction in Idaho Roadless Areas designated to be managed pursuant to the backcountry theme when a “road is needed to protect public health and safety in cases of significant risk or imminent threat of flood, wildland fire,

or other catastrophic event that, without intervention, would cause the loss of life or property; or to facilitate forest health activities permitted under § 294.25(c)(1).” The phrase “significant risk” is an addition to the imminent threat language contained in the 2001 rule’s exceptions and bears further explanation.

During its presentation to the RACNAC, the State was under the impression that the “imminent threat” exception provides the needed flexibility to allow the Forest Service to build roads for the purpose of conducting what Governor Risch and other State representatives identified as “stewardship activities.” An example of such an activity would be a fuel treatment project to protect a municipal water supply system conducted cooperatively with the Forest Service through the Healthy Forests Restoration Act (HFRA) (Pub. L. 108–148). However, when read in context of the 2001 rule’s preamble language, the application of the “imminent threat” regulatory language may not always achieve the State’s desire for more progress toward the congressional goals identified in HFRA.

Referring to the “imminent threat” language, the preamble to the 2001 rule stated that the exception “does not constitute permission to engage in routine forest health activities, such as temporary road construction for thinning to reduce mortality due to insect and disease infestation” (66 FR 3243, 3255). Like the 2001 rule, the Forest Service and State do not intend this change in language to be construed as giving permission to build roads in areas designated as backcountry for the purpose of engaging in *routine* forest management activities as shown by the use of the words “significant risk.” This addition is intended to provide additional flexibility where site-specific conditions pose a significant risk of wildland fire.

Although the principal objective for this adjustment is to protect at-risk communities and municipal water supply systems from adverse effects of wildland fire, this provision also contemplates access for (1) areas where wind throw, blowdown, ice storm damage, or the existence or imminent threat of an insect or disease epidemic is significantly threatening ecosystem components or resource values that may contribute to significant risk of wildland fire; or (2) areas where wildland fire poses a threat to, and where the natural fire regimes are important for, threatened and endangered species or their habitat consistent with HFRA.

The proposed rule is programmatic in nature, establishing the types of prohibitions and conditions where future projects may occur under the appropriate theme. As stated by Governor Risch, this proposed rule "does not cut one tree or plow one road." Further, not every acre experiencing significant risk is expected to receive treatment because of funding limitations and mitigation measures needed for other resource protection. After the rule becomes effective, site-specific proposed projects must still undergo project planning procedures before they can be implemented. This includes compliance with HFRA (if applicable), National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), the Endangered Species Act (ESA), and other environmental laws and regulations. Public involvement under NEPA will be undertaken for these site-specific proposals.

The Idaho Roadless Rule DEIS discloses the effects of roads and projections of the types and amounts of possible treatments over the next 15 years. Treatments will be designed based on site-specific needs to reduce any significant risks, or to maintain or restore the characteristics of ecosystem composition and structure. Determination of a significant risk would be guided by the interagency *Healthy Forests Initiative and Healthy Forests Restoration Act: Interim Field Guide* (2004).

Mineral Activities

The laws governing disposal of Federal minerals on NFS lands are complex. Responsibility for management of these resources is often shared between USDA and the Department of the Interior (DOI). Generally speaking, Federal minerals are divided into three categories with different legal authorities, responsibilities, and controls applying in each instance. The three basic systems are: locatable, saleable, and leasable minerals.

Locatable minerals are generally metals (like gold and silver) but also include rare earth elements such as uranium and special uncommon varieties of sand, stone, gravel, pumice, pumicite, and cinders. Development of such minerals is subject to the General Mining Law of 1872. Like the 2001 rule, this proposed rule does not seek to impose any limits regarding activities undertaken regarding locatable minerals. In the long term, it is reasonable to assume that future exploration, mining, and mineral processing activities would continue to

occur in Idaho Roadless Areas where valuable deposits exist. When necessary, construction or reconstruction of roads for locatable mineral exploration or development is part of the reasonable right of access provided under the General Mining Law. Therefore, this rule does not propose to affect rights of reasonable access to prospect and explore lands open to mineral entry and develop valid claims. All proposals for locatable mineral exploration or development are subject to the planning and design requirements governing locatable minerals in 36 CFR part 228, subpart A and the appropriate level of environmental analysis. The plan of operations would be approved subject to modifications identified in the environmental analysis and would be binding on the operator.

Saleable minerals, also known as common variety mineral materials, are common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay. The Secretary of Agriculture is solely responsible for disposal of saleable minerals on NFS lands. The Forest Service has complete discretion to refrain from authorizing the disposal of saleable minerals.

The proposed rule would prohibit the sale of common variety mineral materials in Idaho Roadless Areas that are designated to be managed pursuant to WLR, SAHTS, or primitive themes. This prohibition would be more restrictive than the 2001 rule for these three themes. However, under the proposed § 294.23(b)(1)(vii), the Forest Service would be allowed to build roads associated with the sale or administrative use of common variety mineral materials in areas designated as backcountry "if the use of these mineral materials is incidental to an activity otherwise allowed under the rule" (§ 294.24(e)). Road construction and reconstruction associated with the sale or administrative use of common variety mineral materials is allowed in GFRG.

Leasable minerals include oil, gas, coal, phosphate, potassium, sodium, sulphur, gilsonite, oil shale, geothermal resources, and hardrock minerals. There are two general umbrella authorities governing the leasing of these minerals, except for sulphur, geothermal resources, and hardrock minerals, on NFS lands. One of these umbrella authorities, the Mineral Leasing Act of 1920, applies exclusively, and by its terms applies comprehensively, to NFS lands reserved from the public domain. The other, the Mineral Leasing Act for Acquired Lands, applies exclusively, and by its terms applies comprehensively, to acquired NFS

lands. The leasing of geothermal resources is governed by free standing statutory authority which applies to all NFS lands. Collectively, these authorities are known as the mineral leasing laws.

Despite the many authorities governing mineral leasing on NFS lands, there are basic commonalities among the mineral leasing laws. The most fundamental is that the Secretary of the Interior is statutorily charged with the administration of the mineral leasing laws. Consequently, the Department of the Interior (DOI) issues all mineral leases for NFS lands. The Secretary of the Interior also has complete discretion to refrain from leasing any leasable mineral.

This is not to say that the Forest Service lacks a role with respect to mineral leasing on NFS lands. DOI is statutorily required to obtain the Forest Service's consent before it issues leases for many leasable minerals. The Forest Service also has the right to regulate operations conducted for certain leasable minerals.

The proposed rule would not seek to restrict retroactively any existing authorizations. The proposed rule would establish limitations on the future exercise of discretion available to Forest Service line officers. It does not impose restrictions on decisions that Congress has allocated to DOI. Nor does the proposed rule effect or seek a withdrawal of the mineral estate as such matters are subject to a separate statutory process established under the Federal Land Policy Management Act. Instead, the proposed rule would instruct Forest Service line officers when exercising their discretionary authority concerning disposal of different mineral materials.

The Forest Service and State see an opportunity to clarify and remove confusion regarding expectations for mineral leasing and associated road construction activities across the management themes set out in this proposed rule. This is a refinement of the 2001 rule which permitted the leasing and the surface use or occupancy across all roadless areas, but did not allow new roads to be constructed pursuant to new leases. Using the management spectrum associated with the proposed themes, the Forest Service and the State are seeking a balance between the protection of roadless values and the responsible development of mineral resources.

If promulgated, in designated WLR, SAHTS, or primitive areas, the Forest Service would not recommend, authorize or consent to road

construction or reconstruction or surface use and occupancy associated with mineral leases. This leasing restriction is more restrictive than the 2001 rule.

In backcountry areas, road construction or reconstruction is prohibited except for the leasing of phosphate materials. Surface use or occupancy without road construction or reconstruction is permissible for all mineral leasing.

In areas designated as GFRG, leasing approvals, including road construction, reconstruction, surface use and occupancy, and associated road access requests are permissible.

Where authorized, all road construction or reconstruction associated with mining activities allowed under this management theme must be conducted in a way that minimizes effects on surface resources, prevents unnecessary or unreasonable surface disturbance, and complies with all applicable lease requirements, land and resource management plan direction, regulations, and laws. Roads constructed or reconstructed pursuant to this management theme must be decommissioned when no longer needed or when the lease, contract, or permit expires, whichever is sooner.

There has been considerable debate among various parties offering competing interpretations of the 2001 rule provisions about whether or not ongoing leasing activities can be geographically expanded beyond current lease boundaries; particularly phosphate leasing in the Caribou-Targhee National Forest. The proposed rule contains text at § 294.24(d) that resolves this question in the affirmative. At the effective date of a final rule, existing operations could expand beyond their current boundaries, including such lands as are necessary for access. The DEIS estimates an additional 12,100 acres above the acres under existing lease will potentially be affected. The DEIS also discusses the importance and value of this phosphate leasing to the local communities, the State, and the Nation.

Accommodating Change

The Forest Service, State of Idaho, and members of the public have expressed confusion over how boundary or other changes were expected to be made under the 2001 rule. The State of Colorado in its roadless area rulemaking petition similarly identified the need for a process to allow future modifications of the management direction to be established in that rulemaking. Based on Forest Service experience with the 2001 rule, as well as other land and resource

management and classification systems, the Agency has included in the proposed rule a system to address future corrections and modifications of the allocations made through this rulemaking. The Forest Service is proposing a system that parallels the National Forest Management Act forest plan amendment process, allowing for technical corrections as well as minor or even significant changes. All changes are noticed to the public and public involvement requirements vary depending on the magnitude of the change being made.

The proposed rule applies a two tiered approach. Like the 2001 rule, § 294.27(e)(1) expressly provides that technical errors, such as clerical mistakes, errant maps, and so on, can be corrected by the Chief and are effective upon public notice. This provision could also be applied when changes are necessitated by events beyond the scope of this proposed rule, such as Congressional legislation or a conveyance of land by sale, exchange or interchange.

The second tier of the approach involves a mechanism for modifying boundaries or management direction in other circumstances. The Department believes the proposed rule should allow for changes in management direction due to changed conditions or circumstances. Any modification would be effective only after the Chief provides public notice in the **Federal Register**. Modifications would be subject to a 30-day notice requirement in all instances; and if the change is determined to be significant by the Chief, notice and comment rulemaking must be undertaken.

The proposed rule provides factors to assess whether a proposed change is of sufficient magnitude to warrant additional rulemaking or so limited as to not merit such a procedure. This is an admittedly subjective assessment and the expectation is that the Agency will keep foremost in its mind the implications of the change to the roadless character of the area(s). Again, the Forest Service has implemented a similar sliding scale approach for amendment of forest plans for three decades and is confident such a system is workable.

Examples of when rulemaking would not be expected: (1) Establishment by the Forest Service of a research natural area in a roadless area designated as primitive; (2) changing the designation of a small portion of backcountry adjacent to a large block of GFRG into the GFRG designation; (3) changing the designation of a small portion of

backcountry adjacent to a large block of primitive into the primitive designation.

Examples where rulemaking would be expected: (1) Approving the use of lands designated as primitive to construct and operate an all-season recreation resort complex; (2) geothermal exploration has discovered a significant energy field in an area designated as primitive and the Forest Service proposes that a portion of the roadless area be designated as GFRG to allow development and transmission line corridors; (3) during a forest plan revision the Forest Service recommends two primitive areas for wilderness designation; therefore, the Agency proposes their designations be changed to WLR.

The Department does not anticipate extensive adjustments will occur under this provision. The provision would provide public confidence that if adjustments need to be considered, the process will be both open to and understood by all interested parties.

Conclusion

The USDA, Forest Service, and the State of Idaho are committed to conserving and managing Idaho Roadless Areas under the context of the Agency's multiple-use mandate and consider roadless areas an important component of the NFS. The Department, Agency, and State believe that establishing a state-specific rule, based on the petition submitted by the State, allows state-specific consideration of the needs of these areas and is an appropriate solution to address the challenges of managing Idaho Roadless Areas.

Collaborating with the State on the long-term strategy for the management of Idaho Roadless Areas allows for the recognition of national values and local situations and resolution of unique resource management challenges. Collaboration with others who have a strong interest in the conservation and management of inventoried roadless areas will also help to ensure balanced management decisions that maintain the most important characteristics and values of those areas.

The proposed rule envisions a sliding scale of designating themes for the management of Idaho Roadless Areas. From most restrictive to least restrictive, the themes are Wild Land Recreation; Special Areas of Historic or Tribal Significance; Primitive; Backcountry/Restoration; and General Forest, Rangeland, and Grassland. Prohibitions with exceptions or permissions with conditions for road construction, discretionary mineral development, and timber cutting are proposed for each theme.

USDA invites written comments on both the proposed rule and the draft environmental impact statement and will consider those comments in developing the final rule and final environmental impact statement. The final rule will be published in the **Federal Register**.

Regulatory Certifications

Regulatory Planning and Review

This proposed rule was reviewed under USDA procedures, Executive Order 12866 issued September 30, 1993 (E.O. 12866), as amended by E.O. 13422 on Regulatory Planning and Review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). It has been determined that this proposed rule is not an economically significant rule. This proposed rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This proposed rule is not expected to interfere with an action taken or planned by another agency nor raise new legal or policy issues. This proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, due to the level of interest in inventoried roadless areas management, this proposed rule has been designated as significant and is therefore subject to Office of Management and Budget review under E.O. 13422.

A regulatory impact analysis has been prepared for this proposed rule. The benefits, costs, and distributional effects of three alternatives referred to as follows: 2001 Roadless Rule (2001 rule), existing forest plans (existing plans), and the Idaho State Petition (proposed rule) are analyzed over a 15-year time period. As of the printing of this proposed rule, the 2001 rule is in operation by court order and represents the legal status quo. In absence of the 2001 rule, management would be governed by existing plans and agency interim direction. As such, for the purpose of regulatory impact analysis, the 2001 rule and existing forest plans are assumed to represent a range of baseline conditions or goods and services provided by national forests and grasslands in the near future in the absence of the proposed rule.

The proposed rule is programmatic in nature, consisting of direction for road construction, road reconstruction, timber cutting, and discretionary

mineral activities, which would be applied to future management activities in Idaho Roadless Areas. The purpose of the proposed rule is to provide State-specific direction for the conservation and management of inventoried roadless areas within the State. The proposed rule integrates local management concerns with the national objectives for protecting roadless area values and characteristics.

The proposed rule would establish five management themes to clarify direction within Idaho Roadless Areas in contrast to the single management strategy assigned to all Idaho Roadless Areas under the 2001 rule. The five themes are Wild Land Recreation (WLR), Primitive, Special Areas of Heritage and Tribal Significance (SAHTS), Backcountry/Restoration (backcountry), and General Forest, Rangeland, and Grassland (GFRG). Management direction under the 2001 rule is most similar to the backcountry/restoration theme under the proposed rule. The proposed rule does not prescribe site-specific activities on the ground, nor does it irreversibly commit resources. Direct effects of site-specific activities would be disclosed through NEPA project-level analysis when site-specific decisions are made.

In general, the proposed rule does not affect the efficiency of individual operations or activities (such as, an individual timber sale) associated with forest resources and/or services, but may instead affect the number or extent of opportunities as a function of activities permitted within Idaho Roadless Areas on NFS lands. Because the proposed rule does not prescribe site-specific activities, it is difficult to quantify the benefits of the alternatives. It should also be emphasized that the types of benefits derived from roadless characteristics and the uses of roadless areas are far ranging and include a number of non-market and non-use benefit categories. Consequently, benefits are not monetized, nor are net present values or benefit cost ratios estimated. Instead, increases and/or losses in benefits are discussed separately for each resource area in a quantitative or qualitative manner. Benefits and costs are organized and discussed in the context of 'local resource concerns' and 'roadless characteristics' in an effort to remain consistent with overall purpose of the proposed rule, recognizing that benefits associated with local concerns may trigger indirect benefits in roadless characteristics in some cases (such as, forest health). Table 1 summarizes the potential benefits and costs of the

proposed rule, the 2001 roadless rule, and existing plan alternatives.

Distributional effects or economic impacts, in terms of jobs and labor income, are quantified for five economic areas (EAs) for the State using regional impact models (IMPLAN). Economic impacts are evaluated only for changes in activities directly affected by the proposed rule (timber cutting, minerals extraction, and road construction and reconstruction). Distributional effects are also discussed in relation to revenue sharing, small entities, and to the resource dependent communities (counties) most likely to be affected by the proposed rule. Table 2 summarizes distributional effects and economic impacts of the proposed rule and alternatives.

Details about the environmental effects of the proposed rule can be found in the Roadless Area Conservation; National Forest System Lands in Idaho Draft Environmental Impact Statement (DEIS). Effects on opportunities for small entities under the proposed rule are discussed in the context of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Local Resource Concerns

Local resource concerns include ensuring access, protecting communities, property, and resources from risk of wildfire; as well as protecting forests from the adverse effects of wildfire, insects, and disease.

Approximately 1.4 million acres within Idaho Roadless Areas are estimated to be at risk of 25% or more tree mortality (that is, high risk) over the next 15 years. Of the 1.4 million acres at risk, approximately 26,000 acres are within the GFRG and 939,000 acres in the backcountry theme under the proposed rule. The areas identified within the GFRG theme would have the most potential to be treated given their treatment flexibility. Timber cutting in the backcountry theme would be done on a limited basis and would be done to retain roadless characteristics. Under existing plans, the high-risk acreage assigned to the GFRG theme increases to 190,000 acres while 730,000 acres are assigned to backcountry. Existing plans provide flexible opportunities to treat high-risk acres through timber cutting on lands assigned to both of these themes without constraints associated with roadless characteristic retention. Projected levels of treatment, involving timber cutting, are greatest under

existing plans (2,800 acres per year; 42,000 acres over 15 years) followed by the proposed rule (800 acres per year; 12,000 acres over 15 years). Treatments associated with projected harvests over the next 15 years are likely to be effective in reducing the risks from insects and disease in areas treated.

Timber cutting associated with treatments are estimated to be 0.5 million board feet (MMBF), 14 MMBF, and 4 MMBF per year for the 2001 rule, existing plans, and the proposed rule respectively and account for 0.5%, 11.5%, and 3% of average annual harvests from National Forest land in Idaho. A majority of the volume under the proposed rule is projected to occur within the northern economic area (EA).

Approximately 1 million acres of Idaho Roadless Areas are within the wildland urban interface (WUI), and about 40% of those acres (450,000) are in high priority fire risk areas as defined by fire regime and condition class. Opportunities to use a full range of treatment methods to address severe wildfire risk, particularly within the WUI, are substantially greater under the proposed rule relative to the 2001 rule. Treatment flexibility expands only slightly under the proposed rule compared to existing plans.

Approximately 71% of WUI acreage within Idaho Roadless Areas is assigned to management themes that permit flexible treatment methods that include road construction under the proposed rule, compared to 69% under existing plans. However, fewer overall acres are projected for treatment under the proposed rule due to other constraints (such as, maintenance of roadless characteristics). Projected harvests could treat the equivalent of approximately 5% of high priority areas within the WUI under the proposed rule over a 15-year period. In contrast, approximately 14% of high priority WUI areas could be treated under existing plans. An insignificant amount of high priority WUI acreage would be treated under the 2001 rule.

Phosphate mining activity on existing leases will be similar across the alternatives over the next 15 years. However, 12,100 acres of unleased known phosphate reserves within Idaho Roadless Areas will be made available for future leasing or lease expansion under the proposed rule that would not be accessible under the 2001 rule. Mining in these areas could generate an estimated 545 million tons of phosphate ore, but development of these areas is expected to occur over an extended period (50+ years). All unleased areas with known phosphate reserves (approximately 13,400 acres; estimated

603 million tons) will be available for leasing over an extended period under existing plans.

There are negligible opportunities for geothermal development under the 2001 rule. Geothermal opportunities increase under the proposed rule where 233,600 acres of high geothermal potential, on land with feasible slopes, are made available because of GFRG theme assignments. These opportunities increase slightly under existing plans to 249,500 acres. The existing plans provide for greater development opportunities in areas of medium geothermal potential with feasible slopes (457,700 acres) compared to the proposed rule (140,800 acres). There are currently no existing geothermal leases on National Forest land in Idaho.

The proposed rule is not expected to have a significant impact on other local resource issues or concerns including livestock grazing, saleable minerals, other leasable minerals (oil, gas, and coal), locatable minerals, or energy corridors.

Roadless Characteristics

Roadless characteristics include high quality soil, water (including drinking water), and air; plant and animal diversity; habitat for sensitive species; reference landscapes and high scenic quality; primitive and semi-primitive recreation; cultural resources; and other locally identified unique characteristics. Shifts in the number of roadless area acres assigned to more permissive management themes can increase the potential for adverse effects to roadless characteristics. However, reasonably foreseeable effects in the next 15 years are likely to be limited by levels of road construction/reconstruction, timber cutting, and leasable minerals activity actually projected to occur during that time.

Based on the relative acreage assigned to different management themes, the proposed rule creates greater potential for reductions in scenic integrity compared to the 2001 rule but lower potential relative to existing plans. The proposed rule assigns 5.5 million acres to management themes (GFRG, backcountry) that permit activities that could trigger moderate reductions in scenic integrity. Theme assignments under existing plans create potential for triggering similar integrity reductions on 5.9 million acres. Potential reductions would be moderated under the backcountry theme due to more restrictive management requirements relative to GFRG. There is little potential for reductions in scenic integrity under the 2001 rule. Reasonably foreseeable reductions in

scenic integrity from timber cutting are limited to those resulting from projected harvest levels. Foreseeable reductions in scenic integrity from high to low levels from long-term development (50+ years) of unleased phosphate reserves are similar for the proposed rule (12,100 acres) and existing plans (13,400 acres) and confined to the Caribou Targhee National Forest. Reductions in scenic integrity associated with development of existing phosphate leases are similar across the three alternatives.

The proposed rule does not directly affect wilderness designations in the context of the National Wilderness Preservation System, but the changes in activities permitted within Idaho Roadless Areas under the proposed rule have the potential to affect the degree to which Idaho Roadless Areas are considered for future wilderness designation. Reductions in wilderness characteristics are most likely to occur in areas assigned to the GFRG theme (1.262 million acres under existing plans; 609,500 acres under the proposed rule). Activities may not change wilderness characteristics if the effects of prior activities are still evident within GFRG areas. Acreage recommended for wilderness increases from 1,320,900 under existing plans (that is, current wilderness recommendations) to 1,378,600 under the proposed rule, primarily through assignment of areas to the wild land recreation theme. A vast majority of acreage is likely to retain existing wilderness characteristics under the 2001 rule, and no changes occur regarding recommended wilderness under the 2001 rule.

No measurable differences in dispersed recreation opportunities are expected across alternatives. Losses in dispersed recreation associated with development of existing phosphate leases are equal for all alternatives; development of future leases will affect opportunities but not within 15 years (that is, >50 years). Perceptions of remoteness and solitude may be affected in dispersed recreation areas where timber cutting and road construction occur, but effects are constrained by projected levels of these activities.

Opportunities for developed recreation are limited under the proposed rule but increase to some extent under existing plans, though reasonably foreseeable development is minimal. Opportunities for maintaining dispersed recreation opportunities are high under the 2001 rule, with little potential for increases in developed recreation opportunities. Concerns about access and designations for motorized versus non-motorized recreation were raised in comments

during scoping, however, the proposed rule does not provide direction on where and when off highway vehicle (OHV) use would be permissible and makes clear that travel planning-related actions should be addressed through travel management planning and individual forest plans.

The potential for adverse effects to plant, wildlife, and aquatic species and habitat is lower under the proposed rule, compared to existing plans due to fewer acres assigned to more permissive themes. However, reasonably foreseeable effects are constrained by projected levels of road construction/reconstruction, timber cutting, and leasable minerals activity over the next 15 years. Acreage assigned to wild land, primitive, and SAHTS themes should have a beneficial effect on sensitive species and habitat. Acreage under these themes contains 289 occurrences of known sensitive plant populations (out of a total of 666) compared to 293 occurrences on similar themes under existing plans. The management prescriptions under the 2001 rule are likely to have beneficial effects on sensitive species, as well as biodiversity.

Road building associated with timber cutting will have a negligible effect on high hazard soils under all alternatives. Road building is likely to affect high hazard soils in areas associated with existing phosphate leases but effects are equivalent across alternatives. Similar effects associated with future leases are possible but not likely to occur within the next 15 years under the proposed rule and existing plans (future leases are not feasible under the 2001 rule).

The proposed rule is expected to have negligible adverse effects on other resources associated with roadless characteristics including cultural resources, air, water, climate change, non-timber products, and outfitter and guide opportunities based on reasonably foreseeable activity projections. Any adverse impacts to these resources and services would be addressed through analysis conducted in accordance with NEPA and minimized through compliance with forest plan guidelines.

Agency Costs and Revenues

Agency costs and revenues are summarized in Table 1. Aggregate timber program costs under the

proposed rule are expected to be greater than costs under the 2001 rule and lower than costs under existing plans when considering projected levels of timber cutting. Treatment costs per acre are expected to be lower under the proposed rule and existing plans compared to the 2001 rule due to greater flexibility regarding treatment methods under the GFRG theme. Greater acreage assigned to GFRG under existing plans implies potential for some gains in treatment cost effectiveness relative to the proposed rule. Lower costs imply greater capacity for generating viable sales and positive net revenues for a given project. Net revenues may increase under the proposed rule relative to the 2001 rule, primarily for the Idaho Panhandle NF and the Northern economic area (EA) based on projected levels of timber cutting. However, net revenues may decrease under the proposed rule when compared to revenues generated by projected timber cutting under existing plans for the Idaho Panhandle, Clearwater, and Nez Perce National Forests.

Projected total miles of new roads (constructed and reconstructed) are 15, 180, and 60 miles over the next 15 years under the 2001 rule, existing plans, and the proposed rule respectively. Today, approximately 1,800 miles of roads (include forest, other public, private, and unauthorized roads) exist on 5% of the land within Idaho Roadless Areas. Agency costs related to roads (e.g., administration, planning, maintenance) are not likely to change significantly under the proposed rule based on projected construction/reconstruction levels, and due to the types of roads constructed (such as, temporary, single-purpose).

Distributional Effects

The distributional effects of the proposed rule are quantified for reasonably foreseeable levels of timber cutting and road construction projected to occur over the next 15 years (see Table 2). The majority of employment and income impacts are projected to occur in the southeastern EA (due to leasable minerals), the northern EA (due to timber cutting), and to some extent in the central EA. Predicted amounts of phosphate output from Idaho Roadless Areas are not expected to differ across

alternatives over the next 15 years, implying that jobs and labor income contributed by phosphate activities are constant across alternatives.

Phosphate mining on existing leases is estimated to contribute the greatest number of jobs and income, but jobs from this sector will not differ by alternative. Timber cutting is primarily responsible for differences in jobs and income across alternatives. Projected harvest and accompanying road construction under the proposed rule is estimated to contribute an additional 80 jobs and \$1.6 million in income per year, relative to conditions under the 2001 rule. These changes are expected to occur in the northern (Idaho Panhandle NF) and southeastern (Caribou/Targhee NF) economic areas. In contrast, annual employment and income are estimated to be lower under the proposed rule compared to existing plans by 221 jobs and \$6 million in labor income. These effects are likely to occur within the northern, southeastern, and central (Clearwater NF) economic areas.

Timber-dependent counties where changes in harvest opportunities and corresponding jobs and income may have the most significant impact on local economies are identified by economic area. Nine counties are identified for the northern EA, while five such counties are located in the central EA, one of which is located in the State of Washington. One additional county is located in the southeastern EA. Little or no potential for adverse impacts to the local economy is predicted for these counties under the proposed rule relative to the 2001 rule, but some potential for adverse impacts exists compared to existing plans.

Payments to counties are expected to remain the same under all alternatives as long as the Secure Rural Schools and Community Self-Determination Act (SRSA) remains in effect. If SRSA is allowed to lapse, the timber-dependent counties noted above are likely to experience the greatest loss. Mineral-based payments to states are a function of receipts from leasable minerals, including receipts from phosphate operations, but no differences in phosphate production are projected across alternatives.

TABLE 1.—SUMMARY OF NET BENEFITS OF THE PROPOSED RULE AND ALTERNATIVES

Category	2001 Roadless rule	Existing plans	Proposed rule
LOCAL RESOURCE CONCERNS			
Forest Health			
Insects and Disease	Most of the 1.4 million acres currently at risk of 25% mortality or significant growth loss will remain untreated.	Opportunities for treatment under GFRG and backcountry themes: • 190,000 acres of high risk (9) forest assigned to GFRG. • 730,000 acres of high risk forest assigned to backcountry. Projected treatments on 42,000 acres likely to be effective over 15 years.	Opportunities for treatment under GFRG and backcountry themes: • 26,000 acres of high risk (9) forest assigned to GFRG. • 940,000 acres of high risk forest assigned to backcountry. Backcountry treatments must be for forest health and/or hazardous fuels reductions, and retain roadless characteristics. Projected treatments on 12,000 acres likely to be effective over 15 years.
Noxious Weeds	Spreading is unlikely given limited potential for soil disturbance. 28,000 acres of weeds currently found in Idaho Roadless Areas.	Some potential for spreading based on acreage assigned to GFRG (1.262 million); the limited degree of projected road construction, timber cutting, and mineral activity will minimize the potential for spreading. 8,300 acres of weeds currently found in GFRG.	Some potential for spreading based on acreage assigned to GFRG (609,500 acres); the limited degree of projected construction, harvest and mineral activity would minimize the potential for spreading. 2,600 acres of noxious weeds currently found in GFRG.
Fuel Management	Road construction not permitted in conjunction with treatments on 100% of wildland urban interface (WUI). Treatments more expensive; insignificant acreage treated relative to acres at risk. Limited capacity to treat high priority condition class 2 and 3 areas. Does not directly permit timber cutting to reduce risk of unwanted wildland fire.	Road construction permitted in conjunction with treatments on 69% of the WUI. Mechanical treatments without road construction may be permitted on 22% of the WUI. Mechanical treatments not permitted on 9% of the WUI (7). Projected harvests could treat 14% of high priority areas (i.e., fire regimes I, II, and III, condition class 2 and 3) within WUIs or 1% of high priority areas overall. May permit timber cutting to reduce risk of unwanted wildland fire.	Road construction permitted in conjunction with treatments on 71% of the wildland urban interface (WUI). Mechanical treatments, without road construction may be permitted on 19% of the WUI. Mechanical treatments not permitted on 10% of the WUI (7). Projected harvests could treat 5% of high priority areas (Fire Regimes I, II and III, Condition Class 2 and 3) within WUIs or less than half a percent of high priority areas overall. Directly permits timber cutting to reduce risk of unwanted wildland fires in the primitive, backcountry, and GFRG themes.
Timber Cutting—Projected			
Projected timber cutting	0.5 MMBF/year (0.5% of annual average)(1)	14 MMBF/year (11.5% of annual average)(1)	4 MMBF/year. (3% of annual average)(1).
Vegetation and Fuels Treatments ...	100 acres/year 1,500 acres over 15 years	2,800 acres/year 42,000 acres over 15 years	800 acres/year. 12,000 acres over 15 years.
Roads—Projected (miles per year)			
Permanent—Constructed	0.8	4.8	0.8.
Temporary—Constructed	0.2	2.2	1.7.
Reconstructed	0	5	1.5.
Total New Roads	1.0	12	4.0
	(15 miles over 15 years)	(180 miles over 15 years)	(60 miles over 15 years).
Decommissioned	1	4	3.
Net Road Miles	0	8	1.
		(120 miles over 15 years)	(15 miles over 15 years).

TABLE 1.—SUMMARY OF NET BENEFITS OF THE PROPOSED RULE AND ALTERNATIVES—Continued

Category	2001 Roadless rule	Existing plans	Proposed rule
Leasable Minerals			
Leasable Resources: Phosphate (existing leases).	Projected output is equal across all alternatives because (i) none of the alternatives prohibit road construction and reconstruction associated with existing leases and (ii) existing leases are expected to meet demand in reasonably foreseeable future. Approximately 2 million tons per year of phosphate ore projected to be mined from approximately 8,100 Idaho Roadless Area acres under existing leases under all alternatives over an extended period of 15 years or more (6).		
Leasable Resources: Phosphate (future leases).	Opportunities to recover phosphate from unleased known phosphate areas within Idaho Roadless Areas are negligible.	Estimated 603 million tons of phosphate deposits from 13,400 unleased acres available for development. Development projected to occur only over extended period, over 50+ years. Development could reduce Idaho Roadless Areas acreage on Caribou-Targhee by 1.8%.	Estimated 545 million tons of phosphate deposits from 12,100 unleased acres available for development (road construction prohibited on primitive theme acres). Development projected to occur only over extended period, over 50+ years. Development could reduce Idaho Roadless Areas acreage on Caribou-Targhee by 1.7%.
Leasable Resources: Geothermal Development.	Trend data not available to speculate about reasonably foreseeable geothermal development across alternatives. Current lease applications could affect approximately 7,000 acres within Idaho Roadless Areas.		
	Negligible opportunities for development.	No opportunities on 40% of acreage. Limited opportunities on 46% of acreage. Open or unrestricted opportunities on 14% of acreage (i.e., 1,262 million GFRG acres). 249,500 acres of high geothermal potential located within GFRG acreage with slopes less than 40% (4). 457,700 acres of medium geothermal potential located within GFRG acreage with slopes less than 40% (4).	No opportunities on 93% of Idaho Roadless Areas acreage. Open or unrestricted opportunities on 7% of acreage (i.e., 609,500 GFRG acres). 233,600 acres of high geothermal potential located within GFRG acreage with slopes less than 40% (4). 140,800 acres of medium geothermal potential located within GFRG acreage with slopes less than 40% (4).

Other Resource and Service Areas where Relative Impacts are Insignificant or Negligible Across Alternatives

Livestock Grazing	Differences in activity, revenue, and operating costs are expected to be minimal across alternatives. Existing processes will regulate management direction related to grazing (allotments and permitted use).		
Saleable minerals (sand, stone, gravel, pumice, etc.).	Differences in production of saleable minerals are projected to be minimal across alternatives due to the relative inefficiencies of providing saleable minerals from Idaho Roadless Areas.		
Leasable Resources: Oil, Gas, and Coal.	Differences in activity and revenue associated with oil, gas, and coal development are expected to be minimal based on existing trends and inventories.		
Locatable minerals (gold, silver, lead, etc.).	None of the alternatives affect rights of reasonable access to prospect and explore lands open to mineral entry and develop valid claims under the General Mining Act of 1872.		
Special-Uses: Energy Corridors	None of the proposed corridors designated for oil, gas, and/or electricity under Section 368 of the Energy Policy Act are within Idaho Roadless Areas. Opportunities for non-Section 368 corridors within Idaho Roadless Areas are a function of the themes assigned to the areas proposed for corridor development; differences in opportunities across alternatives cannot be discerned.		

ROADLESS CHARACTERISTICS

Scenery

Scenic Integrity	Potential reductions from high to low quality on 8,100 acres due to existing phosphate leases, across all alternatives.		
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TABLE 1.—SUMMARY OF NET BENEFITS OF THE PROPOSED RULE AND ALTERNATIVES—Continued

Category	2001 Roadless rule	Existing plans	Proposed rule
	High or very high scenic integrity retained on most Idaho Roadless Areas.	Potential for lower scenic quality on 5.5 million acres due to permissions in management prescriptions for timber cutting, road construction/reconstruction and discretionary mineral activities, but reasonably foreseeable losses are small given projections of activities in Idaho Roadless Areas (8). Management prescriptions on remaining 3.8 million acres expected to protect high to very high scenic integrity. Long-term reductions on 13,400 acres are possible from new phosphate leasing within Idaho Roadless Areas (5).	Potential for lower scenic quality on 5.9 million acres due to management theme assignments and associated permissions for timber cutting, road construction/reconstruction and discretionary mineral activities, but reasonably foreseeable losses are small given projections of activities in Idaho Roadless Areas (8). Management prescriptions on remaining 3.4 million acres expected to protect high to very high scenic integrity. Long-term reductions on 12,100 acres are possible from new phosphate leasing within Idaho Roadless Areas (5).
Wilderness			
Existing Wilderness Areas and Experience.	1,726,000 acres of roadless areas located adjacent to existing wilderness. Limited to no indirect effect to wilderness from activities in roadless areas.	158,000 acres of GFRG and 842,000 acres of backcountry located adjacent to existing wilderness. Limited potential for impacts to wilderness experience.	9,000 acres of GFRG and 954,000 acres of backcountry located adjacent to existing wilderness. Limited potential for impacts to wilderness experience.
Recommended Wilderness	No change or effect to recommended wilderness in existing plans.	Existing plans recommend 1,320,900 as wilderness 1,378,600 acres in wild land recreation. • 57,700 acres of additional protection. Some recommended wilderness areas in the Boulder-White Clouds and Winegar roadless areas would be managed as primitive. 6,900 acres in Mallard Larkins would be managed as backcountry.	
Wilderness Characteristics	Majority of roadless areas retain their existing character.	Areas developed could have reduced wilderness character. Activities in GFRG may not change wilderness character if prior activities are still evident.	Areas developed could have reduced wilderness character. Activities in GFRG may not change wilderness character if prior activities are still evident.
Sensitive Species			
Botanical Resources (Biodiversity), Wildlife, and Aquatic Species and Habitat.	Reasonably foreseeable effects to all species from activities on acreage associated with existing phosphate leases apply across all alternatives. All projects and development associated with predicted activities would be subject to NEPA and other regulatory requirements related to monitoring and mitigation for sensitive species.		
	Beneficial effects expected	Beneficial effects expected in wild land recreation, primitive, or SAHTS; Some potential risk of adverse effects in management prescriptions similar to backcountry and GFRG.	Beneficial effects expected in wild land recreation, primitive, or SAHTS; Limited potential risk of adverse effects in backcountry; some potential risk in GFRG.
	Number of Occurrences of Known Sensitive Plant Populations, by Theme		
Wild Land	0	127	141
Primitive	0	166	147
SAHTS	0	0	1
Backcountry	1,165	523	601
GFRG	0	84	10
Forest Plan Special Areas	0	265	265

TABLE 1.—SUMMARY OF NET BENEFITS OF THE PROPOSED RULE AND ALTERNATIVES—Continued

Category	2001 Roadless rule	Existing plans	Proposed rule
Recreation			
Recreation (3)	<p>Relatively high potential for maintaining existing dispersed recreation opportunities; little potential for increasing developed recreation.</p> <p>No measurable change to dispersed recreation opportunities. Feeling of remoteness or solitude may change if timber cutting or road construction/reconstruction occurs (projected 1,500 acres timber cutting and 15 miles of road construction/reconstruction over 15 years.</p> <p>No road construction/reconstruction permitted to access new developed recreations sites (9.3 million acres).</p>	<p>Greatest opportunity for developed and road-based recreation to occur and expand, but magnitude of shift is tempered by limited amount of construction projected to occur.</p> <p>No measurable change to dispersed recreation opportunities, except if unleased phosphate deposits (13,400 acres) are developed. Feeling of remoteness or solitude may change if timber cutting or road construction/reconstruction occurs (projected 42,000 acres timber cutting and 180 miles of road construction/reconstruction over 15 years.</p> <p>Road construction/reconstruction generally permitted to access new developed recreations sites on management prescriptions similar to backcountry and GFRG (5.5 million acres), but there are no foreseeable developments.</p>	<p>Potentially the greatest level of protection for dispersed recreation, foreseeable threats from construction and development are remote.</p> <p>No measurable change to dispersed recreation opportunities, except if unleased phosphate deposits (12,100 acres) are developed. Feeling of remoteness or solitude may change if timber cutting or road construction/reconstruction occurs (projected 12,000 acres timber cutting and 60 miles of road construction/reconstruction over 15 years).</p> <p>Road construction/reconstruction permitted to access new developed recreations sites management in GFRG (.6 million acres), but there are no foreseeable developments.</p>
Special Uses	Reasonably foreseeable differences in effects across alternatives are expected to be minimal given projected levels of road construction and timber cutting. Existing permits unaffected.		
Hunting and Fishing	No effect to opportunities	Opportunities could be affected in locations of phosphate leasing and geothermal development. No effect from timber cutting and limited road construction.	Opportunities could be affected in locations of phosphate leasing and geothermal development. No effect from timber cutting and limited road construction.
Other Resource and Service Areas where Relative Impacts are Negligible or Minimal Across Alternatives			
Cultural Resources	Before management actions taking place on the ground under any alternative or theme, cultural resource inventories and appropriate mitigation are required by law. Differences in risk to cultural resources are not expected to be significant across alternatives due to projected levels of road construction and short-term use and fate of new roads.		
	Low potential for disturbance and vandalism.	Low to moderate potential for disturbance and vandalism.	Low potential for disturbance and vandalism.
Air, Soils, and Water	Projected levels of road construction and timber cutting across alternatives expected to have minimal effect. Levels of prescribed burning will vary to slight extent but subject to strict guidelines for minimizing air impacts. Minimal differences in effects on impaired surface waters (303(d) listed waters) and surface sources of drinking water. Negligible differences in effects on soils from road construction associated with timber cutting. Effects on high hazard soils from road construction associated with phosphate mining are likely, but effects are equivalent across alternatives for existing leases and projected to occur well in the future (>50 years) on the Caribou Targhee NF for unleased areas.		
Climate Change	The magnitude and rapidity of climate change is uncertain, particularly at the finer scales such as Idaho Roadless Areas within forests. Variable impacts across alternatives are therefore not quantified.		
Non-timber products	Current access for the harvest of non-timber products is not expected to change under the proposed rule. Assignment of Idaho Roadless Area acres to themes that restrict road construction may limit access opportunities for some individuals, but construction may also reduce availability of some species. Projected changes in road miles are minimal across alternatives.		
AGENCY COSTS AND REVENUES			
Roads	Reasonably foreseeable differences in agency costs (planning, design, and maintenance) are expected to be small given low road mile construction projections, as well as the fact that new roads will often be temporary and/or single-purpose.		

TABLE 1.—SUMMARY OF NET BENEFITS OF THE PROPOSED RULE AND ALTERNATIVES—Continued

Category	2001 Roadless rule	Existing plans	Proposed rule
Timber Program: Vegetation and Fuels Treatments.	Lowest total acreage projected for treatment, implying low aggregate timber program costs. However, per unit treatment costs are expected to be highest, implying lower probability of viable sales. Potential loss in net revenue for Idaho Panhandle NF relative to the proposed rule (2).	Highest total acreage projected for treatment, implying higher aggregate timber program costs. Per unit treatment costs are expected to be lower, implying higher probability for positive net revenue and viable sales. Potential gain in net revenue for Idaho Panhandle, Clearwater, and Nez Perce NFs, relative to the proposed rule (2).	Intermediate amount of acreage projected for treatment, implying moderate aggregate timber program costs, relative to the 2001 rule and existing plans. Per unit treatment costs are expected to be lower, implying higher probability for positive net revenue and viable sales. Potential gain in net revenue for the Idaho Panhandle NF relative to the 2001 rule, and potential loss in net revenue for the Idaho Panhandle, Clearwater, and Nez Perce NFs, relative to existing plans (2).

- (1) Percentage of average harvest on all National Forest System land within Idaho that occurred between 2002 and 2006. Harvest primarily attributable to stewardship and treatments for forest health and fuels management.
- (2) Projections based on average historic net revenue per unit of harvest and projected harvests. It is recognized that an individual sale within any given forest unit may be below or above cost.
- (3) The proposed rule does not provide direction on where and when OHV use would be permissible.
- (4) Lease approvals subject to NEPA and other regulatory requirements. Acceptable slopes for leasing likely to be <4%.
- (5) Upon completion of mining, scenic levels would be upgraded to a level commensurate with reclamation implemented.
- (6) 1,100 acres under existing leases are likely to be mined in 15 years in Sage Creek and Meadow Peak Idaho Roadless Areas, with the remaining acres (7,000) expected to be mined over a more extended period.
- (7) Includes land in forest plan special use areas.
- (8) Reductions from high/very high to moderate scenic integrity.
- (9) 25% or more tree mortality can be expected over the next 15 years.

TABLE 2.—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE PROPOSED RULE AND ALTERNATIVES

Category	2001 Roadless rule	Existing plans	Proposed rule
Timber Cutting			
Jobs (1)	13/yr	304/yr	91/yr.
Labor income (1)	\$343,000/yr	\$7,651,000/yr	\$1,935,000/yr.
Location of Jobs: BEA	Northern EA (Idaho Panhandle NF).	Northern (Idaho Panhandle), southeastern (Caribou/Targhee NF), and central (Clearwater and Nez Perce NF) EAs.	Northern (Idaho Panhandle), and southeastern (Caribou/Targhee NF) EAs.
Economic Areas (EA)			
Leasable Minerals Phosphate			
Jobs and labor income (1)	No changes in jobs (582/year) or labor income (\$23.5 million/yr) contributed by phosphate extraction on existing leases within Idaho Roadless Areas, because none of the alternatives affect existing leases.		
	No new leases on Idaho Roadless Area likely to be feasible.	Jobs and income from new leases on unleased phosphate reserve areas within Idaho Roadless Areas in the southeastern EA are expected to occur over an extended period (>50 yrs).	Jobs and income from new leases on unleased phosphate reserve areas within Idaho Roadless Areas in the southeastern EA are expected to occur over an extended period (>50 yrs).
Road Construction and Reconstruction			
Jobs (1)	2/yr	12/yr	4/yr.
Labor income (1)	\$100,000/yr	\$467,000/yr	\$150,000/yr.
Location of Jobs: BEA	Northern and southeastern EAs ..	Northern, southeastern, and central EAs.	Northern and southeastern EAs.
Economic Areas (EA)			
Revenue Sharing and Resource Dependent Communities			
Timber-Dependent Counties (2)	Northern EA: Boundary, Bonner, Kootenai, Benewah, Latah, Ferry (WA), Pend Oreille (WA), Shoshone, and Stevens (WA). Central EA: Clearwater, Idaho, Lewis, Nez Perce, and Asotin (WA). Southeastern EA: Bear Lake.		

TABLE 2.—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE PROPOSED RULE AND ALTERNATIVES—Continued

Category	2001 Roadless rule	Existing plans	Proposed rule
Revenue Sharing	Payments to counties are expected to remain the same under all alternatives as long as the Secure Rural Schools and Community Self-Determination Act remains in effect. If SRSA is allowed to lapse, timber-dependent counties are likely to experience the greatest loss. Mineral-based payments to states are a function of leasable receipts, but no differences in phosphate production are projected across alternatives over the next 15 years.		
Adverse Impacts to Small Entity Opportunities.	Greatest potential, given restrictions associated with the backcountry theme.	Least potential, given fewest management theme restrictions.	Lower potential relative to the 2001 rule, and potential for some isolated impacts (e.g., northern and central EAs) relative to existing plans.

(1) Jobs and income contributed annually (2007\$). Based on projected levels of timber cutting, road construction, and phosphate mining output per year, conversion of physical output to final demand (\$) using FEAST (citation), and application of IMPLAN multipliers (Minnesota IMPLAN Group 2003).

Counties where 10% of total labor income is attributable to timber-related sectors. Little or no potential for adverse impacts to the local economy is predicted for these counties under the proposed rule relative to the 2001 rule but some potential for adverse impacts exists compared to existing plans. Changes in jobs and income are not projected for phosphate mining, but counties dependent on phosphate mining include Caribou, Oneida, Power, and Bannock in the southeastern EA.

Proper Consideration of Small Entities

This proposed rule has also been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The Forest Service with the assistance of the State has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the E.O. 13272 and SBREFA. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

For many activities and/or program areas, small entity opportunities under the proposed rule are projected to increase, relative to the 2001 rule because of easing of restrictions on selected activities under the backcountry management theme and adoption of the less-restrictive GFRG management theme for a number of Idaho Roadless Areas under the proposed rule. Exceptions include the potential for losses in small entity opportunities associated with timber cutting in the northern and central EAs, relative to existing plans. However, recent harvests from Idaho Roadless Areas, as represented by projected harvests under the 2001 rule, have been equal to or less than the volumes projected under the proposed rule, and small business shares are being met for the most part for forest units in these EAs. It is unlikely that opportunities for small entities associated with phosphate mining will decrease under the proposed rule given the size of corporations currently operating mines

in Idaho and flexibility offered by management theme assignments.

Controlling Paperwork Burdens on the Public

This proposed rule does not call for any additional recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use (OMB 0596–0178) and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The Department has considered this proposed rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), Federalism. The Department has made an assessment that the proposed rule conforms with the Federalism principles set out in E.O. 13132; would not impose any compliance costs on the states; and would not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this proposed rule does not have Federalism implications. This proposed rule is based on a petition submitted by the State of Idaho under the Administrative Procedure Act at 5 U.S.C. § 553(e) and pursuant to Department of Agriculture regulations at 7 CFR § 1.28. The State's petition was developed with involvement of local governments. The

State has been a cooperating agency for the development of this proposed rule. State and local governments are encouraged to comment on this proposed rule, in the course of this rulemaking process.

Consultation With Indian Tribal Governments

The United States has a unique relationship with Indian Tribes as provided in the Constitution of the United States, treaties, and federal statutes. These relationships extend to the Federal government's management of public lands and the Forest Service strives to assure that its consultation with Native American Tribes is meaningful, in good faith, and entered into on a government-to-government basis.

On September 23, 2004, President George W. Bush issued Executive Memorandum Government-to-Government Relationship with Tribal Governments recommitting the Federal government to work with federally recognized Native American Tribal governments on a government-to-government basis and strongly supporting and respecting Tribal sovereignty and self-determination.

Management of roadless areas has been a topic of interest and importance to Tribal governments. During promulgation of the 2001 Roadless Rule, Forest Service line officers in the field were asked to make contact with Tribes to ensure awareness of the initiative and of the rulemaking process. Outreach to Tribes was conducted at the national forest and grassland level, which is how Forest Service government-to-government dialog with Tribes is typically conducted. Tribal representatives remained engaged

concerning these issues during the subsequent litigation and rulemaking efforts.

The State's petition identifies that a vital part of its public process in developing its petition were the recommendations and comments received from Native American Tribes. The Governor's office was keenly aware of the spiritual and cultural significance some of these areas hold for the Tribes. The State solicited input from the Coeur D'Alene, Kootenai, Nez Perce, Shoshone-Bannock, and Shoshone-Paiute Tribes. The State and Forest Service have endeavored to reflect those interests and concerns in the proposed rule. Based on that input, the State and Forest Service developed a special theme to recognize and address certain roadless areas with special areas of historic or Tribal significance, including Pilot Knob, the Nimiipuu, and Lewis and Clark Historic Trails.

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," the Department has assessed the impact of this proposed rule on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect Indian Tribal government communities. The proposed rule would establish direction governing the management and protection of Idaho Roadless Areas, however, the proposed rule respects prior existing rights, and it addresses discretionary Forest Service management decisions involving road construction, timber harvest, and some mineral activities. The Department has also determined that this proposed rule does not impose substantial direct compliance costs on Indian Tribal governments. This proposed rule does not mandate Tribal participation in roadless management of the planning of activities in Idaho Roadless Areas. Rather, the Forest Service officials are obligated by other agency policies to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988. It has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this

proposed rule, (1) all State and local laws and regulations that conflict with this proposed rule or that would impede full implementation of this proposed rule will be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) this proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of \$100 million or more by State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order. As explained above and in greater detail in the DEIS, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. The proposed rule does not disturb existing access or mineral rights, restrictions on saleable mineral materials are narrow, and no oil and gas leasing is currently underway or projected for these lands. The proposed rule also provides regulatory mechanism for consideration of requests for modification of restrictions if adjustments are determined to be necessary in the future. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 36 CFR Part 294

National Forests, Recreation areas, Navigation (air), State petitions for inventoried roadless area management.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 294 of Title 36 of the Code of Federal Regulations by adding new subpart C to read as follows:

PART 294—SPECIAL AREAS

Subpart C—Idaho Roadless Area Management

Sec.

294.20 Purpose.

294.21 Definitions.
294.22 Idaho Roadless Areas.
294.23 Road construction and reconstruction in Idaho Roadless Areas.
294.24 Mineral activities in Idaho Roadless Areas.
294.25 Timber cutting, sale, or removal in Idaho Roadless Areas.
294.26 Other activities in Idaho Roadless Areas.
294.27 Scope and applicability.
294.28 List of designated Idaho Roadless Areas.

Subpart C—Idaho Roadless Area Management

Authority: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

§ 294.20 Purpose.

(a) The purpose of this subpart is to provide, in the context of multiple-use management, lasting protection for designated inventoried roadless areas in the national forests in Idaho. These rules set forth the procedures for management of Idaho Roadless Areas notwithstanding any other regulatory provision set forth in part 294.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531), the goal of managing the National Forest System is to sustain in perpetuity the productivity of the land and the multiple uses of its renewable resources. These renewable resources are to be managed so that they are used in the combination that will best meet the needs of the American people.

§ 294.21 Definitions.

The following terms and definitions apply to this subpart.

At-risk Community: As defined under section 101 of the Healthy Forests Restoration Act the term "at risk-community" means an area:

(1) That is comprised of:

(i) An interface community as defined in the notice entitled "Wildland Urban Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire" issued by the Secretary of Agriculture and the Secretary of the Interior in accordance with Title IV of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Pub. L. 106–291); or

(ii) A group of homes and other structures with basic infrastructure and services (such as utilities and collectively maintained transportation routes) within or adjacent to Federal land;

(2) In which conditions are conducive to a large-scale wildland fire disturbance event; and

(3) For which a significant threat to human life or property exists as a result of a wildland fire disturbance event.

Backcountry/restoration theme: An Idaho Roadless Area classification intended to retain undeveloped character, while providing a variety of recreation opportunities and allowing for limited forest health activities including preserving biological strongholds for a variety of species and maintaining or restoring the characteristics of ecosystem composition and structure.

Forest road: As defined at 36 CFR 212.1, a "forest road" means a road wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

General forest, rangeland, and grassland theme: An Idaho Roadless Area classification intended to provide a variety of goods and services as well as a broad range of recreational opportunities and conservation of natural resources.

Idaho roadless areas: Areas designated pursuant to this rule and identified in a set of maps maintained at the national headquarters office of the Forest Service.

Municipal water supply system: As defined under section 101 of the Healthy Forests Restoration Act, the term "municipal water supply system" means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.

Primitive theme: An Idaho Roadless Area classification intended to remain relatively undisturbed by human management activities while allowing for limited forest health activities including preserving biological strongholds for a variety of species and protecting ecological integrity.

Responsible official: The Forest Service line officer with the authority and responsibility to make decisions about protection and management of Idaho Roadless Areas pursuant to this subpart.

Road: As defined at 36 CFR 212.1, a "road" means a motor vehicle route over 50 inches wide, unless identified and managed as a trail.

Road construction and reconstruction: As defined at 36 CFR 212.1, "road construction or reconstruction" means supervising, inspecting, actual building, and

incurrence of all costs incidental to the construction or reconstruction of a road.

Road maintenance: The ongoing upkeep of a road necessary to retain or restore the road to the approved road management objective.

Road realignment: Activity that results in a new location of an existing road or portions of an existing road, and treatment of the old roadway.

Roadless characteristics: Resources or features that are often present in and characterize Idaho Roadless Areas, including:

- (1) High quality or undisturbed soil, water, and air;
- (2) Sources of public drinking water;
- (3) Diversity of plant and animal communities;
- (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;
- (5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation;
- (6) Reference landscapes;
- (7) Natural appearing landscapes with high scenic quality;
- (8) Traditional cultural properties and sacred sites; and
- (9) Other locally identified unique characteristics.

Significant risk: A natural resource condition threatening an at-risk community or municipal water supply system.

Special area of historic or tribal significance theme: An Idaho Roadless Area classification intended to be relatively undisturbed by human management activities in order to maintain unique Tribal or historic characteristics.

Substantially altered portion: An area within an Idaho Roadless Area where past road construction, timber cutting, or other uses have materially diminished the area's roadless characteristics.

Temporary road: As defined at 36 CFR 212.1, a "temporary road" is a road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road and that is not included in a forest transportation atlas.

Wild land recreation theme: An Idaho Roadless Area classification intended to areas show little evidence of human-caused disturbance, and natural conditions and processes are predominant.

§ 294.22 Idaho Roadless Areas.

(a) **Designations.** All National Forest System lands within the State of Idaho

listed in § 294.28 are hereby designated as Idaho Roadless Areas.

(b) **Maps.** The Chief shall maintain and make available to the public a map of each Idaho Roadless Area, including records regarding any corrections or modifications of such maps pursuant to § 294.27(e).

(c) **Management classifications.** Management classifications for Idaho Roadless Areas express a management continuum that includes at one end, a restrictive approach emphasizing passive management and natural restoration approaches, and on the other end, active management designed to accomplish sustainable forest, rangeland, and grassland management. The following management classifications are established:

- (1) Wild Land Recreation,
- (2) Special Areas of Historic or Tribal Significance,
- (3) Primitive,
- (4) Backcountry/Restoration, and
- (5) General Forest, Rangeland, and Grassland

(d) Activities in Idaho Roadless Areas shall be consistent with the applicable management classification listed for each area under § 294.28.

§ 294.23 Road construction and reconstruction in Idaho Roadless Areas.

(a) **Wild land recreation, special areas of historic or tribal significance, or primitive.** Road construction and reconstruction are prohibited in Idaho Roadless Areas listed under § 294.28; however, a road may be constructed or reconstructed in an area listed as wild land recreation, special area of historic or Tribal significance, or primitive when provided by statute, treaty, pursuant to reserved or outstanding rights, or other legal duty of the United States.

(b) **Backcountry/restoration.** (1) Road construction and reconstruction are allowed in Idaho Roadless Areas listed under § 294.28 only if the responsible official determines that it meets one or more of the following criteria:

(i) A road is needed to protect public health and safety in cases of significant risk or imminent threat of flood, wildland fire, or other catastrophic event that, without intervention, would cause the loss of life or property; or to facilitate forest health activities permitted under § 294.25(c)(1);

(ii) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, section 311 of the Clean Water Act, or the Oil Pollution Act;

(iii) A road is needed pursuant to statute, treaty, reserved or outstanding

rights, or other legal duty of the United States;

(iv) Road realignment is needed to prevent resource damage that arises from the design, location, use, or deterioration of a forest road and cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for public or private access, natural resource management, or public health and safety;

(v) Road construction is needed to implement a road safety improvement project on a road determined to be hazardous based on accident experience or accident potential on that road; or

(vi) The Secretary of Agriculture determines that a Federal aid highway project, authorized pursuant to Title 23 of the United States Code, is in the public interest or is consistent with the purpose for which the land was reserved or acquired and no other reasonable and prudent alternative exists.

(vii) A road is needed in conjunction with activities permissible under the limited mineral activity exceptions set forth in § 294.24.

(2) Any road constructed pursuant to paragraph (b)(1) of this section must be a temporary road unless the responsible official determines that a forest road meets a criterion set forth in paragraphs (b)(1)(i) through (vii) of this section and the addition of a forest road will not substantially alter roadless characteristics as defined in this proposed rule.

(3) Maintenance of forest or temporary roads is permissible in areas listed as backcountry/restoration in § 294.28.

(c) *General forest, rangeland, and grassland.* (1) A forest or temporary road may be constructed or reconstructed in Idaho Roadless Areas listed in § 294.28 after the necessary environmental analysis is completed.

(2) Maintenance of forest and temporary roads is permissible as provided in § 294.28.

§ 294.24 Mineral activities in Idaho Roadless Areas.

(a) Nothing in this subpart shall be construed as expressly or implicitly restricting mineral leases, contracts, permits, and associated activities (including, but not limited to, access and road construction or reconstruction, surface use, and occupancy) authorized prior to the effective date of the final rule; including any subsequent renewal, reissuance, continuation, extension, or modification, or new legal instruments, for mineral and associated activities on these or adjacent lands. Nothing in this subpart shall affect mining activities

conducted pursuant to the General Mining Law of 1872.

(b) After [final rule effective date], the Forest Service will not authorize sale of common variety mineral materials in Idaho Roadless Areas that are listed to be managed pursuant to wild land recreation, special areas of historic or Tribal significance, or primitive themes.

(c) After [final rule effective date], the Forest Service will not recommend, authorize, or consent to road construction, road reconstruction, or surface occupancy associated with mineral leases in Idaho Roadless Areas that are listed to be managed pursuant to wild land recreation, special areas of historic or Tribal significance, and primitive themes.

(d) After [final rule effective date], the Forest Service will not recommend, authorize, or consent to road construction or reconstruction associated with mineral leases in Idaho Roadless Areas that are listed as backcountry/restoration; except such road construction or reconstruction may be authorized in association with phosphates leasing. Surface use or occupancy without road construction or reconstruction is permissible for all mineral leasing.

(e) After [final rule effective date], the Forest Service may authorize the use or sale of common variety mineral materials, and associated road construction or reconstruction to access these mineral materials, in Idaho Roadless Areas that are listed as backcountry/restoration only if the use of these mineral materials is incidental to an activity otherwise allowed under this proposed rule.

(f) After [final rule effective date], the Forest Service may recommend, authorize, or consent to activities associated with mineral leases in Idaho Roadless Areas that are designated to be managed pursuant to general forest, rangeland, and grassland theme.

(g) Road construction or reconstruction associated with mining activities allowed under this subsection must be conducted in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface disturbances, and complies with all applicable lease requirements, land and resource management plans except as provided in § 294.27(b), regulations, and laws. Roads constructed or reconstructed pursuant to this subsection must be decommissioned when no longer needed or upon expiration of the lease, contract, or permit, whichever is sooner.

§ 294.25 Timber cutting, sale, or removal in Idaho Roadless Areas.

(a) *Wild land recreation.* The cutting, sale, or removal of timber is prohibited unless the responsible official determines:

(1) It is for personal or administrative use, as provided for in 36 CFR part 223; or

(2) It is incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(b) *Special areas of historic or tribal significance, or primitive.* The cutting, sale, or removal of timber is prohibited unless existing roads or aerial harvest systems are used and the responsible official determines that:

(1) The cutting, sale, or removal of timber will maintain or improve one or more of the roadless characteristics as defined in this proposed rule and is needed for one of the following purposes:

(i) To improve threatened, endangered, proposed, or sensitive species habitat; or

(ii) To maintain or restore the characteristics of ecosystem composition and structure or to reduce the significant risk of wildland fire effects.

(2) The cutting, sale, or removal of timber is:

(i) For personal or administrative use, as provided for in 36 CFR part 223; or

(ii) Incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(c) *Backcountry/restoration.* Timber may be cut, sold, or removed if the responsible official determines that one of the following circumstances exists.

(1) The cutting, sale, or removal of timber will maintain or improve one or more of the roadless characteristics as defined in this proposed rule and is needed for one of the following purposes:

(i) To improve threatened, endangered, proposed, or sensitive species habitat; or

(ii) To maintain or restore the characteristics of ecosystem composition and structure or to reduce the significant risk of wildland fire effects.

(2) The cutting, sale, or removal of timber is:

(i) For personal or administrative use, as provided for in 36 CFR part 223;

(ii) Incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(iii) In a substantially altered portion of an Idaho Roadless Area designated as backcountry/restoration, which has been altered due to the construction of

a forest road and subsequent timber cutting. Both the road construction and subsequent timber cutting must have occurred prior to the effective date of this rule.

(d) *General forest, rangeland, and grassland.* Timber may be cut, sold, or removed upon the discretion of the responsible official consistent with the applicable forest plan except as provided in § 294.27(b) after the required site-specific environmental analysis, including public involvement, is completed.

§ 294.26 Other Activities in Idaho Roadless Areas.

(a) *Motorized travel.* Nothing in this subpart shall be construed as expressly or implicitly affecting the current or future management status of existing roads or trails in Idaho Roadless Areas. Decisions concerning the future management and/or status of existing roads or trails in Idaho Roadless Areas under this rule shall be made during the applicable travel management processes.

(b) *Grazing.* Nothing in this subpart shall be construed as expressly or implicitly affecting the current management status of existing grazing allotments in Idaho Roadless Areas. Future road construction or reconstruction associated with grazing operations shall conform to this rule.

(c) *Motorized equipment and mechanical transport.* Nothing in this subpart shall be construed as expressly

or impliedly affecting the current or future management status of the existing use of motorized equipment and mechanical transport in Idaho Roadless Areas. Decisions concerning the future management and/or use of motorized equipment and mechanical transport in Idaho Roadless Areas under this rule shall be made during the applicable forest planning processes.

§ 294.27 Scope and applicability.

(a) This subpart does not revoke, suspend, or modify any permit, contract, or other legal instrument authorizing the occupancy and use of National Forest System land issued prior to [final rule effective date].

(b) The provisions set forth in this subpart shall take precedence over any inconsistent regulatory provision (including, to the extent it has any current legal effect, the regulations contained in subpart B of this part) or land and resource management plan. This subpart does not compel the amendment or revision of any land and resource management plan.

(c) This subpart does not revoke, suspend, or modify any project or activity decision made prior to [final rule effective date].

(d) This subpart is not subject to reconsideration, revision, or rescission in subsequent project decisions or land and resource management plan amendments or revisions undertaken pursuant to 36 CFR part 219.

(e) Correction or modification may occur under the following circumstances:

(1) *Administrative corrections.* The Chief of the Forest Service may issue administrative corrections to the maps of lands identified in § 294.22(b) at any time. Corrections are effective upon public notice. Administrative corrections include, but are not limited to, adjustments that remedy clerical, typographical, mapping errors, or improvements in mapping technology.

(2) *Modifications.* The Chief may add to, remove from, or modify the designations and management classifications listed in § 294.28 based on changed circumstances or public need. If such modification would result in a significant change, public involvement comparable to that required for the promulgation of this rule shall be conducted; that is, notice and comment rulemaking. Factors to be considered in assessing the significance of the modifications include location and size, degree of change, and the purpose of the modification. At least 30 days public notice shall be given prior to any non-significant modification of the classifications of lands listed in § 294.28.

(f) If any provision of the rules in this subpart or its application to any person or to certain circumstances is held invalid, the remainder of the regulations in this subpart and their application remain in force.

§ 294.28 LIST OF DESIGNATED IDAHO ROADLESS AREAS.

Forest	Idaho roadless area	#	Wild land recreation	Primitive	Backcountry restoration	GFRG	SAHTS	Forest plan special areas
Boise	Bald Mountain	019			X			X
Boise	Bear Wallow	125		X				X
Boise	Bernard	029			X			X
Boise	Black Lake	036			X			X
Boise	Blue Bunch	923			X			X
Boise	Breadwinner	006			X			X
Boise	Burnt Log	035			X			X
Boise	Cathedral Rocks	038		X				X
Boise	Caton Lake	912			X	X		X
Boise	Cow Creek	028		X				
Boise	Danskin	002		X				X
Boise	Deadwood	020		X	X			X
Boise	Elk Creek	022			X			X
Boise	Grand Mountain	007			X			X
Boise	Grimes Pass	017			X	X		X
Boise	Hanson Lakes	915	X	X				X
Boise	Hawley Mountain	018		X				
Boise	Horse Heaven	925			X	X		
Boise	House Mountain	001		X				X
Boise	Lime Creek	937		X				
Boise	Lost Man Creek	041		X				X
Boise	Meadow Creek	913			X	X		X
Boise	Mt Heinen	003		X				
Boise	Nameless Creek	034			X			
Boise	Needles	911	X	X	X	X		X
Boise	Peace Rock	026		X	X			X
Boise	Poison Creek	042			X			

§ 294.28 LIST OF DESIGNATED IDAHO ROADLESS AREAS.—Continued

Forest	Idaho roadless area	#	Wild land recreation	Primitive	Backcountry restoration	GFRG	SAHTS	Forest plan special areas
Boise	Poker Meadows	032			X			X
Boise	Rainbow	008		X				X
Boise	Red Mountain	916	X	X	X	X		X
Boise	Reeves Creek	010			X			
Boise	Sheep Creek	005		X				X
Boise	Smoky Mountains	914		X				X
Boise	Snowbank	924		X				
Boise	Steel Mountain	012		X				X
Boise	Stony Meadows Ten Mile/Black	027		X	X			
Boise	Warrior	013	X	X		X		X
Boise	Tennessee	033			X			X
Boise	Whiskey	031			X			
Boise	Whiskey Jack	009		X				
Boise	Whitehawk Mountain	021			X	X		
Boise	Wilson Peak	040		X				
Caribou	Bear Creek	615		X	X	X		X
Caribou	Bonneville Peak	154			X	X		X
Caribou	Caribou City	161	X		X	X		X
Caribou	Clarkston Mountain	159			X	X		
Caribou	Deep Creek	158			X	X		X
Caribou	Dry Ridge	164			X	X		
Caribou	Elkhorn Mountain	156			X	X		
Caribou	Gannett-Spring Creek	111		X	X	X		X
Caribou	Gibson	181			X	X		
Caribou	Hell Hole	168				X		X
Caribou	Huckleberry Basin	165			X	X		
Caribou	Liberty Creek	175			X	X		X
Caribou	Meade Peak	167		X	X	X		X
Caribou	Mink Creek	176			X	X		X
Caribou	Mount Naomi	758	X		X	X		
Caribou	North Pebble	155			X	X		
Caribou	Oxford Mountain	157			X	X		X
Caribou	Paris Peak	177			X	X		
Caribou	Pole Creek	160			X	X		
Caribou	Red Mountain	170		X	X	X		
Caribou	Sage Creek	166			X	X		
Caribou	Schmid Peak	163			X	X		
Caribou	Scout Mountain	152			X	X		X
Caribou	Sherman Peak	172			X	X		
Caribou	Soda Point	171			X	X		X
Caribou	Station Creek	178			X	X		
Caribou	Stauffer Creek	173			X			
Caribou	Stump Creek	162		X	X	X		X
Caribou	Swan Creek	180			X			
Caribou	Telephone Draw	169			X	X		X
Caribou	Toponce	153		X	X	X		
Caribou	West Mink	151			X	X		X
Caribou	Williams Creek	174			X	X		X
Caribou	Worm Creek	170			X	X		X
Challis	Blue Bunch Mountain	923			X			
Challis	Borah Peak	012	X		X			
Challis	Boulder-White Clouds	920	X		X			
Challis	Camas Creek	901			X			
Challis	Challis Creek	004			X			
Challis	Cold Springs	026			X			
Challis	Copper Basin	019			X			
Challis	Diamond Peak	601			X			X
Challis	Greylock	007			X			
Challis	Grouse Peak	010			X			
Challis	Hanson Lake	915			X			
Challis	Jumpoff Mountain	014			X			
Challis	King Mountain	013			X			
Challis	Lemhi Range	903			X			X
Challis	Loon Creek	908			X			
Challis	Pahsimeroi Mountain	011			X			
Challis	Pioneer Mountains	921	X		X			X
Challis	Prophyry Peak	017			X			
Challis	Railroad Ridge	922			X			
Challis	Red Hill	027			X			
Challis	Red Mountain	916			X			

§ 294.28 LIST OF DESIGNATED IDAHO ROADLESS AREAS.—Continued

Forest	Idaho roadless area	#	Wild land recreation	Primitive	Backcountry restoration	GFRG	SAHTS	Forest plan special areas
Challis	Seafoam	009			X			
Challis	Spring Basin	006			X			
Challis	Squaw Creek	005			X			
Challis	Taylor Mountain	902			X			
Challis	Warm Creek	024			X			
Challis	White Knob	025			X			
Challis	Wood Canyon	028			X			
Clearwater	Bighorn-Weitas	306			X		X	X
Clearwater	Eldorado Creek	312			X		X	
Clearwater	Hoodoo	301	X				X	
Clearwater	Lochsa Face	311		X	X			X
Clearwater	Lolo Creek (LNF)	805			X			
Clearwater	Mallard-Larkins	300	X		X			
Clearwater	Meadow Creek—Upper North Fork	302			X			
Clearwater	Moose Mountain	305			X			
Clearwater	North Fork Spruce—White Sand	309	X	X	X			
Clearwater	North Lochsa Slope	307		X	X		X	X
Clearwater	Pot Mountain	304			X			X
Clearwater	Rackliff-Gedney	841			X			X
Clearwater	Rawhide	313			X			
Clearwater	Siwash	303			X			
Clearwater	Sneakfoot Meadows	314	X	X	X			X
Clearwater	Weir-Post Office Creek	308			X		X	X
Idaho Panhandle	Beetop	130			X			
Idaho Panhandle	Big Creek	143			X			
Idaho Panhandle	Blacktail Mountain	122			X			X
Idaho Panhandle	Blacktail Mountain	161			X			
Idaho Panhandle	Buckhorn Ridge	661			X			
Idaho Panhandle	Continental Mountain	004			X			
Idaho Panhandle	East Cathedral Peak	131			X	X		X
Idaho Panhandle	East Fork Elk	678				X		
Idaho Panhandle	Gilt Edge-Silver Creek	792			X			
Idaho Panhandle	Graham Coal	139			X			X
Idaho Panhandle	Grandmother Mountain	148	X		X			X
Idaho Panhandle	Hammond Creek	145			X			
Idaho Panhandle	Hellroaring	128				X		
Idaho Panhandle	Katka Peak	157			X	X		
Idaho Panhandle	Kootenai Peak	126				X		
Idaho Panhandle	Little Grass Mountain	121			X			
Idaho Panhandle	Lost Creek	137			X			X
Idaho Panhandle	Magee	132			X	X		X
Idaho Panhandle	Mallard-Larkins	300	X		X	X	X	X
Idaho Panhandle	Maple Peak	141			X			
Idaho Panhandle	Meadow Creek-Upper N. Fork	302			X			X
Idaho Panhandle	Midget Peak	151			X			X
Idaho Panhandle	Mosquito-Fly	150			X			X
Idaho Panhandle	Mt. Willard-Lake Estelle	173			X			X
Idaho Panhandle	North Fork	147			X			X
Idaho Panhandle	Packsaddle	155			X			
Idaho Panhandle	Pinchot Butte	149			X			
Idaho Panhandle	Roland Point	146			X			
Idaho Panhandle	Saddle Mountain	154			X			
Idaho Panhandle	Salmo-Priest	981	X					X
Idaho Panhandle	Schafer Peak	160			X	X		
Idaho Panhandle	Scotchman Peaks	662	X		X	X		X
Idaho Panhandle	Selkirk	125	X	X	X	X		X
Idaho Panhandle	Sheep Mountain-State Line	799			X			X
Idaho Panhandle	Skitwish Ridge	135			X			
Idaho Panhandle	Spion Kop	136			X			X
Idaho Panhandle	Stevens Peak	142			X			
Idaho Panhandle	Storm Creek	144			X			
Idaho Panhandle	Tepee Creek	133			X			X
Idaho Panhandle	Trestle Peak	129			X			
Idaho Panhandle	Trouble Creek	138			X			X
Idaho Panhandle	Trout Creek	664			X			X
Idaho Panhandle	Upper Priest	123			X	X		X
Idaho Panhandle	White Mountain	127			X			
Idaho Panhandle	Wonderful Peak	152			X			
Kootenai	Mt. Willard-Lake Estelle	173			X			X

§ 294.28 LIST OF DESIGNATED IDAHO ROADLESS AREAS.—Continued

Forest	Idaho roadless area	#	Wild land recreation	Primitive	Backcountry restoration	GFRG	SAHTS	Forest plan special areas
Kootenai	Roberts	691			X			
Kootenai	Scotchman Peaks	662			X	X		
Kootenai	West Fork Elk	692			X			
Nez Perce	Clear Creek	844			X			
Nez Perce	Dixie Summit—Nut Hill	235			X			X
Nez Perce	East Meadow Creek	845		X				X
Nez Perce	Gospel Hump	921			X			
Nez Perce	Gospel Hump Adjacent to Wilderness.				X			
Nez Perce	John Day	852			X			
Nez Perce	Lick Point	227			X			
Nez Perce	Little Slate Creek	851			X			
Nez Perce	Little Slate Creek North	856			X			X
Nez Perce	Mallard	847			X			
Nez Perce	North Fork Slate Creek	850			X			
Nez Perce	O'Hara—Falls Creek	226			X			X
Nez Perce	Rackliff—Gedney	841			X			X
Nez Perce	Rapid River	922		X				X
Nez Perce	Salmon Face	855			X			
Nez Perce	Selway Bitterroot (new)			X				
Nez Perce	Silver Creek—Pilot Knob	849					X	
Nez Perce	West Fork Crooked River (new)				X			
Nez Perce	West Meadow Creek	845			X			X
Payette	Big Creek Fringe	009			X			X
Payette	Caton Lake	912			X			X
Payette	Chimney Rock	006			X			X
Payette	Cottontail Point/Pilot Peak	004		X	X			X
Payette	Council Mountain	018		X				X
Payette	Crystal Mountain	005			X			X
Payette	Cuddy Mountain	016		X		X		X
Payette	French Creek Hells Canyon/7 Devils.	026		X	X	X		X
Payette	Scenic	001		X				X
Payette	Horse Heaven	925			X			
Payette	Indian Creek	019		X				
Payette	Meadow Creek	913			X			
Payette	Needles	911	X	X	X			
Payette	Patrick Butte	002		X	X			X
Payette	Placer Creek	008		X	X			X
Payette	Poison Creek	042			X			
Payette	Rapid River	922		X				X
Payette	Secesh	010	X	X	X			X
Payette	Sheep Gulch	017			X			
Payette	Smith Creek	007		X				
Payette	Snowbank	924		X				
Payette	Sugar Mountain	014			X			
Salmon	Agency Creek	512			X			
Salmon	Allan Mountain	946			X			X
Salmon	Anderson Mountain	942			X			
Salmon	Blue Joint Mountain	941		X				
Salmon	Camas Creek	901			X			
Salmon	Deep Creek	509			X			
Salmon	Duck Peak	518			X			X
Salmon	Goat Mountain	944			X			
Salmon	Goldbug Ridge	903			X			
Salmon	Haystack Mountain	507			X			
Salmon	Italian Peak	945			X			
Salmon	Jesse Creek	510			X			
Salmon	Jureano	506			X			
Salmon	Lemhi Range	903			X			X
Salmon	Little Horse	514			X			
Salmon	Long Tom	521			X			
Salmon	McEleny	505			X			
Salmon	Musgrove	517			X			
Salmon	Napias	515			X			
Salmon	Napoleon Ridge	501				X		X
Salmon	Oreana	516			X			
Salmon	Perreau Creek	511				X		
Salmon	Phelan	508			X			
Salmon	Sal Mountain	513			X			

§ 294.28 LIST OF DESIGNATED IDAHO ROADLESS AREAS.—Continued

Forest	Idaho roadless area	#	Wild land recreation	Primitive	Backcountry restoration	GFRG	SAHTS	Forest plan special areas
Salmon	Sheepeater	520			X			X
Salmon	South Deep Creek	509			X			
Salmon	South Panther	504			X			
Salmon	Taylor Mountain	902			X			
Salmon	West Big Hole	943		X	X			X
Salmon	West Panther Creek	504			X			
Sawtooth	Black Pine	003			X			X
Sawtooth	Blackhorse Creek	039		X				
Sawtooth	Boulder-White Clouds	920	X	X	X	X		X
Sawtooth	Buttercup Mountain	038		X	X			
Sawtooth	Cache Peak	007			X	X		
Sawtooth	Cottonwood	010			X			
Sawtooth	Elk Ridge	019		X				
Sawtooth	Fifth Fork Rock Creek	023		X		X		
Sawtooth	Hanson Lakes	915	X	X	X			X
Sawtooth	Huckleberry	016			X			X
Sawtooth	Liberal Mountain	040		X		X		
Sawtooth	Lime Creek	937		X				X
Sawtooth	Lone Cedar	011				X		
Sawtooth	Loon Creek	908			X			
Sawtooth	Mahogany Butte	012				X		
Sawtooth	Mount Harrison	006		X		X		X
Sawtooth	Petit	017			X			X
Sawtooth	Pioneer Mountains	921	X	X	X	X		X
Sawtooth	Railroad Ridge	922			X			X
Sawtooth	Smoky Mountains	914		X	X			X
Sawtooth	Sublett	005		X				
Sawtooth	Third Fork Rock Creek	009		X		X		
Sawtooth	Thorobred	013			X			
Targhee	Bald Mountain	614			X	X		
Targhee	Bear Creek	615			X	X		X
Targhee	Caribou City	161			X			
Targhee	Diamond Peak	601	X	X	X	X		X
Targhee	Garfield Mountain	961		X	X	X		X
Targhee	Garns Mountain	611			X			X
Targhee	Italian Peak	945	X		X	X		X
Targhee	Lionhead	963	X		X			X
Targhee	Mt. Jefferson	962		X	X			X
Targhee	Palisades	613	X		X			X
Targhee	Poker Peak	616		X				
Targhee	Pole Creek	160			X			
Targhee	Raynolds Pass	603			X			
Targhee	Two Top	604		X				
Targhee	West Slope Tetons	610			X			X
Targhee	Winegar Hole	347		X				X
Wallowa-Whitman	Big Canyon Id	853			X			
Wallowa-Whitman	Klopton Creek—Corral Creek Id	854			X			

Dated: December 17, 2007.

Abigail R. Kimbell,

Chief, Forest Service.

[FR Doc. 07-6305 Filed 1-4-08; 8:45 am]

BILLING CODE 3410-11-P

POSTAL SERVICE

39 CFR Part 111

Implementation of Intelligent Mail® Barcodes

AGENCY: Postal Service.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In January 2009, mailers will be required to meet one of two options using Intelligent Mail® barcodes to access automation prices for letters and flats. Automation prices will no longer be available for the use of the POSTNET barcode. This **Federal Register** notice provides advance information to help mailers understand the mail preparation requirements that the Postal Service will propose when using Intelligent Mail® barcodes and offers insight into the additional information that will be available to mailers who comply with these requirements.

DATES: In order to transition to Intelligent Mail® barcodes by January 2009, it is important that we receive

comments to this advance notice February 21, 2008.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260-3436. Written comments may be inspected and photocopied at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington DC between 9 a.m. and 4 p.m. EST, Monday through Friday. Comments and questions can also be e-mailed to imb@usps.gov.

FOR FURTHER INFORMATION CONTACT: William Chatfield, e-mail: william.a.chatfield@usps.gov phone: 202-268-7278; Karen Zachok, e-mail:

karen.zachok@usps.gov phone: 202-268-8779; Uni Han-Norton, e-mail: uni.k.han-norton@usps.gov phone: 202-268-8437.

SUPPLEMENTARY INFORMATION: Given the success of our automation program over the years, the great majority of letters and flats are eligible for automation prices. Therefore, this continuing evolution of our automation program is expected to generate extensive comment. The purpose of this advance notice is to seek such comments so that we can address them as we move forward to the revised requirements for automation prices. A separate rule-making will be issued in the near future to address mail characteristics that impact machinability and delivery efficiency for letters and flats.

Two options will be proposed for using Intelligent Mail® barcodes to obtain access to automation prices. Under the "Full Service" option, mailers will be required to apply Intelligent Mail® barcodes on their letter and flat mailpieces, trays and sacks, and other containers. Mailers will also be required to submit their postage statements and mailing documentation electronically. For drop-ship mailings and all origin-entered mail verified at a detached mail unit (DMU), mailers will be required to schedule appointments using the Facility Access and Shipment Tracking (FAST) system.

Under the "Basic" option, mailers will be required to use the Intelligent Mail® barcode on their letter and flat mailpieces in place of the POSTNET barcode. At a minimum, this barcode will include the same delivery point information that is included in the POSTNET barcode today, an assigned Mailer ID, the class of mail, and optional endorsement line (OEL) information if an OEL is printed on the mailpiece. Mailers using pressure sensitive barcoded presort labels will not be required to include this information in the Intelligent Mail® barcode.

General requirements for the Full Service and Basic options for use of the Intelligent Mail® barcodes will be proposed as follows:

Requirements for Full Service Intelligent Mail® Option

Intelligent Mail® Barcodes

Mailpiece barcode. The 65-bar Intelligent Mail® barcode, which accommodates 31-digits of data, will be required on letter and flat mailpieces. This barcode is used to sort and track letters and flats and will include the delivery point routing code. Unlike the POSTNET barcode that only contains

the routing code, the Intelligent Mail® barcode contains additional fields that encode special services, identify the mailer and the class of mail, and uniquely number the mailpiece. The USPS will issue a Mailer ID to each mailer for use in their Intelligent Mail® barcodes. Mailers must include this USPS-assigned Mailer ID in the Intelligent Mail® barcode. In most circumstances, mailers will be expected to use the mail owner's Mailer ID in all Intelligent Mail® barcodes. Mailers will be required to uniquely number each mailpiece in a mailing and the number cannot be reused for a period of 45 days from the date of induction. Alternatives to this requirement, such as using the same number on all mailpieces in a mailing or the same number on all mailpieces in a handling unit (tray, sack or bundle) may allow for the collection of similarly-detailed data, but will require USPS approval.

Tray barcode. An Intelligent Mail® tray barcode will be required on letter trays, flat trays and sacks. Unlike the current 10-digit tray barcode that only contains routing information, the 24-digit Intelligent Mail® tray barcode includes additional fields to identify the mailer and uniquely number each tray or sack. Mailers will be required to uniquely number each tray or sack in a mailing, and the number cannot be reused for a period of 45 days from the date of induction.

Container barcode. An Intelligent Mail® container barcode will be required on all containers used to transport mail such as pallets, all purpose containers (APCs), rolling stock, gaylords, etc. This 21-digit Intelligent Mail® container barcode includes fields to identify the mailer and uniquely number each container. Mailers will be required to uniquely number each container in a mailing, and the number cannot be reused for a period of 45 days from the date of induction.

Electronic Documentation and Appointment Scheduling Using FAST (Facility Access and Shipment Tracking)

Mailings claiming prices that require minimum volumes must be accompanied by a postage statement and, in most cases, by presort documentation. Mailers typically furnish hard copy postage statements and documentation or supply a computer terminal at their site for USPS acceptance personnel to view their documentation. Several mailers have already transitioned to electronic submission of their postage statements and mailing documentation to the Postal

Service's *PostalOne!*® System using *Mail.dat*®, Wizard Web Services, or Postage Statement Wizard. Mailers will be required to use one of these three methods to send their electronic mailing information to the *PostalOne!*® System if they are meeting the new requirements through the Full Service option. This information-management system translates the customer-generated electronic information into postage statements and supporting documentation, such as qualification and container reports, that are used for business mail verification, acceptance, and induction processes. By submitting documents electronically, mailers will be able to avoid the creation of paper-based forms and use this technology to manage their mailing data.

In addition to the presort documentation required today, the mailer's electronic documentation will contain information about Intelligent Mail® barcodes applied to mailpieces, trays and sacks and containers. The documentation must include the unique Intelligent Mail® barcode applied to each mailpiece in a mailing, the unique Intelligent Mail® tray barcode applied to each tray or sack, as well as the unique Intelligent Mail® container barcode applied to each container in a mailing. The documentation must also describe how mailpieces are linked to handling units, such as trays and sacks, and how mailpieces and handling units are linked to containers. The documentation must also identify the preparer of the mailing and the mailer for whom the mailing is prepared (*i.e.*, mail owner, if applicable). Mailers that otherwise meet the Full Service option standards and use Postage Statement Wizard for mailings that do not require documentation to support presort (mailings of fewer than 10,000 pieces with postage affixed to each piece at the correct rate or if all pieces are of identical weight, the pieces are separated by rate) will not be required to submit this additional documentation.

Mailers will be required to schedule appointments using the FAST (Facility Access and Shipment Tracking) system for drop-ship mailings and for all origin-entered mail verified at a detached mail unit (DMU). Mailers may schedule appointments online using the FAST Web site or they may submit appointment requests through *PostalOne!* FAST Web Services using the Transaction Messaging™ specifications. This convenient messaging protocol allows customers to automate the appointment scheduling process and receive electronic

information about their appointments from the Postal Service.

Requirements for Basic Intelligent Mail® Option

Intelligent Mail® Barcode

The 31-digit Intelligent Mail® barcode will be required on letter and flat mailpieces. Mailers will be required to include the delivery point routing code in the barcode. The USPS will issue a Mailer ID to each mailer for use in the Intelligent Mail® barcodes. Mailers must include this USPS-assigned Mailer ID in all Intelligent Mail® barcodes. In most circumstances, mailers will be expected to use the mail owner's ID in their Intelligent Mail® barcodes. Under this option, mailers will not be required to uniquely number their mailpieces. Mailers will simply populate the Intelligent Mail® barcode with the Mailer ID, delivery point routing code, the class of mail (service type identifier), and optional endorsement line (OEL) if an OEL is printed on the mailpiece. Mailers using pressure sensitive barcoded presort labels will not be required to include this information in the Intelligent Mail® barcode.

Scheduling Using FAST (Facility Access and Shipment Tracking)

Mailers will be required to schedule appointments electronically using the FAST system for drop-ship mailings. Mailers may schedule appointments online using the FAST web site or they may submit appointment requests through *PostalOne!* FAST Web Services using the Transaction Messaging™ specifications.

Additional Available Mailing Information With the Full-Service Option

Implementation of the Intelligent Mail® barcodes and electronic mailing documentation solutions will offer mailers better visibility into the mailstream. The additional fields in the Intelligent Mail® barcodes expand the ability of mailers to track individual pieces, handling units and containers; receive information about mail preparation and address quality; and determine when a mailing was inducted to the postal system.

Mailers that comply with the January 2009 requirement through the Full Service option (Intelligent Mail® barcodes, electronic documentation and appointment scheduling) will receive address correction services, if requested, and mail induction (start-the-clock) information at no additional charge. We understand that some mailers will be

interested in more granular information such as piece, unit, and container tracking and service performance data at a mailing-specific level. We plan to make such information available at an additional charge, either through an existing service such as Confirm or through a service that we develop later.

Descriptions of Intelligent Mail® Barcodes and Electronic Documentation

Types of Intelligent Mail® Barcodes

The Intelligent Mail® program includes the following three Postal Service barcodes that enable the tracking of letter and flat pieces, handling units and containers as they move across the Postal Service network:

- Intelligent Mail® barcode for mailpieces
- Intelligent Mail® tray barcode for handling units (trays and sacks)
- Intelligent Mail® container barcode for containers (pallets, APCs, gaylords, etc.) Each of these barcodes is mailer applied and has a common customer identifier called the Mailer ID which can be used to associate the mailpiece, handling unit or container to the appropriate mailer. Each barcode also has a field which is used to support a serial number allowing mailers to uniquely identify their mailpieces, handling units and containers.

Intelligent Mail® Barcode for Mailpieces

The Intelligent Mail® barcode is a 65-bar USPS barcode used to sort and track letters and flats. It allows the mailer to number each mailpiece so that it can be uniquely identified in the mailing. The Intelligent Mail® barcode contains a USPS-assigned Mailer ID field.

There are two formats of the Intelligent Mail® barcode. The format a mailer will use depends upon the Mailer ID assigned by the Postal Service (see examples of an Intelligent Mail® barcode with a 6-Digit Mailer ID and with a 9-Digit Mailer ID on Postal Explorer at pe.usps.com—click on **Federal Register** Notices in the left frame).

The following fields are embedded in the Intelligent Mail® barcode:

Barcode ID: The barcode identifier is a 2-digit field that is used to specify the presort makeup.

Service Type Identifier: Used to indicate the class of mail and request special services such as tracking or address correction.

Mailer ID: Used to identify mail owners and/or mailing agents. The Mailer ID is assigned by the Postal Service. The Postal Service assigns 6-digit or 9-digit Mailer IDs based upon

the mail volume of the mail owner/ mailing agent. Mail owners and mailing agents will be expected to use the mail owner's Mailer ID in the Intelligent Mail® barcode in most circumstances. Mailer IDs can be obtained by making a request to the *PostalOne!* Help Desk at 800-522-9085.

Serial Number: If a 6-digit Mailer ID is assigned, the mailer will have a 9-digit Serial Number to uniquely identify the mailpieces. If a 9-digit Mailer ID is assigned, the mailer will have a 6-digit Serial Number to identify the mailpieces. To comply with the Full Service option standards, the Serial Number field is populated with a unique number for each mailpiece in the mailing. These unique mailpiece IDs must be maintained unique for 45 days from the date of induction.

To access the automation prices through the Basic option, the minimum information required in the Intelligent Mail® barcode will be the Service Type Identifier (showing class of mail), Mailer ID, delivery point routing code, and OEL information if an OEL is printed on the mailpiece.

To access the automation prices through the Full Service option, the required information in the Intelligent Mail® barcode will be the Service Type Identifier (showing class of mail), Mailer ID, delivery point routing code, OEL information if an OEL is printed on the mailpiece and a unique serial number.

To view the final specifications and for detailed information on how to generate the Intelligent Mail® barcode, access the Intelligent Mail® barcode link from <http://ribbs.usps.gov/>.

Intelligent Mail® Tray Barcode for Trays and Sacks

Today, mailers that prepare their mail in trays and sacks typically use a 10-digit barcode that contains only sorting information on their labels (see example on Postal Explorer at pe.usps.com—click on **Federal Register** Notices in the left frame). A 24-digit Intelligent Mail® tray barcode will be available for mailers that use barcoded tray or sack labels. The Intelligent Mail® tray barcode not only includes routing information but also includes additional fields to identify the mailer and uniquely identify each tray or sack. Use of the Intelligent Mail® tray barcode allows mailpieces bearing Intelligent Mail® barcodes to be linked to the specific tray or sack in which they are placed. The Intelligent Mail® tray barcode is applied to a label called the 10/24 Digit Intelligent Mail® tray label (see example on Postal Explorer at pe.usps.com—click on **Federal Register** Notices in the left frame). The 10/24

Digit Intelligent Mail® tray label is a transitional label which contains the current 10-digit barcode on it as well as the 24-digit Intelligent Mail® tray barcode. The inclusion of the current 10-digit barcode on the label is a transitional strategy as the Postal Service enhances all processing systems to read the 24-digit barcode. Mailers will need to use the new 10/24 Digit Intelligent Mail® tray label to comply with the full service option standards.

There are two formats of the Intelligent Mail® tray barcode. The format a mailer will use depends upon the Mailer ID assigned by the Postal Service (see an example of an Intelligent Mail® tray barcode with a 9-Digit Mailer ID, and with a 6-Digit Mailer ID on Postal Explorer at pe.usps.com).

The following fields are embedded in the Intelligent Mail® barcode:

ZIP Code: Used to identify the destination of the tray or sack.

Content Identifier Number (CIN):

Describes the contents of the tray or sack including presort level and class.

Content Label Source (L SCR): Used to designate that the contents of the tray or sack are automation compatible.

Mailer ID: A 6-digit or 9-digit Mailer ID assigned by the Postal Service for use in the Intelligent Mail® barcodes.

Serial Number: A mailer will use this field to uniquely identify individual trays or sacks. If a 6-digit Mailer ID is assigned, the mailer will have an 8-digit Serial Number to uniquely identify the handling units. If a 9-digit Mailer ID is assigned, the mailer will have a 5-digit Serial Number to uniquely identify the handling units. To participate in the Full Service option, the Serial Number field is populated with a unique number for each handling unit (tray or sack) in the mailing. These unique mailpiece IDs must be maintained unique for 45 days from the date of induction.

Label Type: Indicates the length of the Mailer ID field.

To access the automation prices through the Full Service option, mailers will be required to populate all fields in the Intelligent Mail® tray barcode to include a unique serial number.

To view the final specifications and for detailed information on how to generate the Intelligent Mail® tray barcode, access the Intelligent Mail® tray label link from <http://ribbs.usps.gov/>.

Intelligent Mail® Container Barcode for Pallets, APCs, Rolling Stock

Mailers typically apply a label on containers of mail deposited with the Postal Service. Today, mailers are not required to put a barcode on these labels. The Postal Service has

introduced a label format which includes the Intelligent Mail® container barcode (see both examples on Postal Explorer at pe.usps.com—click on **Federal Register** Notices in the left frame). This barcode includes fields to identify the mailer and uniquely identify the containers. To comply with the Full Service option standards, mailers will need to apply the label to all containers such as pallets, APCs, rolling stock, and gaylords.

The Postal Service is also exploring other modifications to container labeling to improve the visibility and scanning of the barcodes. The proposed changes would require the use of green identifying strips or borders for enhanced visual identification of the Intelligent Mail® container barcode and the application of three labels (increased from the two labels currently required) with one facing the tail of the truck on all drop shipments and plant load mailings. These changes would provide the flexibility needed to scan the barcodes in processing and enhance the ability to locate the barcodes quickly at varying distances.

There are two formats of the Intelligent Mail® container barcode. The format a mailer will use depends upon the Mailer ID assigned by the Postal Service (see examples of an Intelligent Mail® container barcode with a 9-Digit Mailer ID and with a 6-Digit Mailer ID on Postal Explorer at pe.usps.com—click on **Federal Register** Notices in the left frame).

The following fields are embedded in the Intelligent Mail® barcode:

Application ID (AppI ID): “99” indicates the source of the barcode.

Type Indicator: “M” indicates a mailer generated barcode.

Mailer ID: A 6-digit or 9-digit Mailer ID assigned by the Postal Service for use in the Intelligent Mail barcodes.

Serial Number: A mailer will use this field to uniquely identify individual containers. If a 6-digit Mailer ID is assigned, the mailer will have a 12-digit Serial Number to uniquely identify the containers. If a 9-digit Mailer ID is assigned, the mailer will have a 9-digit Serial Number to uniquely identify the containers. To participate in the Full Service option, the Serial Number field is populated with a unique number for each container in the mailing. These unique mailpiece IDs must be maintained unique for 45 days from the date of induction.

To access the automation prices through the Full Service option, mailers will be required to populate all fields in the Intelligent Mail® container barcode to include a unique serial number.

To view the final specifications and for detailed information on how to generate the Intelligent Mail container barcode, access the Intelligent Mail Container barcode link from <http://ribbs.usps.gov/>.

Electronic Documentation

To participate in the Full Service option, mailers will be required to submit their postage statements and mailing documentation, when applicable, electronically using one of three methods: Mail.dat®, Wizard Web Services or Postage Statement Wizard. Electronic information is transmitted to the Postal Service's *PostalOne!* System. The information is used for verification, acceptance, and payment. The *PostalOne!* System can also use this information to automate payment processes using ACH Debit or Credit payment methods. With the *PostalOne!* System, mailers have access to their mailing documentation and financial transaction information 24 hours a day, seven days a week.

Mail.dat: Mail.dat file submission is part of the overall *PostalOne!* application and provides customers with the capability of submitting mailing documents over a secure connection with the Postal Service. Mail.dat uses industry standard electronic file formats developed by IDEAlliance to facilitate communication of mailing information to the Postal Service. Mailing information is sent electronically to the *PostalOne!* System where it is stored and used to generate documentation to support verification and payment.

Wizard Web Service: The Wizard Web Service is part of the overall *PostalOne!* application and provides customers with the capability of submitting mailing documents through the internet using a Web service over a secure connection with the Postal Service. The Wizard Web Service uses a Simple Object Access Protocol (SOAP) to submit information in an Extensible Markup Language (XML) format that ensures that the data can be sent and received by applications written in various languages and deployed on various platforms. Mailing information is sent via Wizard Web Service to the *PostalOne!* system where it is stored and used to generate documentation to support verification and payment.

Postage Statement Wizard: The Postage Statement Wizard is an online tool that allows mailers to enter their postage statement information using a secure *PostalOne!* account. The Postage Statement Wizard verifies completed information for an online postage statement and automatically populates

the Permit Holder section of the postage statement based on the account number provided. It guides the user through the items needed to complete the statement. The Postage Statement Wizard automatically calculates the postage and validates the information entered. Once the postage statement is completed online, the electronic statements will be submitted directly to the acceptance unit.

For detailed information about electronic mailing information options, access <http://www.usps.com/postalone/guides.htm>.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7–25635 Filed 1–4–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0606; FRL–8513–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Allentown-Bethlehem-Easton 8-hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Allentown-Bethlehem-Easton ozone nonattainment Area (referred to also as the “Allentown Area” or “Area”) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Allentown Area is comprised of Carbon, Lehigh, and Northampton Counties. EPA is proposing to approve the ozone redesignation request for the Allentown Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Allentown Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is

proposing to make a determination that the Allentown Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2004–2006. EPA’s proposed approval of the 8-hour ozone redesignation request is based on its determination that the Allentown Area has met the criteria for redesignation to attainment specified in the Clean Air Act (“the Act”). In addition, the Commonwealth of Pennsylvania has also submitted a 2002 base-year inventory for the Allentown Area, and EPA is proposing to approve that inventory for the Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Allentown Area for purposes of transportation conformity, and is proposing to approve those MVEBs. EPA is proposing approval of the redesignation request, the maintenance plan, and 2002 base-year inventory SIP revisions in accordance with the requirements of the Act.

DATES: Written comments must be received on or before February 6, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0606 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:*

fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–0606, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0606. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web

site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental 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:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What Are the Clean Air Actions EPA Is Proposing to Take?

On June 26, 2007, the PADEP formally submitted a request to redesignate the Allentown Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for the Allentown Area as a SIP revision to ensure continued attainment in the Area over the next 11 years. PADEP also submitted a 2002 base-year inventory for the Allentown Area as a SIP revision. On August 9, 2007, PADEP submitted a technical correction to the emission inventory to submit inventory support documents that were omitted from the June 26, 2007 SIP submittal.

The Allentown Area is comprised of Carbon, Lehigh, and Northampton Counties. It is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Allentown Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the Clean Air Act. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Allentown Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Allentown maintenance plan as a SIP revision for the Area (such approval being one of the Act criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the Allentown Area for the next 11 years. EPA is also proposing to approve the 2002 base-year inventory for the Allentown Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Allentown maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for the Area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_x and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_x and VOC are referred to as precursors of ozone. The Clean Air Act establishes a process for air quality management through the

attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Allentown Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Allentown Area (as well as most other areas of the country), effective June 15, 2005. *See* 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); 70 FR 44470 (August 3, 2005).

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 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006) (hereafter "*South Coast*"). 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 DC 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 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 Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that 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 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 that 1-hour conformity determinations are not required for anti-backsliding purposes. Elsewhere in this document, mainly in section VI. B. "The Allentown-Bethlehem-Easton Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and has a Fully Approved SIP Under Section 110(k) of the Act", EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Allentown Area to attainment of the 8-hour ozone NAAQS.

The Clean Air Act, title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Allentown Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Area is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness

as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Allentown Area has a design value of 0.084 ppm for the 3-year period of 2004–2006, using complete, quality-assured data. Therefore, the ambient ozone data for the Allentown Area indicates no violations of the 8-hour ozone standard.

B. The Allentown-Bethlehem-Easton Area

The Allentown Area consists of Carbon, Lehigh, and Northampton Counties in Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, the Allentown Area was a marginal 1-hour ozone nonattainment area. Therefore, the Allentown Area was subject to requirements for marginal nonattainment areas pursuant to section 182(a) of the Act. *See* 56 FR 56694 (November 6, 1991). EPA determined that the Allentown 1-hour ozone nonattainment Area had attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995).

On June 26, 2007, the PADEP requested that the Allentown Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2004–2006, indicating that the 8-hour NAAQS for ozone had been achieved in the Area. The data satisfies the Act requirements that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the Act, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area attained the standard and the area meets the redesignation requirements set forth in section 107(d)(3)(E) of the Act.

III. What Are the Criteria for Redesignation to Attainment?

The Clean Air Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation, providing that:

- (1) EPA determines that the area has attained the applicable NAAQS;
- (2) EPA has fully approved the applicable implementation plan for the area under section 110(k);
- (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from

implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the Clean Air Act, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, June, 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- “Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance

Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;

- “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On June 26, 2007, the PADEP requested redesignation of the Allentown Area to attainment for the 8-hour ozone standard. Simultaneously, PADEP submitted a maintenance plan for the Allentown Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. PADEP also submitted a 2002 base-year inventory concurrently with its maintenance plan as a SIP revision. On August 9, 2007, PADEP submitted a technical correction SIP revision to submit emission inventory support documents that were omitted from the June 26, 2007 SIP submittal. EPA has determined that the Allentown Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the Allentown Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Allentown Area for the next 11 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_x and VOC MVEBs for transportation conformity purposes for the years 2009 and 2018.

Transportation agencies, working in conjunction with Metropolitan Planning Organizations (MPOs) are responsible for making timely transportation conformity determinations. There are two separate MPOs responsible for transportation planning within the

Allentown Area. They are the Lehigh Valley Transportation Study (for Lehigh and Northampton Counties), and the Northeastern Pennsylvania Alliance (NEPA) (for Carbon County). Pennsylvania has established separate motor vehicle emission budgets for each MPO for their respective portion of the Allentown Area. EPA's transportation conformity regulations (40 CFR 93.124(d)) allow a SIP to establish sub-regional motor vehicle emission budgets for each MPO within a nonattainment area if it contains more than one MPO.

These MVEBs are displayed in the following table:

TABLE 1A—ALLENTOWN-BETHLEHEM-EASTON MOTOR VEHICLE EMISSIONS BUDGETS LEHIGH VALLEY TRANSPORTATION STUDY MPO

[(Lehigh and Northampton Counties portion of the Area), in Tons per Summer Day (tpsd)]

Year	VOC	NO _x
2009	20.6	28.9
2018	12.4	12.4

TABLE 1B—ALLENTOWN-BETHLEHEM-EASTON MOTOR VEHICLE EMISSIONS BUDGETS NORTHEAST PENNSYLVANIA ALLIANCE MPO

[(Carbon County portion of the Area), in Tons per Summer Day (tpsd)]

Year	VOC	NO _x
2009	3.4	5.9
2018	2.3	3.0

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the Allentown Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The following is a description of how the PADEP's June 26, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the Act.

A. The Allentown Area Has Attained the 8-Hour NAAQS

EPA is proposing to determine that the Allentown Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of Part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value,

which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Allentown Area, there were three ozone monitors that measured ambient ozone air quality between 2004 and 2006. One of these monitors is located in Lehigh County and two are in Northampton County. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2004–2006 for the Allentown Area. This data has been quality assured and is recorded in the AQS. The PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations for the period from 2004–2006, along with the three-year average, are summarized in Table 2.

TABLE 2.—ALLENTOWN-BETHLEHEM-EASTON AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES [2004–2006]

Monitor/county/AIRS ID	Annual 4th highest reading (ppm)		Average 4th highest reading (ppm)	
	2004	2005	2006	2004–2006
Allentown Monitor, Lehigh County, AQS ID 42–077–0004	0.083	0.086	0.080	0.083
Freemansburg Monitor, Northampton County AQS ID 42–095–0025	0.088	0.086	0.078	0.084
Easton 2 Monitor, Northampton County AQS ID 42–095–8000	0.083	0.080	0.078	0.080

The Area design value for the 3-year period 2004–2006 is 0.084 ppm (based on the Freemansburg Monitor/AQS ID 42–095–0025)

The air quality data for 2004–2006 show that the Allentown Area has attained the standard with a design value of 0.084 ppm. The data collected at the three Allentown Area monitors satisfies the Act requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is below the maximum design value of 0.085 ppm. The PADEP's request for redesignation for the Allentown Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring

in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the Allentown Area has attained the 8-hour ozone NAAQS.

B. The Allentown-Bethlehem-Easton Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has a Fully Approved SIP Under Section 110(k) of the Act

EPA has determined that the Allentown Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of

the Act (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the Act, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approvable with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Allentown Area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the Act. We note that SIPs must be

fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA’s interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant Clean Air Act requirements that came due prior to the submittal of a complete redesignation request. *See also*, Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the Act that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the Act. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section sets forth EPA’s views on the potential effect of the Court’s rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court’s rulings alters any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately 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 light of the Court’s decisions, redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the Act delineates the general requirements for a SIP, which includes enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area’s designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area’s designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area’s attainment status are not applicable requirements for purposes of redesignation. The Allentown Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements which are linked with a particular area’s designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA’s existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See Reading, Pennsylvania*, proposed and final

rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_x SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_x SIP Call rules are not “an ‘applicable requirement’ for purposes of section 110(1) because the NO_x rules apply regardless of an area’s attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS. 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area’s nonattainment status are not applicable for purposes of redesignation. As we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due for the Allentown Area prior to submission of the redesignation request.

2. Part D Nonattainment Requirements Under the 8-Hour Standard

Pursuant to an April 30, 2004, final rule (69 FR 23951), the Allentown Area was designated a basic nonattainment area under subpart 1 for the 8-hour ozone standard. Sections 172–176 of the Act, found in subpart 1 of Part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the Act, found in subpart 2 of Part D, establishes additional specific requirements depending on the area’s nonattainment classification.

With respect to the 8-hour standard, the court’s ruling rejected EPA’s reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA’s longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Allentown Area was classified under subpart 1 and was obligated to meet requirements under subpart 1. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). *See also*, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. *See* 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking, *Sierra Club v. Whitman*, 285 F. 3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to 8-hour subpart 2 requirements, if the Allentown Area initially had been classified under subpart 2, the first two Part D subpart 2 requirements applicable to the Area under section 182(a) of the Act would be: a base-year inventory requirement pursuant to section 182(a)(1) of the Act, and, the emissions statement requirement pursuant to section 182(a)(3)(B).

As stated previously, these requirements are not yet due for purposes of redesignation of the Allentown Area, but nevertheless, Pennsylvania already has in its approved SIP, an emissions statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area and, that satisfies the emissions statement requirement for the 8-hour standard. *See*, 25 Pa. Code 135.21(a)(1), codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base-year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base-year inventory for the Allentown Area, which was submitted on June 26, 2007 (including the August 9, 2007 technical correction SIP revision containing previously omitted inventory support documents), concurrently with its maintenance plan SIP revision. EPA is proposing to approve the 2002 base-year inventory as fulfilling the requirements of both section 182(a)(1) and section 172(c)(3) of the Act. A detailed evaluation of Pennsylvania's 2002 base-year inventory for the Allentown Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking. EPA has determined that the emission inventory and emissions statement requirements for the Allentown Area have been satisfied.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes that the general conformity and NSR requirements do not require approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the Act requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act ("transportation conformity") as well as to all other Federally supported or funded projects ("general conformity"). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the Act required the EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State

conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See, Wall v. EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also*, 60 FR 62748 (December 7, 1995).

In the case of the Allentown Area, EPA has also determined that before being redesignated, the Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D NSR Requirements or Areas Requesting Redesignation to Attainment." Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. *See* the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the Allentown Area the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the Act to ozone attainment areas within the Ozone Transport Region (OTR). The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Allentown Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as reasonably available control technology (RACT), and Vehicle Inspection and Maintenance programs even after redesignation. Second, the section 184

control measures are region-wide requirements and apply to the Allentown Area to address ozone transport—not solely by virtue of the Area's designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

In its June 8, 2007 decision, the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore the Allentown Area must meet the federal anti-backsliding requirements. See 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the Area's classification for the 1-hour ozone NAAQS. As set forth in more detail below, the Area must also address four additional anti-backsliding provisions identified by the Court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after revocation of the 1-hour ozone NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

“The area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.900(f), except as provided in paragraph (a)(1)(iii) of paragraph (b) of this section.”

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that:

Applicable requirements means for an area the following requirements to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the Clean Air Act for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS.

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the Clean Air Act.

(7) Clean fuels for boilers under section 182(e)(3) of the Clean Air Act.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as required by section 182(e)(4) of the Clean Air Act.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the Clean Air Act.

(10) Transportation control measures (TCMs) under section 182(c)(5) of the Clean Air Act.

(11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the Clean Air Act.

(12) NO_x requirements under section 182(f) of the Clean Air Act.

(13) Attainment demonstration or alternative as provided under § 51.905(a)(1)(ii).”

Pursuant to 40 CFR 51.905(c), the Allentown Area is subject to the obligations set forth in §§ 51.905(a) and 51.900(f).

Prior to its designation as an 8-hour ozone nonattainment area, the Allentown Area was designated a marginal nonattainment area for the 1-hour standard. With respect to the 1-hour standard, the applicable requirements under the anti-backsliding provisions at 40 CFR 51.905(a)(1) for the Allentown Area are limited to RACT and I/M programs specified in section 182(a) of the Act and are discussed in the following paragraphs:

Section 182(a)(2)(A) required SIP revisions to correct or amend RACT for sources in marginal areas, such as the Allentown Area, that were subject to control technique guidelines (CTGs) issued before November 15, 1990 pursuant to Clean Air Act section 108. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of the Act (59 FR 65971, December 22, 1994). EPA believes that this requirement applies only to marginal and higher classified areas under the 1-hour NAAQS pursuant to the 1990 amendments to the Act; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 182(a)(2)(B) relates to the savings clause for vehicle inspection and maintenance (I/M). It requires marginal areas that were required to adopt an I/M program prior to 1990 to adopt a program meeting EPA I/M requirements, or to maintain operation of an existing I/M program. Section 182(a)(2)(B) relates to the savings clause for vehicle inspection and maintenance programs. It requires marginal areas to adopt (or if already in effect, to continue operation of) a vehicle I/M program if a program was required to have been in operation prior to November 15, 1990. This provision is applicable to the Allentown area because Northampton and Lehigh Counties had a required I/M program in place prior to November 15, 1990. Therefore, under this provision, the Allentown area was

required to continue to operate an I/M program, in accordance with I/M requirements, after 1990. A separate I/M provision under section 184 of the Act, which requires adoption of an enhanced I/M program to address ozone transport in certain metropolitan areas of the Ozone Transport Region also applies to the Allentown Area and is described below.

In addition the Court held that EPA should have retained four additional measures in its anti-backsliding provisions: (1) Nonattainment area NSR; (2) Section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the Act; and (4) 1-hour motor vehicle emission budgets that were yet not replaced by 8-hour emissions budgets. These requirements are addressed below:

With respect to NSR, EPA has determined that areas being redesignated need not have an approved nonattainment New Source Review program, for the same reasons discussed previously with respect to the applicable Part D requirement for the 8-hour standard.

The section 185 penalty fee requirement was not applicable in the Allentown 1-hour marginal nonattainment Area.

With respect to the requirement for submission of contingency measures for the 1-hour standard, section 182(a) does not require contingency measures for marginal areas.

The conformity portion of the Court's ruling does not impact the redesignation request for the Allentown Area except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour MVEBs, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

Thus EPA has concluded that the area has met all requirements applicable for redesignation under the 1-hour standard.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184

requirements include RACT, NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure.

In the case of the Allentown Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001, EPA approved the 1-hour NSR SIP revision for the Area. See 66 FR 53094 (October 19, 2001).

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. Reading, PA Redesignation, 61 FR 53174, (October 10, 1996), 62 FR 24826 (May 7, 1997). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the Commonwealth remains obligated to

have NSR, as well as RACT and I/M, even after redesignation. Second, the section 184 control measures are region-wide, transport-based requirements that apply to an area not solely by virtue of the area's nonattainment designation and classification. Therefore, these measures are considered not relevant to an action changing an area's designation. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

5. The Allentown-Bethlehem-Easton Area Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p.3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.

3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR at 25425 (May 12, 2003) and citations therein.

C. The Air Quality Improvement in the Allentown-Bethlehem-Easton Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Allentown Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Stationary point	Stationary area	Nonroad mobile	Highway mobile	Total
Volatile Organic Compounds (VOC)					
2002	4.9	28.6	13.6	35.6	82.7
2004	6.4	28.1	13.0	30.5	78.0
Difference (2002 – 04)	+1.5	–0.5	–0.6	–5.1	–4.7
Nitrogen Oxides (NO_x)					
2002	60.0	2.8	13.4	55.1	131.3
2004	58.8	2.9	12.9	48.3	122.9
Difference (2002 – 04)	–1.2	+0.1	–0.5	–6.8	–8.4

Between 2002 and 2004, VOC emissions decreased by 4.7 tpsd from 82.7 tpsd to 78.0 tpsd. During the same period, NO_x emissions decreased by 8.4 tpsd from 131.3 tpsd to 122.9 tpsd. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard. These reductions, as well as anticipated future reductions, are due to the following permanent and enforceable measures.

1. Stationary Point Sources

Federal NO_x SIP Call (66 FR 43795, August 21, 2001).

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003).

Portable Fuel Containers (69 FR 70893, December 8, 2004).

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP).

—Tier 1 Rule (56 FR 25724, June 5, 1991).

—Tier 2 Rule (65 FR 6698, February 10, 2000).

—Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65 FR 59896, October 6, 2000).

National Low Emission Vehicle (NLEV) Program (64 FR 72564, December 28, 1999).

PA Vehicle Emission Inspection/Maintenance Program (70 FR 58313, October 6, 2005).

Changes to Vehicle Safety Inspection Program in non-I/M Counties (70 FR 58313, October 6, 2005).

4. Non-Road Sources

Non-road Diesel Rule (69 FR 38958, June 29, 2004).

D. The Allentown Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the Clean Air Act

In conjunction with its request to redesignate the Allentown ozone nonattainment Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 11 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of Clean Air Act section 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Allentown Area meets the requirements of the Act regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175 of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under

section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the Clean Air Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

- (a) An attainment emissions inventory;
- (b) A maintenance demonstration;
- (c) A monitoring network;
- (d) Verification of continued attainment; and
- (e) A contingency plan.

Analysis of the Allentown-Bethlehem-Easton Area Maintenance Plan

(a) *Attainment inventory*—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2004–2006 as a baseline and accounts for reductions attributable to implementation of the Act requirements to date. The 2004 inventory is consistent with EPA

guidance and is based on actual “typical summer day” emissions of VOC and NO_x during 2004 and consists of a list of sources and their associated emissions.

The 2002 and 2004 point source data was compiled from actual sources. Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data Systems and EPA’s publication series AP–42, and are based on Source Classification Codes (SCC). The 2002 area source data was compiled using county-level activity data, from census numbers, from county numbers, etc. The 2004 area source data was projected from the 2002 inventory using temporal allocations provided by the Mid-Atlantic Regional Air Management Association (MARAMA).

The on-road mobile source inventories for 2002 and 2004 were compiled using MOBILE6.2 and Pennsylvania Department of Transportation (PENNDOT) estimates for VMT. The PADEP has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_x emissions for 2002, as well as for the projection years of 2004, 2009, and 2018 (shown in Tables 5 and 6 below).

The 2002 and 2004 emissions for the majority of non-road emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model calculates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled non-road equipment types and includes growth factors. The NONROAD model does not estimate emissions from locomotives or aircraft. For 2002 and 2004 locomotive emissions, the PADEP

projected emissions from a 1999 survey using national fuel consumption information and EPA emission and conversion factors. Emissions from commercial aircraft for 2002 and 2004 are estimated using EPA-approved Emissions & Dispersion Modeling System (EDMS) 4.20, the latest version available at the time the inventory was prepared. Emissions from commercial aircraft are estimated using EPA-approved Emissions & Dispersion Modeling System (EDMS). Small aircraft emissions were calculated using small airport statistics from the Federal Aviation Administration’s APO Terminal Area Forecast Report and the Web site *www.airnav.com*.

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can found in the Technical Appendices, which are part of the June 26, 2007 state submittal.

(b) *Maintenance Demonstration*—On June 26, 2007, the PADEP submitted a maintenance plan as required by section 175A of the Act. The Allentown Area maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_x remain at or below the attainment year 2004 emissions levels throughout the Area through the year 2018. A maintenance demonstration need not be based on modeling. See *Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. See also, 66 FR at 53099–53100; 68 FR at 25430–25432.

Tables 4 and 5 specify the VOC and NO_x emissions for the Allentown Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_x emissions are not projected to increase above the 2004 attainment level during the time of the maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004	2009	2018
Stationary Point	6.4	5.5	6.6
Stationary Area	28.1	26.7	28.9
Highway Mobile	30.5	24.1	14.7
Nonroad Mobile	13.0	10.3	8.9
Total	78.0	66.6	59.1

TABLE 5.—TOTAL NO_x EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004	2009	2018
Point	58.8	58.3	66.6
Area	2.9	3.1	3.2
Highway Mobile	48.3	34.8	15.4
Nonroad Mobile	12.9	11.0	6.6

TABLE 5.—TOTAL NO_x EMISSIONS FOR 2004–2018 (TPSD)—Continued

Source category	2004	2009	2018
Total	122.9	107.2	91.8

Additionally, the following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- The Clean Air Interstate Rule (71 FR 25328, April 28, 2006).
- The Federal NO_x SIP Call (66 FR 43795, August 21, 2001).
- Portable Fuel Containers Rule (69 FR 70893, December 8, 2004).
- Consumer Products Rule (69 FR 70895, December 8, 2004).
- Architectural and Industrial Maintenance (AIM) Coatings (69 FR 68080, November 23, 2004).
- Federal Light-duty Highway Vehicle Control Program (FMVCP)—Tier 1/Tier 2 Emissions Standards (Model Year 1994/2004); Tier 1—(56 FR 25724, June 5, 1991), Tier 2—(65 FR 6698, February 10, 2000).
- Federal Heavy-duty Diesel Highway Engine Standards (Model Year 2004/2007) / Low-Sulfur Highway Diesel Fuel Standards (2006); (66 FR 5002, January 18, 2001).
- Federal Nonroad Engine Emission Standards (Model Year 2008) and Nonroad Diesel Fuel (2007); (69 FR 38958, June 29, 2004).
- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999).
- PA Vehicle Emission Inspection and Maintenance Program (70 FR 58313, October 6, 2005).
- Changes to Vehicle Safety Inspection Program for Non-I/M Counties (70 FR 58313, October 6, 2005).

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Allentown Area.

(c) *Monitoring Network*—There are three ozone monitors (located in Lehigh and Northampton Counties) that provided monitoring data to support the Commonwealth's ozone maintenance plan for the Allentown area. The Commonwealth has committed to continue to operate its monitoring network in accordance with 40 CFR part 58, with no reduction in the number of sites.

(d) *Verification of Continued Attainment*—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track

the attainment status of the ozone NAAQS in the Area by reviewing air quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of Vehicle Miles Traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. The PADEP will also continue to operate the existing ozone monitoring station in the Area pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system. Section 175A(b) of the Act states that eight years following redesignation of the Allentown Area, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made that commitment to meet the requirement in section 175A(b).

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Allentown Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_x emissions in the Area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_x emissions to decrease and stay below 2004 levels through the year

2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentration at any Allentown Area monitor is above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at any Allentown Area monitor. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and in the Pennsylvania Air Pollution Control Act in order to return the Area to attainment with the standard. Contingency measures to be considered for the Allentown Area will include, but not be limited to the following:

Regulatory measures:

- Additional controls on consumer products.
- Additional controls on portable fuel containers.

Non-Regulatory measures:

- Voluntary diesel engine "chip reflash" (installation software to correct the defeat device option on certain heavy-duty diesel engines).
- Diesel retrofits, including replacement, repowering or alternative fuel use, for public or private local on-road or off-road fleets.
- Idling reduction technology for Class 2 yard locomotives.

- Idling reduction technologies or strategies for truck stops, warehouses and other freight handling facilities.
- Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
- Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The plan sets forth a process to have regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Allentown-Bethlehem-Easton Area Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the Act, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e., reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed “on-road mobile source emission budgets.” Pursuant to 40 CFR part 93 and § 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the Act, new transportation projects, such as the construction of new highways, must “conform” to (i.e., be consistent with) the part of a State’s air quality plan that addresses pollution from cars and trucks. “Conformity” to the SIP means that transportation activities will not

cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein “adequate” for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, the MVEB can be used by state and federal agencies in determining whether proposed transportation projects “conform” to the SIP as required by section 176(c) of the Act. EPA’s substantive criteria for determining “adequacy” of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA’s process for determining “adequacy” consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA’s adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999 guidance, “Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change” on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

Transportation agencies in Pennsylvania are responsible for making timely transportation conformity determinations. There are two metropolitan planning organizations (MPOs) that serve as transportation planning agencies for the Allentown area: The Lehigh Valley Transportation Study (for Lehigh and Northampton Counties), and the Northeastern

Pennsylvania Alliance (NEPA) (for Carbon County). Pennsylvania has established separate motor vehicle emission budgets for each of these MPOs. EPA’s transportation conformity regulations (40 CFR 93.124(d)) allow a SIP to establish separate motor vehicle emission budgets for each MPO if a nonattainment area contains more than one MPO.

The MVEB for the Allentown Area are listed in Table 1 for 2009 and 2018. Table 1 presents the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: the Allentown Area attained the 8-hour ozone NAAQS during the 2004 to 2006 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Allentown Area. The sum total emissions for 2004 for point, area, mobile on-road, and mobile non-road sources for the Area are 78.0 tpsd of VOC and 122.9 tpsd of NO_x. The PADEP projected that total emissions for the year 2018 will be 59.1 tpsd of VOC and 91.8 tpsd of NO_x from all sources in the Area. The Area-wide safety margin for 2018 would be the difference between these amounts, or 18.9 tpsd of VOC and 31.1 tpsd of NO_x. The emissions up to the level of the attainment year, including the safety margins, are projected to maintain the Area’s air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—SAFETY MARGINS FOR ALLENTOWN-BETHLEHEM-EASTON AREA
[(2009 & 2018)]

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2004 Attainment	78.0	122.9
2009 Interim	66.6	107.2
2009 Safety Margin	11.4	15.7
2004 Attainment	78.0	122.9
2018 Final	59.1	91.8
2018 Safety Margin	18.9	31.1

Lehigh Valley Transportation Study MPO MVEB (Lehigh and Northampton Counties)

The PADEP allocated 1.1 tpsd of VOC and 0.8 tpsd of NO_x of the 2009 safety margin to the interim VOC projected on-road mobile source emissions and the 2009 interim NO_x projected on-road mobile source emissions to arrive at the 2009 MVEB to be allocated to the sub-regional portion of the Area covered by the Lehigh Valley Transportation Study MPO (Lehigh and Northampton Counties).

The PADEP also allocated 1.1 tpsd of VOC and 0.8 tpsd of NO_x of the 2018 safety margins to arrive at the 2018

MVEBs to be allocated to the Lehigh and Northampton County portion of the Area covered by the Lehigh Valley Transportation Study MPO.

Northeast Area Pennsylvania Alliance (NEPA) MPO

The PADEP allocated 0.2 tpsd of VOC and 0.1 tpsd of NO_x of the 2009 safety margin to the interim VOC projected on-road mobile source emissions and the 2009 interim NO_x projected on-road mobile source emissions to arrive at the 2009 MVEB to be allocated to the sub-regional portion of the Area covered by the NEPA MPO (Carbon County).

The PADEP also allocated 0.3 tpsd of VOC and 0.2 tpsd of NO_x of the 2018

safety margins to arrive at the 2018 MVEBs to be allocated to the sub-regional portion of the Area covered by the NEPA MPO (Carbon County).

Once allocated to the budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Tables 7 and 8 show the final 2009 and 2018 MVEBs for Allentown Area, including the portion of the each total MVEB that has been allocated to the Lehigh and Northampton Counties sub-regional portion of the Area (served by the Lehigh Valley Transportation Study MPO) and for the Carbon County sub-regional portion of the Area (served by the NEPA MPO).

TABLE 7.—MOTOR VEHICLE EMISSION BUDGETS FOR THE LEHIGH AND NORTHAMPTON COUNTIES PORTION OF THE ALLENTOWN-BETHLEHEM-EASTON AREA (2009 & 2018) *
[Lehigh Valley Transportation Study MPO]

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2009 Projected On Road (Highway) Emissions	19.6	28.1
2009 Safety Margin Allocated to MVEBs	1.1	0.8
2009 MVEBs	20.6	28.9
2018 Projected On Road (Highway) Emissions	11.3	11.6
2018 Safety Margin Allocated to MVEBs	1.1	0.8
2018 MVEBs	12.4	12.4

*PADEP calculates MVEBS using kilograms per summer day, and converts the values to tons per summer day for informational purposes. This may appear to make the totals in the table incorrect, but is merely the result of the rounded tpsd values.

TABLE 8.—MOTOR VEHICLE EMISSION BUDGETS FOR THE CARBON COUNTY PORTION OF THE ALLENTOWN-BETHLEHEM-EASTON AREA (2009 & 2018) *
[Northeastern Pennsylvania Alliance MPO]

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2009 Projected On Road (Highway) Emissions	3.2	5.8
2009 Safety Margin Allocated to MVEBs	0.2	0.1
2009 MVEBs	3.4	5.9
2018 Projected On Road (Highway) Emissions	2.0	2.9
2018 Safety Margin Allocated to MVEBs	0.3	0.2

TABLE 8.—MOTOR VEHICLE EMISSION BUDGETS FOR THE CARBON COUNTY PORTION OF THE ALLENTOWN-BETHLEHEM-EASTON AREA (2009 & 2018) *—Continued

[Northeastern Pennsylvania Alliance MPO]

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2018 MVEBs	2.3	3.0

* PADEP calculates MVEBS using kilograms per summer day, and converts the values to tons per summer day for informational purposes. This may appear to make the totals in the table incorrect, but is merely the result of the rounded tpsd values.

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Allentown Area are approvable because the MVEBs for VOCs and NO_x continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for MVEBs in the Maintenance Plan?

The MVEBs for the Allentown Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and EPA is proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Area's MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Allentown Area MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/index.htm> (from there, click on "Adequacy Review of SIP Submissions").

VIII. Proposed Actions

EPA is proposing to determine that the Allentown-Bethlehem-Easton Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated

Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the Act. EPA believes that the redesignation request and monitoring data demonstrate that the Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Allentown Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Area, submitted on June 26, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Allentown Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Allentown Area, submitted by PADEP on June 26, 2007, along with an August 9, 2007 technical correction to the emissions inventory to submit previously omitted inventory support documents. Finally, EPA is proposing to approve the MVEBs submitted by Pennsylvania for the Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects

the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. 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 proposed 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 proposes to approve 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). Because this action affects the status of a geographical area or allows the state to avoid adopting or implementing other requirements and because this action does not impose any new requirements on sources, this proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 (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 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 Act. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule, proposing to approve the redesignation of the Allentown Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 18, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8-27 Filed 1-4-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2007-0561; FRL-8513-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Nevada; Wintertime Oxygenated Gasoline Rule; Vehicle Inspection and Maintenance Program; Redesignation of Truckee Meadows to Attainment for the Carbon Monoxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve certain submittals by the State of Nevada of revisions to the Nevada state implementation plan that are intended to provide for attainment and maintenance of the carbon monoxide national ambient air quality standard in the Truckee Meadows nonattainment area located within Washoe County, Nevada. These revisions include a local wintertime oxygenated gasoline rule, a "basic" vehicle inspection and maintenance program (including a performance standard evaluation), current statutory provisions and State rules governing mobile sources, a maintenance plan and related motor vehicle emissions budgets. EPA is also proposing to approve Nevada's request to redesignate the Truckee Meadows carbon monoxide nonattainment area to attainment. Lastly, EPA is proposing to rescind a provision previously approved in error related to inspection and maintenance of vehicles operated on Federal installations. EPA proposes these actions pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of revisions to state implementation plans and requests for redesignation. This proposed action is intended to make certain State and local measures and commitments related to attainment and maintenance of the carbon monoxide standard in Truckee Meadows federally enforceable as part of the Nevada state implementation plan.

DATE: Any comments on this proposal must arrive by *February 6, 2008*.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2007-0561, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* kaplan.leanor@epa.gov.

3. *Mail or deliver:* Eleanor Kaplan (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:
Throughout this document, the terms
“we,” “us,” and “our” refer to EPA.
This supplementary information is
organized as follows:

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I. Summary of Today’s Proposed Action

Under section 110(k)(3) of the Clean Air Act, as amended in 1990 (CAA or “Act”), EPA is proposing to approve certain submittals of revisions to the Nevada state implementation plan (SIP) by the Nevada Division of Environmental Protection (NDEP). These revisions are intended to provide for attainment and maintenance of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Truckee Meadows nonattainment area located within Washoe County, Nevada. The specific SIP revision submittals that we are proposing to approve are listed in the following table:

Plan, plan element or rule	Adoption date(s)	State of Nevada submittal date(s)
Washoe County District Board of Health Regulations Governing Air Quality Management, section 040.095 (“Oxygen content of motor vehicle fuel”).	Originally adopted on Dec. 21, 1988 and amended on Apr. 18, 1990; amended on Sept. 23, 1992; amended on Sept. 22, 2005.	Submitted on Apr. 14, 1991; resubmitted as amended on Nov. 13, 1992; re-submitted as amended on Nov. 4, 2005.
State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada (June 1994).	Regulations adopted at various times by the State Environmental Commission and Department of Motor Vehicles but superseded by SIP revision submittal dated May 11, 2007, as listed below.	June 3, 1994.
Basic I/M Performance Standard Evaluation	Sept. 28, 2006	Nov. 2, 2006.
Nevada Mobile Source SIP, Update of the Regulatory Element (May 11, 2007).	Regulations adopted at various times by State Environmental Commission and Department of Motor Vehicles.	May 11, 2007.
Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area (September 2005).	Sept. 22, 2005	Nov. 4, 2005.

Specifically, we are proposing to approve NDEP’s SIP revision submittal dated November 4, 2005 of the wintertime oxygenated gasoline rule as amended on September 22, 2005 by the Washoe County District Board of Health (“District”) and codified as District Regulations Governing Air Quality Management section 040.095 (“District rule 040.095”). We are also proposing to approve the SIP revision submittal dated June 3, 1994 of the *State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada* (June 1994) (“Basic I/M SIP”). In connection with the basic vehicle inspection and maintenance (I/M) program in Truckee Meadows, we are proposing to approve two subsequent SIP revision submittals: A “basic” I/M performance standard evaluation (“Basic I/M Performance Standard Evaluation”) submitted on November 2,

2006 and the *Nevada Mobile Source SIP, Update of the Regulatory Element* (May 11, 2007) (“Mobile Source SIP Update”) submitted on May 11, 2007. NDEP’s Mobile Source SIP Update contains current I/M-related statutory provisions, regulations, and updated exhaust gas analyzer specifications.¹ In

¹The statutory provisions and rules submitted by NDEP on May 11, 2007 represent a comprehensive update to the regulatory portion of the State’s mobile source SIP (excluding the rules establishing fuels specifications, alternative fuels programs for government vehicles, and local rules related to mobile sources), including the regulatory portion of the State’s Truckee Meadows I/M SIP, which was last approved in 1984 (49 FR 44208, November 5, 1984), and the regulatory portion of the State’s Las Vegas Valley I/M SIP, which was last approved in 2004 (69 FR 56351, September 21, 2004). The current submitted versions of the I/M-related statutory provisions and rules are not significantly different than the corresponding versions of the statutory provisions and rules approved in 2004 for the State’s Las Vegas I/M program, and are consistent with the underlying assumptions used to develop the Las Vegas Valley 2005 CO Plan, which was approved by EPA on August 7, 2006 (71 FR 44587).

so doing, we find that the above submittals fulfill the applicable requirements under section 110 and part D (of title I) of the Act.

In connection with our proposed approval of the State’s Basic I/M SIP, as supplemented and amended in submittals dated November 2, 2006 and May 11, 2007, we are taking no action on submitted rule NAC 445B.595(2), which extends the State’s I/M requirements to motor vehicles operated on Federal installations located within I/M areas because the Federal government has not waived sovereign immunity in the context of vehicle I/M programs. Furthermore, we are proposing, under CAA section 110(k)(6), to rescind our previous, and erroneous, approval of NAC 445B.595(2) into the Nevada SIP in 2004, also on the grounds of sovereign immunity.

Lastly, we are proposing to approve NDEP’s SIP revision submittal (dated November 4, 2005) of the *Redesignation*

Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area (September 2005) (“Truckee Meadows CO Maintenance Plan”), adopted by the District on September 22, 2005, and to approve NDEP’s request for redesignation of the Truckee Meadows CO nonattainment area to attainment. In connection with our proposed approval of the Truckee Meadows CO Maintenance Plan, we are approving certain commitments by the District, contingency provisions, and CO motor vehicle emissions budgets for years 2010 and 2016 for the purposes of transportation conformity. In so doing, we find that the Truckee Meadows CO Maintenance Plan meets the requirements for maintenance plans under section 175A of the Act. In connection with our proposed approval of NDEP’s redesignation request, we find that the State has fulfilled the criteria for redesignation of the Truckee Meadows CO nonattainment area from nonattainment to attainment as set forth in section 107(d)(3)(E).²

II. Nature, Sources, and Health Effects of Carbon Monoxide

Carbon monoxide (CO) is a colorless and odorless gas, formed when carbon in fuel is not burned completely. It is a component of motor vehicle exhaust, which contributes about 60 percent of all CO emissions nationwide. Nonroad vehicles account for the remaining CO emissions from transportation sources. High concentrations of CO generally occur in areas with heavy traffic congestion. Peak CO concentrations typically occur during the colder months of the year when CO automotive emissions are greater and nighttime inversion conditions (where air pollutants are trapped near the ground beneath a layer of warm air) are more frequent.

CO enters the bloodstream through the lungs and reduces oxygen delivery to the body’s organs and tissues. The health threat from levels of CO

² The Truckee Meadows CO Maintenance Plan relies upon three principal State or local control measures: The District’s wintertime oxygenated gasoline rule, the State’s vehicle inspection and maintenance (I/M) program, and the District’s residential wood combustion rule. We are proposing to approve the first and second of the three measures in this document. We approved the third measure (the residential wood combustion rule) in a separate document earlier this year. See 72 FR 33397 (June 18, 2007). We will not finalize the proposed approval of the redesignation request until we take final action approving the oxygenated gasoline rule and the I/M program. Also, for reasons set forth in this document, we find that we need not fully approve either the County’s nonattainment new source review rules or the County’s transportation conformity rules as a pre-condition to redesignation of Truckee Meadows to attainment for the CO NAAQS.

sometimes found in the ambient air is most serious for those who suffer from cardiovascular disease, such as angina pectoris. At much higher levels of exposure not commonly found in ambient air, CO can be poisonous, and even healthy individuals may be affected. Visual impairment, reduced work capacity, reduced manual dexterity, poor learning ability, and difficulty in performing complex tasks are all associated with exposure to elevated CO levels.

III. Introduction to Truckee Meadows, Washoe County, Nevada

Truckee Meadows lies in the far southern portion of Washoe County. Washoe County lies in the northwestern portion of the State of Nevada and is bordered by the State of California to the west and the State of Oregon to the north. Within the State of Nevada, the counties of Humboldt, Pershing, Churchill, Lyon, and Storey and the city of Carson City bound Washoe County to the east and south. Located at an average elevation of 4,500 feet above sea level, Truckee Meadows lies in the rain shadow of the Sierra Nevada mountain range located to the west. The boundaries of Truckee Meadows are defined as equal to the State’s hydrographic area #87, and encompass a land area of approximately 200 square miles. It is surrounded by mountain ranges, which can lead to persistent wintertime temperature inversions where a layer of cold air is trapped in the valley. Warmer air above the inversion acts as a lid, containing and concentrating air pollutants emitted at ground-level.

Truckee Meadows has experienced rapid growth in population, with an increase in population from approximately 138,000 in 1977 to approximately 359,000 in 2002, an increase of 160 percent over that 25-year period. The two major cities are Reno and Sparks.

Air quality planning and monitoring in Truckee Meadows is the responsibility of the District, which administers air quality programs in Washoe County through the District Health Department’s Air Quality Management Division (“District AQMD”). The State Environmental Commission and the Nevada Department of Motor Vehicles are responsible for the motor vehicle I/M program in Truckee Meadows.

IV. History of Carbon Monoxide Planning in Truckee Meadows

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act, as amended in 1970, EPA

promulgated NAAQS for six criteria pollutants, including CO. EPA set the NAAQS for CO at 35 parts per million (ppm), one-hour average, and 9 ppm, eight-hour average. The CO NAAQS remain the same today.

Under section 110 of the Clean Air Amendments of 1970, States were required to adopt and submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. These original plans, generally submitted and approved in the early 1970’s, are referred to as state implementation plans (SIPs). Incremental changes to SIPs that a State submits, such as new or amended rules, attainment plans, and maintenance plans, are referred to as “SIP revisions.”

Generally, SIPs were to provide for attainment of the NAAQS within three years of EPA approval of the plan. However, many parts of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS, and on March 3, 1978 (43 FR 8962), under paragraph 107(d)(2) of the Act as amended in 1977, EPA promulgated attainment status designations for all States. EPA designated Truckee Meadows (with boundaries defined by reference to State hydrographic area #87) as a nonattainment area for the CO NAAQS. See 43 FR 8962, at 9013 (March 3, 1978).

The Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. The CO attainment plan for Truckee Meadows that was developed in the late 1970’s and early 1980’s relied upon implementation of such control measures as a vehicle inspection and maintenance (I/M) program, road improvements, traffic controls, and areawide ride-sharing programs to attain the CO NAAQS by the statutory deadline of 1982. In 1981, we approved most of the elements of the CO plan for Truckee Meadows and conditionally approved other elements. See 46 FR 21758 (April 14, 1981). In 1982, we revoked the remaining conditions resulting in full approval of the CO plan. See 47 FR 15790 (April 13, 1982).

Truckee Meadows did not attain the CO NAAQS by the 1982 attainment deadline, and thus, the District revised the CO attainment plan and requested an extension in the attainment date to 1987. In 1984, we approved parts of the revised CO attainment plan but deferred action on certain other parts based on our conclusion that the emissions reduction credit taken in the revised CO

plan for one of the principal control measures relied upon to show attainment, residential wood burning control, was not sufficiently documented. See 49 FR 31683 (August 8, 1984).

Like many other areas of the country, Truckee Meadows did not attain the CO NAAQS by the 1987 attainment date and remained nonattainment at the time of the 1990 Clean Air Act Amendments. Under section 107(d)(1)(C) of the 1990 Amended Act, the CO nonattainment designation in Truckee Meadows was brought forward by operation of law. Based on a design value of 9.8 ppm (eight-hour average), we further classified Truckee Meadows as a "moderate" CO nonattainment area for the CO NAAQS with an attainment date of (no later than) December 31, 1995. See 56 FR 56694, at 56798 (November 6, 1991) and CAA section 186(a)(1). A review of the data collected in 1994 and 1995 provided EPA with the basis to determine that Truckee Meadows in fact attained the CO NAAQS by the 1995 attainment date. See 70 FR 22803 (May 3, 2005).

In addition to extending the deadline for attainment of the CO NAAQS, the Act, as amended in 1990, also established new requirements for CO nonattainment areas that vary depending upon the severity of the problem. The additional requirements for "moderate" CO nonattainment areas are set forth in sections 172, 176, 187, and 211 of the Act, and include such elements as updated and periodic emission inventories, upgraded vehicle I/M programs, conformity requirements, and wintertime oxygenated gasoline requirements. To address these requirements, the District AQMD developed new plans and adopted new or amended rules, the State revised the vehicle I/M program, and NDEP submitted the plans, rules and revised vehicle I/M program to EPA as revisions to the Truckee Meadows portion of the Nevada SIP. In today's action, we are proposing to approve a number of elements contained in these submittals, including the wintertime oxygenated gasoline rule and an upgraded vehicle I/M program. In a separate action, we approved the District's residential wood combustion rule. See 72 FR 33397 (June 18, 2007).

Section 107(d)(3)(D) of the Act allows a State to request redesignation of an air quality planning area. On November 4, 2005, NDEP submitted such a request for the Truckee Meadows CO nonattainment area and submitted the Truckee Meadows CO Maintenance Plan to EPA for approval as a revision to the Nevada SIP. The purpose of the Truckee

Meadows CO Maintenance Plan is to provide for maintenance of the CO NAAQS in the Truckee Meadows area for ten years following redesignation. In this action, we are proposing to approve the Truckee Meadows CO Maintenance Plan and proposing to approve the request for redesignation of Truckee Meadows from nonattainment to attainment for the CO NAAQS.

V. Nevada's Procedures for Adoption of These SIP Revisions

Section 110(l) of the Act requires States to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing to approve the following SIP revisions: the wintertime oxygenated gasoline rule (District rule 040.095), submitted on November 4, 2005; the Basic I/M SIP submitted on June 3, 1994, the Basic I/M Performance Standard Evaluation submitted on November 2, 2006, and current I/M-related statutory provisions and regulations and updated exhaust gas analyzer specifications submitted on May 11, 2007; and the Truckee Meadows CO Maintenance Plan submitted on November 4, 2005.

Each of the SIP revision submittals cited above contains evidence that reasonable notice of a public hearing was provided to the public (via newspaper advertisement) and that a public hearing was conducted prior to adoption by the District.³ Following adoption, the District forwarded these SIP revisions to NDEP, the Governor of Nevada's designee for submitting SIP revisions and redesignation requests to EPA, and NDEP then submitted the SIP revisions to EPA for approval. We find that each of the SIP revisions cited above satisfies the procedural requirements of section 110(l) of the Act for revising SIPs.

VI. Washoe County's Wintertime Oxygenated Fuel Requirements

Under section 211(m) of the Act, as amended in 1990, States with CO nonattainment areas with design values of 9.5 ppm or greater (eight-hour average) are required to submit an oxygenated gasoline program as a SIP revision. The design value for Truckee Meadows based on data collected during 1988–1989 (and recorded in EPA's Air Quality System database) was

9.8 ppm, eight-hour average, and thus, the State of Nevada is required to submit an oxygenated gasoline program for the Truckee Meadows area as a SIP revision.

Section 211(m) of the 1990 Amended Act also specifies the minimum geographic extent for such an oxygenated gasoline program (larger of the Consolidated Metropolitan Statistical Area (CMSA) or MSA if the area is not in a CMSA), the minimum oxygen content (2.7% by weight), and the applicable portion of the year in which the program must be implemented (as determined by EPA). EPA determined that the applicable control period for the purposes of an oxygenated gasoline program in Truckee Meadows area is October 1 through January 31. See 57 FR 47853 (October 20, 1992). EPA labeling requirements for oxygenated gasoline are found at 40 CFR 80.35.

The District first adopted an oxygenated gasoline rule (i.e., District rule 040.095 "Oxygen Content of Motor Vehicle Fuel") on December 21, 1988, and implementation of the rule began in December 1989. This rule applied throughout Washoe County and required a minimum gasoline oxygen content of 2% by weight during a control period defined as December 1 through February 15. The District modified the oxygenated gasoline rule on April 18, 1990 to extend the control period to November 1 through the end of February. The April 18, 1990 version of the District's oxygenated gasoline rule was included in a SIP revision submittal from the Governor to EPA dated April 15, 1991. Meanwhile, five months prior to this SIP submittal, the Clean Air Act Amendments of 1990 were enacted, and the amended Act established new SIP requirements, discussed above, for oxygenated gasoline rules in CO nonattainment areas.

In response to the new requirements, the District again amended the oxygenated gasoline rule (on September 23, 1992) to increase the minimum oxygen content requirement to 2.7% and to extend the control period to October 1 through January 31. NDEP submitted this revised rule to EPA as a SIP revision on November 13, 1992 thereby superseding the April 15, 1991 submittal of the previous version of the rule. EPA did not take action on the November 13, 1992 submittal of the District's oxygenated gasoline rule. In the intervening years, the District has twice amended the oxygenated gasoline rule: on October 25, 2000, the District phased-out use of methyl tertiary butyl ether (MTBE) as the oxygenate to meet the oxygen content requirement, and on

³ In the case of the Basic I/M SIP and the May 11, 2007 SIP submittal of current I/M statutory provisions and regulations, NDEP provided evidence of reasonable notice and public hearing for the various recent amendments to the I/M regulations. The submittal of the current I/M-related statutory provisions and regulations supersede the corresponding provisions and regulations submitted in 1994 as part of the Basic I/M SIP.

September 22, 2005, the District clarified labeling requirements consistent with related EPA requirements at 40 CFR 80.35 and made certain other changes to improve enforceability. The September 22, 2005 version of the wintertime oxygenated gasoline rule was submitted as a SIP revision by NDEP on November 4, 2005, thereby superseding the November 13, 1992 submittal of the rule.

We have evaluated the State's November 4, 2005 submittal of the wintertime oxygenated gasoline rule (District rule 040.095) and find that it meets the applicable statutory and regulatory requirements by establishing the necessary minimum oxygen content requirement (2.7% by weight) in the applicable geographic area (i.e., Reno MSA, which consists of Washoe County, Nevada) for the appropriate control period (October 1 through January 31) and also provides for the necessary labeling of gasoline dispensers, and for recordkeeping, sampling and for enforceability. The District AQMD enforces the oxygenated gasoline rule by obtaining fuel samples from retail gasoline distributors, which are then analyzed by the State of Nevada, Department of Agriculture. Each year, the District AQMD publishes a report summarizing the results of the oxygenated gasoline program for the prior year. A review of these annual reports reveals near-full compliance with the requirements of the rule.

For the above reasons, we find that District rule 040.095 ("Oxygen Content of Motor Vehicle Fuel"), as amended by the District on September 22, 2005, and submitted by NDEP to EPA on November 4, 2005, fulfills the requirements of section 211(m) of the Act and applicable EPA regulations, and, based on that finding, we propose approval of the rule as a revision to the Nevada SIP.

VII. Nevada's Motor Vehicle Inspection and Maintenance (I/M) Program in Truckee Meadows

A. Background Information

As noted in section IV of this document, EPA promulgated area designations for all states pursuant to the Act, as amended in 1977. See 43 FR 8962 (March 3, 1978). The Truckee Meadows area of Nevada was designated nonattainment for the NAAQS for CO and photochemical oxidant.⁴

⁴ In 1979, EPA established a new NAAQS for ozone to replace the oxidant standard. In 1981, EPA changed the designation for Truckee Meadows from nonattainment for oxidant to attainment for ozone. See 46 FR 37896 (July 23, 1981).

During the late 1970's, the Nevada Legislature established the first motor vehicle I/M program for Truckee Meadows, and the Nevada Department of Motor Vehicles (DMV) began to implement this initial program in 1978. Nevada's motor vehicle I/M program is required in two counties, Washoe and Clark.

Originally, I/M requirements were triggered only by a change in vehicle ownership, but by 1983, I/M in Truckee Meadows had been expanded to apply annually upon vehicle registration or upon registration renewal. Implementation of a mandatory annual I/M program in Truckee Meadows was not a requirement of the 1977 amended Act but was one of the control measures selected by Washoe County and the State of Nevada to reduce CO emissions in that area.

The 1980's-era program in Truckee Meadows excluded certain types of vehicles including, among others, new cars, vehicles over 5,000 pounds unladen weight, and motorcycles. Waivers were allowed in certain cases for repairs costing over \$100 in labor plus parts. For more information on this early I/M program in Truckee Meadows and related EPA rulemaking actions, see 44 FR 26763 (May 7, 1979), 45 FR 59334 (September 9, 1980), 46 FR 21758 (April 14, 1981), 48 FR 5071 (February 3, 1983), 49 FR 6386 (February 21, 1984), and 49 FR 44208 (November 5, 1984).

As noted in section IV of this document, under the Clean Air Act Amendments of 1990, EPA classified Truckee Meadows as a "moderate" CO nonattainment area based on a design value of 9.8 ppm. Under section 187(a) of the Act, as amended in 1990, States with "moderate" CO nonattainment areas (with design values less than 12.7 ppm) were required to continue implementation of existing I/M programs and to submit I/M SIP revisions to meet the "basic" I/M performance standard and other new related requirements promulgated by EPA subsequent to the 1990 Act Amendments. See CAA section 187(a)(4).⁵ On January 15, 1993, EPA

⁵ In 1991, all of Washoe County was designated as a "marginal" nonattainment area for the 1-hour ozone NAAQS. See 56 FR at 56798 (November 6, 1991). For most such areas, a corrected and upgraded "basic" I/M program was required under CAA section 182(a)(2)(B); however, the Washoe County "marginal" ozone nonattainment area was not subject to the I/M requirement because the EPA-approved I/M program for Truckee Meadows (at the time of designation as a marginal ozone nonattainment area) did not include hydrocarbon emissions testing (but only CO emissions testing), and thus the I/M program was not part of the applicable ozone SIP. The State of Nevada deleted hydrocarbon emissions testing from the I/M

made a finding of failure to submit the required "basic" I/M SIP revision for Truckee Meadows. On November 15, 1993, the NDEP submitted a "basic" I/M SIP revision for Truckee Meadows, but by letter dated April 13, 1994, EPA made a finding of incompleteness for the November 15, 1993 SIP revision submittal.

On June 3, 1994, NDEP submitted the *State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada* (June 1994) ("Basic I/M SIP"). By letter dated January 31, 1995, EPA found the Basic I/M SIP to be complete. The Basic I/M SIP includes I/M-related statutes and rules, as well as various other documents to satisfy EPA I/M requirements, but does not include the required performance standard evaluation.

On November 2, 2006, NDEP submitted a SIP revision containing a performance standard evaluation of the basic I/M program for motor vehicles in the Truckee Meadows planning area ("Basic I/M Performance Standard Evaluation") thereby fulfilling a requirement not addressed in the Basic I/M SIP. The November 2, 2006 SIP revision submittal contained the performance standard evaluation along with motor vehicle emissions modeling documentation and evidence of public process and adoption by the Washoe County District Board of Health on September 28, 2006.

Since the submittal of the Basic I/M SIP in 1994, the State of Nevada has revised many of the I/M-related statutory provisions and regulations and has established new specifications for exhaust gas analyzers. On May 11, 2007, NDEP submitted a SIP revision entitled *Nevada Mobile Source SIP, Update of the Regulatory Element* (May 11, 2007) ("Mobile Source SIP Update"), which includes current I/M-related statutory provisions and regulations as well as updated exhaust gas analyzer specifications. The current Nevada I/M statutory provisions and rules submitted by NDEP on May 11, 2007 are as follows:

- Nevada Revised Statutes (2005), chapter 365: section 365.060; chapter 366, section 366.060; chapter 445B, sections 445B.210, 445B.700–845 (excluding NRS 445B.776, 445B.777, and 445B.778); chapter 481, sections

program in 1983, and EPA approved the related changes in 1984. See 49 FR 6386 (February 21, 1984) and 49 FR 44208 (November 5, 1984). Hydrocarbon emissions testing requirements have since been restored to the program and are a part of the current I/M program that is the subject of today's proposal.

481.019–481.087; chapter 482, sections 482.029, 482.155–482.290, 482.385, 482.461, and 482.565; and chapter 484, sections 484.101, 484.644 and 484.6441;

- Nevada Administrative Code (NAC), chapter 445B (January 2007 revision by the Legislative Counsel Bureau), sections 445B.400 to 445B.735.⁶

The Mobile Source SIP Update supersedes the corresponding materials included in the Basic I/M SIP submitted in 1994 and represents a comprehensive update to the regulatory portion of the State's mobile source SIP (excluding the rules establishing fuels specifications, alternative fuels programs for government vehicles, and any local rules related to mobile sources), including the regulatory portion of the Truckee Meadows I/M SIP, which was last approved in 1984 (see 49 FR 44208, November 5, 1984), and the regulatory portion of the Las Vegas Valley I/M SIP, which was last approved in 2004 (see 69 FR 56351, September 21, 2004).

B. Evaluation of the State's I/M Program in Truckee Meadows

This subsection summarizes the applicable requirements of EPA's I/M requirements found in 40 CFR part 51, subpart S ("Inspection/Maintenance Program Requirements"), which is referred to herein as the "Federal I/M rule," and discusses whether the elements of the State's "basic" vehicle I/M program for Truckee Meadows as contained in SIP revisions submitted on June 3, 1994, November 2, 2006, and May 11, 2007 comply with Federal requirements.

Applicability (40 CFR 51.350)

Under the Federal I/M rule, any area classified as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 parts per million (ppm) or less shall continue operating I/M programs that were part of an approved SIP as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements as set forth in part 51, subpart S. See 40 CFR 51.350(a)(3). This requirement applies to Truckee Meadows because the CO SIP for Truckee Meadows, as of November 15, 1990, included an I/M program and because, under the Act as amended in 1990, the Truckee Meadows CO nonattainment area was classified as "moderate" (with a design value of 12.7 ppm or less).

⁶ As explained below in the subsection entitled "Vehicle coverage (40 CFR 51.356), we are taking no action on subsection (2) of NAC section 445B.595.

I/M programs are nominally required to cover at least the entire urbanized area, based on the 1990 census. See 40 CFR 51.350(b)(2). The State's legal authority necessary to establish program boundaries is contained in Nevada Revised Statutes (NRS) 445B.770. The applicable area for the basic I/M program is the urbanized area within "Truckee Meadows," which is defined by reference to the State's hydrographic area #87. Under Nevada Administrative Code (NAC) 445B.594, the State's basic I/M program applies within all of Washoe County, except for residents that live outside of the urbanized area and are serviced by one of the following post offices: (1) Crystal Bay, (2) Empire; (3) Incline Village, (4) Nixon, (5) Sutcliffe, or (6) Wadsworth. This is acceptable.

The Federal I/M rule requires a State I/M program to remain in operation even if the area is redesignated to attainment until the State submits and EPA approves a SIP revision which convincingly demonstrates that the area can maintain the relevant standard without benefit of the emission reductions attributable to the I/M program. See 40 CFR 51.350(c). The statutory authority for the "basic" I/M program in Truckee Meadows contains no automatic sunset provision and thus is consistent with EPA requirements.

Basic I/M Performance Standard (40 CFR 51.352)

"Basic" I/M programs must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels achieved from highway mobile sources as a result of the program. Areas are required to meet the performance standard for the pollutants which cause them to be subject to I/M requirements. The performance standard is based on the model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls, and emission levels and emission reduction benefits must be calculated using the most recent version of EPA's mobile source emission factor model (MOBILE).

The Federal model "basic" I/M program has the following characteristics: (1) Network type (centralized testing); (2) Start date (for areas with existing I/M programs, 1983); (3) Test frequency (annual testing); (4) Model year coverage (testing of model year (MY) 1968 and later vehicles); (5) Vehicle type coverage (light-duty vehicles (excluding trucks)); (6) Exhaust emission test type (idle test); (7) Emission standards (no weaker than specified in 40 CFR part 85, subpart W);

(8) Emission control device inspections (none); (9) Stringency (a 20% emission test failure rate among pre-1981 model year vehicles); (10) Waiver rate (0% waiver rate); (11) Compliance rate (a 100% compliance rate); and (12) Evaluation date (1996 for CO nonattainment areas). Also, the basic I/M performance standard includes inspection of all 1996 and later light-duty vehicles equipped with certified on-board diagnostic (OBD) systems,⁷ and repair of malfunctions or system deterioration identified by or affecting OBD systems.

The Nevada basic I/M program within Truckee Meadows has the following characteristics: (1) Network type (decentralized, test-and-repair); (2) Start date (1983); (3) Test frequency (annual testing); (4) Model year coverage (testing of MY 1968 and later vehicles); (5) Vehicle type coverage [light-duty (i.e., less than 8,500 pounds gross vehicle weight rating (GVWR)) vehicles (both gasoline- and diesel-powered) and heavy-duty gasoline-powered vehicles]; (6) Exhaust emission test type ("two-speed idle" test (i.e., at 2,500 revolutions per minute (rpm) and at idle) for light-duty gasoline-powered vehicles from 1968 through 1995 and heavy-duty gasoline-powered vehicles 1968 and newer; 1968 and newer light-duty diesel-powered vehicles are inspected for exhaust opacity on a dynamometer (i.e., steady state using load mode)); (7) Emission standards (based on those specified in 40 CFR part 85, subpart W); (8) Emission control device inspections (for 1968 and newer vehicles, a gas cap check; for gasoline-powered vehicles newer than 1980, the anti-tampering program (ATP) checks for air pump disablement, catalyst removal, fuel inlet restrictor disablement, exhaust gas recirculation (EGR) system disablement, evaporative system disablement, and positive crankcase ventilation (PCV) system disablement; for diesel-powered vehicles, visual tampering inspection is based on manufacturer's specifications); (9) Stringency (21% based on 1996 data); (10) Waiver rate (4% for pre-1981 and 3% for 1981 and newer based on 1996 data); (11) Compliance rate (96%); and (12) Evaluation date (year 1996). The State's basic I/M program includes inspection of all 1996 and newer light-duty gasoline-powered vehicles equipped with certified on-board diagnostic (OBD) systems. Repair of

⁷ A certified OBD system consists of a computer, which performs checks of a number of different vehicle systems for malfunctions or deterioration, which could result in the vehicle exceeding its emissions standards, and a malfunction indicator light, which is required to be illuminated when the system detects a problem.

malfunctions or system deterioration is identified for emission compliance through the OBD system.

As noted above, the Basic I/M SIP submitted in 1994 does not include a performance standard evaluation, but NDEP submitted the required evaluation (referred to herein as the "Basic I/M Performance Standard Evaluation") to EPA for approval on November 2, 2006. District AQMD prepared this evaluation using the latest available version of MOBILE (MOBILE6.2.03). District AQMD used the various inputs for EPA's "basic" model program and the State's basic I/M program for Truckee Meadows as described above to estimate the composite CO emission rate in year 1996 of the vehicle fleet in Truckee Meadows under three scenarios: (1) no I/M program, (2) EPA's basic model program, and (3) the State's basic I/M program for Truckee Meadows. District AQMD assumed 50% effectiveness for the State's basic I/M program in Truckee Meadows to account for the decentralized, test-and-repair nature of the I/M program.

A comparison of the MOBILE6.2.03-based CO emissions rates for these three scenarios shows that EPA's basic model program would have reduced composite CO emissions by 8.9% (relative to the no I/M scenario) and that the State's basic I/M program for Truckee Meadows reduced the emissions rate by 9.5% (once again, relative to the no I/M scenario). We find that District AQMD used the appropriate model and reasonable methods and assumptions in developing the CO emission rates for the performance standard evaluation. Based on this finding and because the results of the evaluation show that State's basic I/M program achieves equivalent or greater reductions in the CO emissions rate as compared to EPA's basic model program, we find that the State's basic I/M program in Truckee Meadows meets the performance standard requirement under 40 CFR 51.352.

Network Type and Program Evaluation (40 CFR 51.353)

State law provides for a decentralized (i.e., privately-owned but licensed by the State), test-and-repair network for 1968 and newer gasoline-powered autos and trucks.⁸ The network includes different types of test-and-repair stations. State law differentiates between two types of test-and-repair stations: (1) Test stations that are

allowed to do only specific types of repairs (such as oil changes, replacement of oil or air filters, and servicing of the fuel injection system) but are generally not allowed to perform repairs that affect exhaust emissions and (2) test stations that are allowed to do more extensive repairs. The former are referred to as "authorized inspection stations" and the latter are referred to as "authorized stations." NAC sections 445B.460 through 445B.480 specify requirements for facilities to obtain licenses as authorized test stations or authorized stations. For the purposes of the performance standard evaluation, Washoe County assumed 50% effectiveness for the program based on the decentralized, test-and-repair nature of the network. The 50% effectiveness value is the default value in MOBILE for such networks and is acceptable. We find that the State's I/M testing network for Truckee Meadows is adequately described in the State's I/M submittals, that the State has sufficient legal authority to enforce the requirements that must be met for stations to obtain and retain licenses as authorized inspection stations or as authorized stations, and that the network has been adequately modeled for performance standard purposes, and thus the requirements of 40 CFR 51.353 are satisfied.

We note that the program evaluation required under 40 CFR 51.353(c) applies to "enhanced" I/M programs, and because Truckee Meadows is subject only to the "basic" I/M program requirements, the program evaluation requirement under 40 CFR 51.353(c) does not apply.

Adequate Tools and Resources (40 CFR 51.354)

The Federal I/M rule requires the state to demonstrate that there is adequate funding of the program functions including quality assurance, data analysis and reporting, the holding of hearings and adjudication of cases. The state must also demonstrate that sufficient personnel have been employed to effectively carry out the duties related to the program and that equipment necessary to achieve the objectives of the program have been acquired.

Nevada law establishes annual fees to cover costs associated with implementation, administration and operation of the I/M program. See NRS 445B.830. The fees must be paid to the DMV and accounted for in the pollution control account, which is created in the Nevada general fund. The 1994 Truckee Meadows I/M SIP notes that the basic I/M program in Truckee Meadows is an

update to existing program whose funding has long been established. To illustrate how the funds paid to DMV are allocated to provide for employee salaries, the Basic I/M SIP includes a copy of the budget for the program, as approved by the 67th Session of the Nevada Legislature and the Governor, showing provisions for personnel sufficient to meet the oversight requirements of the program for fiscal year 1994. See appendix #3 of the Basic I/M SIP. EPA believes the State's I/M program plan for tools and resources is acceptable.

Test Frequency and Convenience (40 CFR 51.355)

The performance standards for I/M programs assume an annual test frequency, but under the Federal I/M rule, other schedules may be approved if the required emission targets are achieved. Also, under the Federal I/M rule, the SIP must include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

Nevada's motor vehicle I/M program is registration-enforced in the two affected counties (i.e., Washoe and Clark) and is tracked by continuing annual vehicle registration. Under NRS 482.206, vehicle registration must be renewed annually, and under NAC 445B.594, persons who are registering or reregistering their vehicle in Truckee Meadows (except for new vehicles) must provide evidence of compliance (with the emission inspection) as part of the annual registration process. New vehicles are exempt from testing until the third registration cycle. See NAC 445B.592.

The DMV has authority under NRS 445B.798 to require proof of compliance with the emission standards after a vehicle has been cited for needing mechanical repair or for a smoking vehicle. Nevada law thereby provides for out-of-cycle emission testing for high-emitting vehicles. Under NRS 482.461, cancellation of registration can result if the vehicle failing a test conducted under NRS 445B.798 has not been repaired as required.

On May 11, 2007, NDEP submitted all of the current versions of the statutory provisions and rules cited above for approval into the Nevada SIP. EPA believes these elements meet the requirements of the Federal I/M rule.

Vehicle Coverage (40 CFR 51.356)

The Federal model "basic" I/M program against which State programs are compared assumes coverage of all

⁸ Under the Nevada I/M program, light-duty diesel-powered motor vehicles registered in the applicable portions of Washoe County and Clark County are also subject to annual inspections, which include a tampering inspection and an opacity test.

1968 and newer model year (MY) "light-duty" vehicles (*i.e.*, up to 8,500 pounds GVWR) and includes vehicles operating on all fuel types. The Federal "basic" I/M program does not assume coverage of light-duty trucks. Other levels of coverage may be approved if the necessary emission reductions are achieved.

Under Nevada's basic I/M program, the term "light-duty motor vehicles" refers to passenger cars and trucks up to 8,500 pounds GVWR; "heavy-duty motor vehicles" refers to vehicles of 8,500 pounds GVWR or more. Nevada's basic I/M program is more inclusive than required under the Federal I/M rule in some ways and less inclusive in others. For instance, the program is more inclusive in that, as mentioned above, it requires all 1968 and newer heavy-duty gasoline-powered vehicles to be tested annually in addition to light-duty gasoline-powered vehicles. On the other hand, Nevada's basic I/M program provides certain exemptions not included in the model program, such as the exemption for new vehicles, which are not emissions-tested until the third registration cycle (but still must be registered or re-registered). Other minor exemptions are set forth in NAC 445B.592 (such as motorcycles and motor vehicles permanently converted from gasoline to propane, compressed natural gas, methane or butane as a fuel). The Basic I/M Performance Standard Evaluation submitted by NDEP as a SIP revision on November 2, 2006 takes these exemptions into account.

Under the Nevada program, light-duty diesel-powered vehicles, 1968 and newer, are also subject to annual registration requirements and certain emissions-related requirements but are not subject to the emissions testing procedures that apply to gasoline-powered vehicles. In addition, the emissions evaluation for the State's I/M program takes no specific credit for inspection and maintenance of diesel-powered vehicles.

EPA believes that Nevada's "basic" I/M program adequately identifies and accounts for the vehicles covered by the program and thereby meets the requirements of the Federal I/M rule under 40 CFR 51.356.

The Federal I/M rule requires that vehicles operated on Federal installations located within an I/M program area be tested regardless of whether the vehicles are registered in the state or local I/M area. See 40 CFR 51.356(a)(4). However, we are not requiring states to implement 40 CFR 51.356(a)(4) at this time. The Department of Justice has recommended to EPA that this Federal regulation be

revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. Therefore, for these reasons, EPA is neither approving nor disapproving the specific requirements which apply to Federal facilities at this time. Specifically, we are taking no action on submitted rule NAC 445B.595(2), which extends the State's I/M requirements to motor vehicles operated on Federal installations located within I/M areas. We are also proposing under CAA section 110(k)(6), which authorizes EPA to correct errors in SIP actions, to rescind our previous approval of NAC 445B.595(2) into the Nevada SIP on grounds of sovereign immunity. We approved NAC 445B.595(2) as part of our 2004 approval of the State of Nevada's I/M program for Las Vegas and Boulder City.

Test Procedures and Standards (40 CFR 51.357)

The Federal I/M rule requires that states establish written test procedures and pass/fail standards to be followed for each model year and vehicle type included in the program. The required test procedures are specified in 40 CFR 51.357(a). The Federal I/M rule also requires that beginning January 1, 2002, inspection of the OBD systems on MY 1996 and newer light-duty vehicles shall be conducted according to the procedure described in 40 CFR 85.2222, at a minimum. See 40 CFR 51.357(a)(12). The required test standards are specified in 40 CFR 51.357(b).

EPA's basic I/M performance standard assumes testing in idle mode, but Nevada's I/M program requires subject vehicles to pass the more demanding "two-speed idle" test (*i.e.*, exhaust emissions are tested in idle mode and at 2,500 rpm). In this instance, the subject vehicles include all gasoline-powered motor vehicles (except motorcycles, and other exempt categories), *i.e.*, light-duty gasoline-powered vehicles MY 1968 through MY 1995, and heavy-duty gasoline-powered vehicles MY 1968 and newer. See NAC 445B.580. Generally, the procedures require use of an approved exhaust gas analyzer and compliance with the emissions standards set forth in NAC 445B.596 (unless a waiver is granted). All light-duty gasoline-powered vehicles MY

1996 and newer are subject to OBD systems checks. See NAC 445B.5805. The State's procedures for the two-speed idle test and the OBD system check are consistent with EPA requirements. Testing procedures and standards for light-duty diesel-powered vehicles are found in NAC 445B.587 through 445B.589.

EPA's basic I/M performance standard assumes exhaust emission testing standards as specified in 40 CFR part 85, subpart W. Consistent with those standards, the State I/M program establishes, for those vehicles that are subject to emissions testing, maximum exhaust emissions for MY 1981 and newer of 1.2% for CO and 220 ppm for hydrocarbons (HC). For older light-duty gasoline-powered vehicles (MY 1968 through 1980), maximum CO (%) and HC (ppm) standards range from 4.0%–2.0% and 800 ppm–500 ppm, respectively. The standards for heavy-duty gasoline-powered vehicles MY 1981 and newer are 3.5% for CO and 1,000 ppm for HC; for older heavy-duty gasoline-powered vehicles (MY 1968 through 1980), maximum CO (%) and HC (ppm) range from 7.0%–4.0% and 1,400 ppm–1,000 ppm, respectively. See NAC 445B.596. In the event of an emission failure of any kind, all components are retested after repairs.

The Federal basic I/M performance standard does not assume that inspections are made of the emission control devices as part of the I/M program. Under the Nevada I/M program, however, such inspections are required. Specifically, inspectors perform visual checks for smoke from the exhaust system and for blowby gases from the crankcase. See NAC 445B.580. Also, inspectors visually inspect all vehicles to determine the presence of a properly installed gas cap. For light-duty gasoline-powered vehicles MY 1981 through MY 1995 (and MY 1996 and newer heavy-duty gasoline-powered vehicles), inspectors also check for the presence of an exhaust gas recirculation valve, catalytic converter, air injection system and fuel inlet restrictor, and whether this equipment appears to be operating in accordance with the specifications of the manufacturer of the vehicle. See NAC 445B.580. For MY 1996 and newer light-duty gasoline-powered vehicles, inspection stations administer OBD systems checks (see NAC 445B.5805) that substitute for the visual inspections that are part of the program for earlier models. If a vehicle has missing or malfunctioning emissions control equipment, Nevada's required I/M test will result in a failed vehicle notification. Under NAC 445B.582 and 445B.589, necessary

repairs must be completed before a second test can be performed.

We conclude that the State's test procedures and standards meet the corresponding Federal I/M rule requirements.

Test Equipment (40 CFR 51.358)

The Federal I/M rule requires computerized test systems for performing any measurement on subject vehicles, and the SIP is to include written technical specifications for all test equipment used in the program.

In 1994, when the Basic I/M SIP was submitted, the State's exhaust gas analyzer was the Nevada 94 analyzer, and the Basic I/M SIP included the written specifications for that analyzer. Since then, the State has replaced the Nevada 94 analyzer with the NV2000 analyzer and submitted the related written specifications to EPA in a SIP submittal dated January 30, 2002. The January 30, 2002 SIP submittal was made in connection with our review of the I/M program in Las Vegas and Boulder City, but we note that the same analyzer (*i.e.*, NV2000) is required for use in both the Las Vegas/Boulder City area and in the Truckee Meadows area. On May 11, 2007, NDEP submitted another I/M-related SIP revision that included, among other items, written specifications for a change in NV2000 as previously submitted to make emissions testing possible on motor vehicles containing a certified OBD system which uses controller area network communication.

NV2000 emission testing equipment has been used to inspect gasoline-powered vehicles since April 2001. NV2000 analyzers carry California Bureau of Automotive Repair (BAR 97) certification. Two-speed idle and OBD inspection procedures can be performed with NV2000 analyzers. The NV2000 emission analyzer has remained in the same configuration as when first implemented in April 2001 with one exception. In late 2004, a revised OBD scan hardware capable of communication with controller area network systems was approved as an option. Emissions stations were required to update their NV2000 emission analyzers to include the revised OBD scan hardware by September 2006.

NV2000 test equipment features include: Concentration measurements of CO, HC, carbon dioxide (CO₂) and oxygen (O₂); engine RPM; leak checks; anti-tampering checks; automatic test data recording; and lock-out measures. The test begins with a check of the vehicle's registration and for any recall notices for that model vehicle. Adoption

or use of alternate test equipment, test procedures or alternate methods requires prior approval by EPA. The exhaust gas analyzer specifications describe all the necessary components of the emission analysis process, test equipment and all necessary EPA requirements under 40 CFR 51.358. We found NV2000 to be acceptable in connection with our approval of Nevada's I/M program for Las Vegas and Boulder City (see 69 FR 56351 (September 21, 2004)) and believe that NV2000, as updated in NDEP's submittal dated May 11, 2007, is equally acceptable for the purposes of the basic I/M program in Truckee Meadows.

Quality Control (40 CFR 51.359)

The Federal I/M rule requires state programs to include measures to ensure emission testing equipment is calibrated and maintained properly. See 40 CFR 51.359. SIPs are to include a description of quality control and recordkeeping procedures and the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements. See 40 CFR 51.359(f). The specifications for Nevada's NV2000 analyzer include several quality control elements. Only State-certified analyzers may be used for emission testing purposes under the I/M program, and to qualify for certification, manufacturers of analyzers must demonstrate that their model complies with all NV2000 specifications. NV2000 specifications were submitted by NDEP as part of its January 30, 2002 SIP submittal to EPA and approved as a SIP revision on September 21, 2004 (69 FR 56351). NDEP submitted revisions to NV2000 on May 11, 2007. NV2000 requires that analyzers be designed to perform automatic two-point gas calibrations for HC, CO and carbon dioxide; ambient air zero and span check tests; and measurements of oxygen using ambient air. The specifications call for automatic gas calibration to be conducted every 72 hours as activated by the analyzer's internal clock. In addition, to meet NV2000 specifications, an analyzer must be designed with a system capable of requiring an automatic leak check of the vacuum side of the analyzer activated by the internal clock every 24 hours.

The NV2000 analyzer also includes a number of automated controls to ensure that the system is tamper-resistant. The inspection certificates are stored automatically by the exhaust gas emission analyzer. The analyzers provide security capable of preventing any unauthorized modifications to the software or test data. The performance

of licensed test and repair stations on repairing vehicles for retest is monitored. Emission certificates are counterfeit-resistant. Overt and covert audits are used to help verify the security of documents and emission test information. The Nevada DMV collects and inspects records from licensed test stations to detect discrepancies in testing and/or repairs. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the quality control requirements of 40 CFR 51.359 and is acceptable.

Waivers and Compliance via Diagnostic Inspection (40 CFR 51.360)

Under the Federal I/M rule, state I/M programs may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as certain prescribed criteria are met. See 40 CFR 51.360. For "basic" I/M programs, state I/M programs must require motorists to make an expenditure of at least \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles to qualify for a waiver, but allows motorists to wait to repair a failed vehicle for the period of one test cycle for "economic hardship." See 40 CFR 51.360(a)(9).

The State of Nevada has adopted procedures for issuing waivers after an emission test failure (see NAC 445B.590). First of all, only Nevada DMV may grant a waiver under the emissions standards tests. Second, for the basic I/M program in Truckee Meadows, the Nevada program requires a minimum expenditure of at least \$200 at an authorized station on repair parts (other than a catalytic converter, fuel inlet restrictor or air injection system) or on labor to qualify for a waiver. See NAC 445B.590(2)(a). Such labor costs cannot include emission testing if the repairs evidenced by the receipt were directly related to the deficiency in emissions. If the vehicle is repaired by the owner, the waiver application must include receipts or other evidence that at least \$200 has been spent on parts (other than a catalytic converter, fuel inlet restrictor or air injection system). No allowance is permitted for labor on vehicles repaired by the owner. Also, a vehicle that qualifies for repairs under a warranty is not eligible for a waiver. The performance standard evaluation provided by the State in the Basic I/M Performance Standard Evaluation SIP submittal dated November 2, 2006 reflects the actual waiver rate that occurred during the first quarter of 1996: 4.2% for pre-1981 vehicles and 3.3% of 1981 and newer vehicles. We

find that Nevada's submitted basic I/M program for Truckee Meadows meets the requirements for issuing waivers under such programs under 40 CFR 51.360 and adequately accounts for waivers in the performance standard evaluation for the program.

Motorist Compliance Enforcement (40 CFR 51.361)

The Federal I/M rule requires the use of registration denial to ensure compliance with the requirements of the I/M program. However, the Federal I/M rule allows programs in "basic" I/M areas to use an alternative enforcement mechanism if the State demonstrates that the alternative will be as effective as registration denial.

The Nevada program includes a registration denial enforcement program. See NRS 445B.815 AND NRS 482.280. New residents to Nevada must register their motor vehicles within 60 days of becoming a resident. See NRS 482.385. Vehicle owners that do not renew vehicle registrations, and continue to drive an unregistered vehicle in the state, are subject to enforcement action by any law enforcement officer in the state. Local governments are responsible for establishing policies for the mandatory fines of all traffic violations including failure to comply with registration requirements.

Persons purchasing vehicles from used-car dealers must have the vehicle tested and obtain evidence of compliance from the dealers prior to sale (NRS 445B.800). All persons purchasing vehicles from individuals must have the vehicle tested and have a passing certificate of compliance to obtain registration. If a vehicle is not registered, it is unlawful to be operated on public highways, and NRS 445B.840 prohibits possession of unauthorized evidence of compliance or the making, issuance, or use of any imitation or counterfeit evidence of compliance.

Government fleets (any number of vehicles) and private fleets (consisting of 25 or more vehicles) can certify their vehicles in their own licensed fleet facility (see NAC 445B.461 and NAC 445B.478). I/M inspection facilities for fleets must also meet the requirements applicable to a licensed test station except for bonds and signs. Evidence of I/M compliance for vehicles serviced by a covered fleet must be submitted annually to Nevada DMV.

Emission control compliance is tied to vehicle registration or re-registration. Registration tags are color-coded with the date imprinted to make it easily visible to local, county or State law enforcement personnel. EPA believes

the submitted basic I/M program for Truckee Meadows meets the requirements under the Federal rule related to motorist compliance enforcement and is acceptable.

Motorist Compliance Enforcement Program Oversight (40 CFR 51.362)

The Federal I/M rule requires the State to audit the enforcement program on a regular basis and to follow effective program management practices, including adjustments to improve operation when necessary. A quality assurance program must be implemented to ensure effective overall performance of the enforcement system.

Under Nevada's program, compliance is monitored using computer records of vehicle registration through the Nevada DMV, in conjunction with the State, local and county law enforcement agencies. Denial of vehicle registration or re-registration is the main tool for compliance. The DMV issues and supplies all emission control documents. The DMV tracks all certificates of inspection issued, received, returned or voided by the individual licensed test stations. Licensed test stations are required to provide the DMV with a report on all control documents received, issued, or voided (see NAC 445B.472 and 445B.473).

The DMV is required to develop procedures for personnel engaged in I/M document management and processing. Periodic audits of test records and registration files for renewals must be performed. Evaluations of all personnel are conducted on a regular basis in accordance with the State Personnel Manual.

Emission test files are required to be updated periodically at the DMV. Procedures have been developed for inquiry into the host computer for specific vehicles, stations, and general program reporting. Information on complaints, waivers issued, and recall information is included in the data files. NV2000 specifications require automatic functions for such items as the following: Pass/fail determinations on all measurements; a record of all test data and vehicle data to the central computer; electronic calibration and system integrity checks; and lockouts for specified quality control.

The State has developed written procedures for all field auditors and personnel directly involved in the enforcement of the I/M program. The procedures include: Methods for performing covert and overt audits, preparation of enforcement documents, methods for operation of I/M test

equipment, public relation materials and other applicable information. EPA believes the submitted basic I/M program for Truckee Meadows meets the requirements under the Federal rule related to oversight of the motorist compliance enforcement program and is acceptable.

Quality Assurance (40 CFR 51.363)

The Federal I/M rule requires an ongoing quality assurance program to discover, correct, and prevent fraud, waste, and abuse and to determine whether procedures are being followed and are adequate, if equipment is measuring accurately, and if other problems may exist, which would impede program performance. The procedures must also be periodically evaluated to assess their effectiveness and relevance in achieving program goals. See 40 CFR 51.363.

The specifications for the NV2000 analyzer incorporate quality assurance procedures. Among its various software requirements, NV2000 provides the capability for generating station and inspector evaluation reports. NV2000 also provides for different types of reports generated for State audit purposes, such as a station performance report and details regarding analyzer maintenance. Each licensed test station must maintain records and have them available for collection for DMV evaluation (see NAC 445B.472).

The State's rules for inspecting test stations and inspectors are set forth in NAC 445B.7015-445B.7045. Nevada DMV conducts annual audits of test stations and may determine that additional inspections are necessary based on circumstances such as abnormal rates of failure of motor vehicles on exhaust emissions tests or receipt of complaints against stations or inspectors. In addition, a minimum of once every calendar month, DMV performs an audit of all exhaust gas analyzers located at a test station, and once every calendar quarter, DMV's audit includes an evaluation of the accuracy of the analyzers using specialty gas specifically designed for that purpose. See NAC 445B.472.

DMV has developed written standard operating procedures for quality assurance that were included as appendix 6 of the Basic I/M SIP submitted in 1994. These procedures cover such subjects as covert audits and use of covert vehicles. Nevada DMV auditors receive formal training in the use of analyzers, basics of air pollution control, basic engine repair, State administrative procedures, quality assurance practices, covert procedures and program rules and regulations. EPA

believes the State's submitted basic I/M program for Truckee Meadows meets the requirements under the Federal rule related to quality assurance and is acceptable.

Enforcement Against Contractors, Stations and Inspectors (40 CFR 51.364)

The Federal I/M rule requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against licensed stations or contractors, and inspectors. Procedures for actions against stations and inspectors are provided for in NAC sections 445B.463 and 445B.476 (stations) and sections 445B.489 and 445B.491 (inspectors). Violations and penalties are set forth in NRS section 445B.835 and 445B.845 and NAC sections 445B.7045 and 445B.727. Stations and inspectors are regulated by Nevada DMV with respect to license denials, suspension, reinstatements, temporary suspensions, revoked licenses, required bonds, reapplications, and hearings for reapplication [NAC sections 445B.463 through 445B.468 (stations) and sections 445B.489 through 445B.493 (inspectors)]. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the requirements for enforcement against licensed stations or contractors, and inspectors in the Federal rule and is acceptable.

Data Collection (40 CFR 51.365)

An effective I/M program requires accurate data collection in order to manage, evaluate and enforce the program requirements. The Nevada I/M program contains data gathering provisions that meet all of the criteria of the EPA regulations. Vehicle test data storage and retrieval methods are enumerated. Test results are expressed as either pass or fail. Information related to the calibration check must be stored automatically by each analysis. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the requirements for data collection in the Federal rule and is acceptable.

Data Analysis and Reporting (40 CFR 51.366)

Data analysis and reporting are required to monitor and evaluate the program by the State and EPA and must provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. The Federal I/M

rule requires four annual reports to be submitted to EPA: A test data report, a quality assurance report, a quality control report, and an enforcement report. In addition, on a biennial basis, the States must submit a report that addresses programmatic changes, such as funding or personnel changes and new regulations, and problems identified in the program and steps taken to correct those problems.

Nevada DMV is responsible, in cooperation with NDEP, for data analysis and reporting. The State of Nevada has consistently submitted the reports on time (by July of each year), and the reports contain the required information. Nevada's annual data analysis and reporting includes: The number of vehicles tested by MY; pass/fail data; basic statistics on the quality assurance program for the previous year that include the number of inspection stations operating through the year; overt and covert audit information; quality control reporting that includes the number of scheduled station audits that were conducted and the number of analyzers that failed a calibration audit; enforcement-related information including the motorist compliance level and the number of waivers granted; and a description of any changes made to the I/M program. The most recent report covers calendar year 2006.

EPA believes that the State's submitted basic I/M program for Truckee Meadows meets the requirements for data analysis and reporting in the Federal rule and is acceptable.

Inspector Training and Licensing or Certification (40 CFR 51.367)

The Federal I/M rule requires all inspectors to receive formal training and be licensed or certified to conduct inspections. NAC sections 445B.485 through 445B.502 set forth the procedures for the required training and licensing of inspectors. Nevada DMV's requirements for an approved inspector include a verified training program for "class 1" and "class 2" inspectors (including a course approved by DMV), a written and practical testing program, and a separate certification process. All trainees are required to pass a comprehensive hands-on and written examination which requires inspectors to demonstrate an understanding of Nevada's regulations, test procedures, equipment usage, quality control procedures and safety and health issues. Certified repair technicians must comply with the training and licensing requirements of "class 2" inspectors in order to perform service on vehicle exhaust emission components. All test

stations must employ approved inspectors of the appropriate class and rating. Nevada DMV provides the appropriate inspector training and licensing to meet the requirements listed in 40 CFR 51.367. EPA believes that the State's submitted basic I/M program for Truckee Meadows meets the requirements for inspector training and licensing or certification in the Federal rule and is acceptable.

Public Information and Consumer Protection (40 CFR 51.368)

The Federal I/M rule requires that an I/M program include a plan for informing the public on an ongoing basis throughout the life of the I/M program of: Local air quality problems, the requirements of Federal and State law, and the impact of motor vehicles to local air quality problems. The educational program should also include information on: The need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. In addition, the program must describe procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the I/M program.

Pursuant to NRS 445B.785 and NAC 445B.471, Nevada DMV issues a pamphlet for the purpose of providing the general public with a description of the methods of, and reasons for, the I/M program. NDEP included such a pamphlet in appendix 8 of the Basic I/M SIP submitted in 1994. In addition, Nevada DMV operates a Web site (<http://www.dmvnv.com/emission.htm>) that describes the emissions testing program. Nevada DMV has developed a public relations program to disseminate information to the public through the local offices of the DMV and civic events throughout the year. Information is made available to the motorist, whose vehicle fails the test, regarding repair facilities. The consumer is protected through covert audits, regular inspections and public reports of improprieties. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the requirements for public information and consumer protection in the Federal rule and is acceptable.

Improving Repair Effectiveness (40 CFR 51.369)

I/M program goals are achieved through effective repairs of vehicles which have failed the initial test. Under the Federal I/M rule, the State must provide the repair industry with

information and assistance on vehicle inspection, diagnosis and repair. Also, the State I/M program must provide feedback, including statistical and qualitative information to individual repair facilities on a regular basis regarding their success in repairing failed vehicles. Lastly, the State must assess the availability of adequate repair technician training in the I/M area and if such training is not currently available, shall ensure training is made available to all interested persons in the community either through private or public facilities.

Nevada DMV provides technical assistance to the repair industry by requiring the manufacturer of NV2000 exhaust gas analyzers to train all approved inspectors at the time of installation in the proper use, maintenance and operation of the analyzer and to provide on-site service calls to address specific issues or problems. See NAC 445B.5075. To provide Nevada DMV with the basis to evaluate the success in repairing failed vehicles, each authorized station is required to maintain, and have available for collection, records of all repairs at the request of Nevada DMV. See NAC 445B.472. Lastly, Nevada DMV's inspector regulations (NAC 445B.485 through 445B.502) require specific training and licensing of "class 2" inspectors, who are then approved as repair technicians. The training and certifying of mechanics is under the auspices of the DMV in cooperation with the Community College System.

We find that the State's I/M program for repair technician training meets the requirements of 40 CFR 51.369 thereby justifying the technician training credit taken in the Basic I/M Performance Standard Evaluation SIP submitted on November 2, 2006.

Compliance With Recall Notices (40 CFR 51.370)

States are required to establish a method to ensure that vehicles subject to "enhanced" I/M and that are included in either a voluntary emissions recall as defined at 40 CFR 85.1902(d), or in a remedial plan determination made pursuant to section 207(c) of the Act, receive the required repairs. "Basic" I/M programs, such as the one required for Truckee Meadows, are not subject to this requirement.

On-Road Testing (40 CFR 51.371)

On-road testing is required in areas subject to "enhanced" I/M requirements but is an option for areas subject to "basic" I/M. Because Truckee Meadows is subject to the "basic" I/M requirements, no on-road testing is

required in that area, and none is being conducted.

State Implementation Plan Submission (40 CFR 51.372)

The Federal I/M rule requires State I/M SIP submittals to address the following elements: (1) Schedule of implementation of the program including interim milestones leading to mandatory testing; (2) an analysis of emission level targets for the program showing that the program meets the performance standard; (3) a description of the geographic coverage of the program; (4) a detailed discussion of each of the required design elements; (5) legal authority requiring or allowing implementation of the I/M program; (6) legal authority for I/M program operation until such time as it is no longer necessary; (7) implementing regulations, interagency agreements, and memorandum of understanding; and (8) evidence of adequate funding and resources to implement all aspects of the program.

The State of Nevada has implemented a mandatory I/M program in Truckee Meadows since 1983. The changes that the State adopted to meet EPA's "basic" I/M program requirements were implemented in 1994. For MY 1996 and newer light-duty gasoline-powered vehicles, mandatory OBD system checks replaced the previous two-speed idle test beginning in 2002.

All of the required SIP I/M elements listed above were included in the Basic I/M SIP submitted by NDEP on June 3, 1994 except for the performance standard evaluation, which was contained in the Basic I/M Performance Standard Evaluation SIP submitted on November 2, 2006. Also, since 1994, the State has updated certain elements of the Basic I/M SIP, including the legal authority for the program, the implementing regulations, and the specifications for the approved exhaust gas analyzer. On May 11, 2007, NDEP submitted a third related SIP revision entitled *Nevada Mobile Source SIP: Update of the Regulatory Element* (May 11, 2007) ("Mobile Source SIP Update"), which includes a complete set of current I/M-related statutory provisions and implementing rules as well as the changes to the specifications for the NV2000 exhaust gas analyzer made since approval of NV2000 as part of Nevada's I/M program in Las Vegas and Boulder City in 2004. Thus, NDEP has submitted all of the required I/M elements. We note also that Nevada's I/M program does not undergo a sunset review, and thereby has the legal authority to operate until such time as it is no longer necessary.

Implementation Deadlines (40 CFR 51.373)

The Federal I/M rule requires I/M programs to be implemented as expeditiously as practicable. Decentralized "basic" I/M programs were required to be fully implemented by January 1, 1994. On-board diagnostic system checks must be implemented in all "basic" I/M areas by January 1, 2002. Nevada's "basic" I/M program was implemented in 1994, and Nevada's requirements for OBD checks were implemented in 2002. This is acceptable.

Conclusion

Based on our review of the various elements of the program as discussed above, we propose to approve the basic I/M program for Truckee Meadows as meeting all applicable requirements under the CAA and our implementing regulations under 40 CFR part 51, including the requirement that the basic program meets the "basic" performance standard applicable to "moderate" CO nonattainment areas with design values less than 12.7 ppm.

VIII. Clean Air Act Requirements for Redesignation to Attainment

The CAA establishes the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the form of a General Preamble for the Implementation of Title I of the CAA Amendments of 1990 published in the **Federal Register** on April 16, 1992 (57 FR 13498), as supplemented on April 28, 1992 (57 FR 18070). Other relevant EPA guidance documents include:

- "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from

G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards (OAQPS), June 1, 1992 (Helms memo);

- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, September 4, 1992 (Calcagni memo 1992a);

- “Public Hearing Requirements for 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, September 29, 1992 (Calcagni memo 1992b);

- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, October 28, 1992 (Calcagni memo 1992c);

- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (Shapiro memo);

- “Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, OAQPS, November 30, 1993 (Berry memo);

- “Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (Nichols memo).

For the reasons set forth below in section IX of this document, we propose to approve NDEP’s request for redesignation of the Truckee Meadows nonattainment area to attainment for the CO NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

IX. Evaluation of the State’s Redesignation Request for Truckee Meadows

A. The Area Must Have Attained the Applicable NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment EPA must determine that

the area has attained the applicable NAAQS. In this case, the applicable NAAQS is the CO NAAQS.

On May 3, 2005 (70 FR 22803), we determined that the Truckee Meadows “moderate” CO nonattainment area attained the CO NAAQS by the applicable attainment date (1995) and had continued to attain the standard since that time. As part of that determination, we reviewed the ambient CO monitoring network operated by the District AQMD and found that it meets or exceeds our requirements. See 70 FR 3170 (January 21, 2005). For a description of District AQMD’s ambient CO monitoring network in Truckee Meadows and our requirements for such networks, please see our January 21, 2005 proposed CO attainment finding (70 FR 3170).

We based our May 3, 2005 determination of attainment on ambient monitoring data through year 2004. For the purposes of this proposed rule, we have reviewed the most recent data input to our Air Quality System (AQS) database and have found that no exceedances of the CO NAAQS have been recorded in the 2005–2006 period. (The highest 8-hour CO concentrations were less than 50% of the NAAQS at all of the stations over the 2005–2006 period.) Thus, based on the attainment finding and positive assessment of the District AQMD ambient CO monitoring network that we made in May 2005 and our current review of the most recent data in AQS, we find that Truckee Meadows has attained the CO NAAQS thereby satisfying the criterion for redesignation set forth in section 107(d)(3)(E)(i).

B. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) precludes redesignation of a nonattainment area to attainment until EPA has fully approved the applicable implementation plan for the area under section 110(k). Pursuant to the CAA amendments of 1977, the State of Nevada submitted a CO plan for the Truckee Meadows nonattainment area. In 1981, we approved in part, and conditionally approved in part, the submitted CO plan, and in 1982, we found that the conditions imposed on approval of certain elements of the CO plan for Truckee Meadows had been fulfilled. In 1984, we approved revisions to many of the elements contained in the CO plan for Truckee Meadows, and deferred action on other elements. We proposed disapproval of a subsequent CO plan for Truckee Meadows in 1987, but we consider the plan elements for which we deferred action or proposed

disapproval in the 1980’s to be superseded by the SIP revision submittals made pursuant to the 1990 Clean Air Act Amendments.

With respect to post-1990 SIP submittals, upon final approval of the required plan elements proposed for approval herein (wintertime oxygenated gasoline rule and “basic” I/M program), we will have fully approved the applicable implementation plan for the Truckee Meadows CO nonattainment area, and thereby satisfied this criterion for redesignation.

C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable regulations. If EPA makes such a determination, then the criterion is satisfied.

The improvement in CO air quality in the Truckee Meadows area is due to the Federal Motor Vehicle Control Program (40 CFR part 86), the local wintertime oxygenated gasoline rule, the State’s “basic” vehicle I/M program, and the local residential wood combustion rule. The Federal Motor Vehicle Control Program has contributed to improved air quality through the gradual, continued turnover and replacement of older vehicle models with newer models manufactured to meet increasingly stringent Federal tailpipe emissions standards. The emissions reductions from the Federal Motor Vehicle Control Program are reflected in the emissions inventories and maintenance demonstration discussed later in this document through the use of EPA’s MOBILE emission factor model for on-road motor vehicles. The Truckee Meadows CO Maintenance Plan provides estimates of the emissions reductions associated with the State and local measures in years 2002, 2010 and 2016 (see page 7 of the Truckee Meadows CO Maintenance Plan). Based on those estimates, the three State and local control measures together reduced CO emissions that would otherwise have occurred in Truckee Meadows by approximately 20 percent in 2002.

With respect to permanence and enforceability, we are proposing approval of the wintertime oxygenated gasoline rule and the “basic” vehicle I/M program in this action, and upon

their final approval, the local wintertime oxygenated gasoline rule and basic I/M program will become federally enforceable as part of the Nevada SIP. (The wintertime oxygenated gasoline rule and basic I/M program are already enforceable by the District and State, respectively.) Upon the effective date of our approval of the residential wood combustion rule, it became federally enforceable. None of these measures include sunset clauses, and thus, upon approval by EPA, the measures will become permanent features of the Nevada SIP until such time as the State submits, and EPA approves, future SIP revisions that amend or delete them.

With respect to the connection between the emissions reductions and the improvement in air quality, the Truckee Meadows CO Maintenance Plan provides a demonstration that the air quality improvement in Truckee Meadows, that has resulted in attainment of the CO NAAQS by 1995 and continued attainment since then, is due to emission reductions from implementation of the control measures discussed above and is not the result of a local economic downturn or unusual or extreme weather patterns. See pages 6 through 11 of the Truckee Meadows CO Maintenance Plan.

Thus, we find that the improvement in CO air quality in Truckee Meadows is the result of permanent and enforceable emissions reductions from a combination of the Federal Motor Vehicle Control Program and certain State and local measures. As such, the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires a State to have met all requirements applicable to a nonattainment area under section 110 and part D of the Act as a prerequisite to redesignation of that nonattainment area to attainment.

1. Section 110 Requirements

Section 110(a)(2) sets forth the general elements that a SIP must contain in order to be fully approved. Although section 110(a)(2) was amended in 1990, a number of the requirements did not change in substance, and therefore, EPA believes that the pre-amendment EPA-approved SIP met these requirements in Truckee Meadows with respect to CO. As to those requirements that were amended, (see 57 FR 27936 and 27939, June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it

is consistent with the requirements of amended section 110(a)(2). The Truckee Meadows portion of the Nevada SIP contains enforceable emission limitations; requires monitoring, compiling and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the State maintains responsibility for ensuring that the CAA requirements are satisfied in the event that the District is unable to meet its CAA obligations.

2. Part D Requirements

The requirements that apply under part D of title I of the Act to “moderate” CO nonattainment areas are set forth in sections 172, 176, 187, and 211. The CAA, as amended in 1990, distinguishes between moderate CO nonattainment areas with design values of 12.7 ppm (eight-hour average) or less and those with design values greater than 12.7 ppm at the time of initial classification. Truckee Meadows had a design value of 9.8 ppm at the time of initial classification and thus is subject to those specific requirements that apply to “moderate” CO nonattainment areas with a design value of 12.7 ppm or less and is not subject to the additional requirements of “moderate” CO nonattainment areas with design values greater than 12.7 ppm. We have issued guidance in a General Preamble⁹ describing how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate CO nonattainment area SIP provisions.

Reasonably Available Control Measures / Reasonably Available Control Technology (RACM/RACT). Section 172(c)(1) of the Act requires States to submit a SIP revision for nonattainment areas that provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the NAAQS. RACM is a more general term that can refer to stationary, area or mobile sources while RACT is a term that refers to stationary sources.

⁹“General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992).

Attainment of the CO NAAQS in Truckee Meadows relies upon three State or local control measures: The State’s I/M program, Washoe County’s rule establishing a wintertime oxygenated fuel requirement and Washoe County’s rule establishing requirements for residential wood combustion. We are proposing to approve the State’s I/M program for Truckee Meadows as well as the District’s rule establishing a wintertime oxygenated fuel requirement as part of this action (see sections VI and VII of this document). In a separate action, we approved the District’s rule governing residential wood combustion. See 72 FR 33397 (June 18, 2007). Because the area has attained the CO NAAQS, no additional measures need be submitted to fulfill the RACM/RACT requirement of CAA section 172(c)(1) in the Truckee Meadows CO nonattainment area.

Reasonable Further Progress (RFP). Section 172(c)(2) of the Act requires States to submit a SIP revision for nonattainment areas that provide for reasonable further progress (RFP). Reasonable further progress is defined in CAA section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

EPA interprets the Act such that the requirements for RFP do not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point. See 57 FR 13498, at 13564 (April 16, 1992). See also our September 4, 1992 memorandum from John Calcagni, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (Calcagni memo), p. 6. Based on our finding above that Truckee Meadows has attained the CO NAAQS, we find that the requirements for RFP do not apply for the purposes of our evaluation of the State’s request to redesignate the area to attainment.

Emissions Inventory. Sections 172(c)(3) and 187(a)(1) of the Act require States to submit a comprehensive, accurate, current inventory of actual CO emissions for year 1990 from all sources within the nonattainment area. The inventory is to address actual CO emissions during the peak CO season for the area, and all stationary (generally referring to larger stationary source or “point” sources), area (generally referring to smaller

stationary and fugitive (non-smokestack sources), and mobile (on-road, nonroad, locomotive and aircraft) sources are to be included in the compilation. Under sections 172(c)(3) and 187(a)(5) of the Act, States are required to submit, no later than September 30, 1995, and no later than the end of each 3-year period thereafter, until redesignation, an updated inventory of CO emitted within CO nonattainment areas.

On November 13, 1992, NDEP submitted a revision to the Truckee Meadows portion of the Nevada SIP that contained a number of items, including the 1990 Base Year CO Inventory. The 1990 Base Year CO Inventory was the responsibility of and complied by the staff of the District AQMD. In the process of developing this base year inventory, the District AQMD submitted an Inventory Preparation Plan (IPP), which was officially accepted and approved by EPA.¹⁰ In 1993, the District AQMD revised the 1990 Base Year CO Inventory to reflect, among other things, an update of EPA's on-road motor vehicle emission factor model (MOBILE) and updated EPA methods for calculating emissions from nonroad mobile sources. NDEP submitted the revised inventory ("Revised 1990 Base Year CO Inventory") to EPA on June 3, 1994 as appendix 4 to NDEP's "basic" vehicle I/M SIP revision submittal for Truckee Meadows.

On January 19, 1996; April 14, 1999; February 5, 2002; and February 3, 2005, NDEP submitted SIP revisions that contained updates of the CO emissions inventories for Truckee Meadows for years 1993, 1996, 1999, and 2002, respectively, as required under CAA sections 172(c)(3) and 187(a)(5). Each successive inventory update reflects the changes in activity levels within each of the various source categories, the effects of on-going emissions control programs such as the Federal Motor Vehicle Control Program and the District's residential wood combustion program, as well as the updates to methods and emissions factors used to develop emissions inventories, such as updates to EPA's "MOBILE" emission factor model.

We interpret the Act such that the emission inventory requirements of section 172(a)(3), 187(a)(1), and 187(a)(5) are satisfied by the inventory requirements of the maintenance plan. See 57 FR 13498, at 13564 (April 16, 1992). Thus, our proposed approval of the submitted maintenance plan and

related base year (2002) CO emission inventory satisfies the requirements of section 172(a)(3), 187(a)(1), and 187(a)(5) for the purposes of redesignation of Truckee Meadows to attainment for the CO NAAQS. See section IX.E.1 herein for details concerning the base year (2002) CO emission inventory. We plan no further action on the previously submitted CO inventories for years 1990, 1993, 1996, and 1999.¹¹

Permits for New and Modified Major Stationary Sources

Under section 172(c)(5), the CAA requires States to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that major new sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control, referred to as the Lowest Achievable Emission Rate (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment in the nonattainment area. The process for reviewing permit applications and issuing permits for new or modified stationary sources of air pollution is referred to as "New Source Review" (NSR). With respect to nonattainment pollutants in nonattainment areas, this process is referred to as "nonattainment NSR."

Under the Clean Air Act Amendments of 1977, States with designated nonattainment areas were required to amend their NSR rules to impose LAER and offsets requirements on new major sources and major modifications of nonattainment pollutants in nonattainment areas. Under the 1977 Act Amendments, we designated Truckee Meadows as a CO nonattainment area. In Washoe County, the District AQMD administers the NSR program for all stationary sources except for certain fossil-fueled power plants that are subject under State law to NDEP jurisdiction.

To address the nonattainment NSR requirements flowing from the 1977 Act Amendments, the District amended its NSR rules; NDEP submitted them to EPA on July 24, 1979 as a revision to the

Truckee Meadows portion of the Nevada SIP; and we approved them on April 14, 1981. See 21758 (April 14, 1981). In that same April 1981 final rule, we also approved NDEP's revised nonattainment NSR rules. Under these EPA-approved rules, LAER and offsets have been requirements for any new major sources or major modifications of CO in the Truckee Meadows nonattainment area.

The 1990 Clean Air Act Amendments retained the core nonattainment NSR elements of LAER and offsets but added additional requirements, and in response, the District again revised its NSR rules, and NDEP submitted the revised rules to EPA on April 7, 1994. We have not taken action on the April 7, 1994 NSR SIP submittal.

We have determined, however, that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without nonattainment NSR in effect. The rationale for this determination is described in the Nichols memo cited in section VIII of this document.

The Truckee Meadows CO Maintenance Plan anticipates an increase in CO emissions that is proportional to expected growth in population in the Truckee Meadows area from the types of sources potentially subject to LAER and offsets¹² rather than assuming that any increases in CO from such sources would be offset. See pages 18–20 in the Truckee Meadows CO Maintenance Plan. Thus, we find that the maintenance demonstration for the Truckee Meadows CO nonattainment area does not rely on nonattainment NSR, and the State need not have a fully-approved nonattainment NSR program for Truckee Meadows prior to approval of the CO redesignation request.

Prevention of Significant Deterioration (PSD) is the NSR program that applies to new major sources or major modifications of attainment pollutants and is the replacement program for nonattainment NSR after redesignation to attainment, and part of the obligation under PSD is for a new source to review increment consumption and maintenance of the air quality standards. The PSD program requires stationary sources to undergo preconstruction review before facilities

¹² The source categories with sources potentially subject to LAER and offsets include stationary source fuel combustion and waste disposal, treatment and recovery.

¹⁰ See letter from Julia Barrow, Chief, Air Quality Section, Air Division, EPA-Region IX, to Jack Sheen, Air Pollution Control Officer, District AQMD, dated February 21, 1992.

¹¹ We are also not taking specific action on NDEP's submittal of the 2002 periodic inventory update. However, because the 2002 inventory was used as the base year inventory in the Truckee Meadows CO Maintenance Plan, we are relying on the technical documentation submitted with the 2002 periodic inventory update in our evaluation of the Truckee Meadows CO Maintenance Plan. See section IX.E.1 of this document.

are constructed or modified, and to apply Best Available Control Technology (BACT). The PSD program will apply to any major source or major modification of CO emissions wishing to locate in the Truckee Meadows area once the area is redesignated to attainment. EPA currently administers the PSD program in Washoe County except for certain types of sources for which EPA has delegated PSD authority to NDEP. See 68 FR 19371 (April 21, 2003) and 70 FR 52837 (September 8, 2003).

Contingency Provisions. Section 172(c)(9) of the Act requires a State to submit contingency measures that will be implemented if an area fails to make reasonable further progress¹³ (RFP) or fails to attain by the applicable attainment date.

On October 20, 1993, the District adopted a request to the Nevada State Environmental Commission to require and implement an “enhanced” vehicle I/M program in Truckee Meadows, upon the occurrence of future CO NAAQS exceedances, as the contingency measure intended to fulfill the requirement of CAA section 172(c)(9). NDEP included this contingency measure as appendix 7 to the State’s “basic” vehicle I/M program for the Truckee Meadows area and submitted the “basic” vehicle I/M program for the Truckee Meadows to EPA in a SIP revision submittal dated June 3, 1994.

As noted above, the section 172(c)(9) requirement for contingency measures are directed at ensuring RFP and attainment by the applicable date. We interpret the Act such that this requirement no longer applies when an area has attained the standard and is eligible for redesignation. See 57 FR 13498, at 13564 (April 16, 1992). See also Calcagni memo 1992a, at page 6. Furthermore, we note that CAA section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Therefore, based on our finding above that Truckee Meadows has attained the CO NAAQS, we find that the requirement for contingency measures under section 172(c)(9) does not apply for the purposes of our evaluation of the State’s request for redesignation, and we consider the contingency provisions submitted as part of the Truckee

Meadows CO Maintenance Plan to supersede the contingency measure submitted on June 3, 1994 and plan no further action on the latter measure.

Section 176 Requirements. Under section 176(c) of the Clean Air Act Amendments of 1990, States were required to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provided that State conformity provisions be consistent with Federal conformity regulations that the CAA required EPA to promulgate. EPA’s conformity regulations are codified at 40 CFR part 93, subparts A (“transportation conformity”) and B (“general conformity”). “Transportation conformity” applies to transportation plans, programs, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Act, and “general conformity” applies to all other Federally-supported or funded projects. SIP revisions intended to address the conformity requirements are referred to herein as “conformity SIPs.”

To address the statutory and regulatory requirements related to transportation and general conformity, on July 31, 1995, NDEP submitted the conformity procedures and criteria that had been adopted by the District on December 14, 1994 and by the Truckee Meadows Regional Planning Governing Board on February 9, 1995. We have not taken action on the July 31, 1995 SIP revision submittal.¹⁴

EPA believes it is reasonable to interpret the conformity requirements as not applicable for purposes of evaluating a redesignation request under section 107(d)(3)(E). The rationale for this is based on a combination of two factors. First, the requirement to submit a conformity SIP continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. See

CAA section 176(c)(5)(B). Second, the EPA’s conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. See 40 CFR 51.390(b) and 51.851(b). Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applicable for purposes of evaluating a redesignation request. See *EPA v. EPA*, 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.

For the reasons stated above, EPA believes the approval of conformity rules into the State’s SIP is not a prerequisite for redesignation and thus, our inaction on NDEP’s July 31, 1995 submittal is no obstacle to redesignation of Truckee Meadows to attainment for the CO NAAQS. Federal transportation and general conformity rules will continue to apply with respect to CO emissions associated with transportation plans, programs, and projects as well as other Federally-supported or funded projects within Truckee Meadows.

Vehicle Inspection and Maintenance Program. Under section 187(a)(4), the CAA requires States with moderate CO nonattainment areas to submit a SIP revision that provides for a new or amended vehicle I/M program that meets applicable Federal I/M requirements, including the “basic” I/M performance standard. As described in section VII of this document, we are proposing to approve the State’s “basic” I/M program for Truckee Meadows, and if we finalize this action as proposed, the vehicle I/M requirement for Truckee Meadows under CAA section 187(a)(4) will be fulfilled.

Oxygenated Gasoline Program. Under section 211(m), the CAA requires States with CO nonattainment areas with design values of 9.5 ppm or greater (based on 1988–1989 data) to submit a SIP revision that provides for an oxygenated gasoline program. As described in section VI of this document, we are proposing to approve the District’s wintertime oxygenated gasoline rule, and if we finalize this action as proposed, the fuel requirement under CAA section 211(m) will be fulfilled.

Conclusion with respect to Section 110 and Part D Requirements. Based on our evaluation of the various SIP requirements and submittals discussed above, we conclude that upon our final approval of the SIP submittals evaluated in this action, the State will have met all

¹³ RFP means “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” See section 171(1) of the Act.

¹⁴ On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted, and among its provisions, this law amended section 176(c) of the CAA to reduce the content requirements for transportation conformity SIPs. Under SAFETEA-LU, with respect to transportation conformity, States are required only to develop criteria and procedures for interagency consultation and enforcement (and enforceability) of commitments for certain control measures and mitigation measures. In response to SAFETEA-LU, NDEP is now free to request that EPA approve only the three provisions that are required to be included in transportation conformity SIPs and that EPA take no action on the remainder of the transportation conformity portion of the July 31, 1995 SIP submission; however, other options are available as well. See 72 FR 24472, at 24484–24485 (May 2, 2007).

section 110 and part D requirements that apply to the Truckee Meadows moderate CO nonattainment area and thereby satisfied the criterion for redesignation under CAA section 107(d)(3)(E)(v).

E. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA requires, as a pre-condition to being redesignated to attainment, that EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act. Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memo 1992a.

The purpose of a maintenance plan is to provide for the maintenance of the applicable NAAQS for at least 10 years after redesignation. Eight years after redesignation, the State must submit a revised maintenance plan which demonstrates continued maintenance of the applicable NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The *Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-*

Attainment Area (September 2005) (“Truckee Meadows CO Maintenance Plan”), which was prepared by the District AQMD and adopted by the District Board of Health, addresses these core elements, and our evaluation of these elements follows.

1. Attainment Inventory

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA’s most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory should also be based on actual “CO season data” (i.e., wintertime) emissions for the attainment year.

The District’s Truckee Meadows CO Maintenance Plan presents CO emissions estimates and projections for years 2002, 2010, and 2016. We find year 2002 to be an acceptable year for the baseline year because it represents a year in which the Truckee Meadows was in attainment of the CO NAAQS. See 70 FR 22803 (May 3, 2005). Based on monitoring data collected during 2002, the design value for CO in Truckee Meadows in the attainment year was 4.4 ppm, eight-hour average, which is well below the NAAQS of 9 ppm. The baseline (2002) inventory in the maintenance plan is not documented in detail in the Truckee Meadows CO Maintenance Plan itself but is so documented in a separate SIP submittal of the same date as the Truckee Meadows CO Maintenance Plan

(November 4, 2005) of the 2002 CO periodic inventory update.

As shown in table 1 below, the baseline inventory (2002) covers stationary area sources (including stationary source fuel combustion; waste disposal, treatment, & recovery; residential wood combustion; and miscellaneous area sources (such as wildfires, structure fires, and prescribed burning)), nonroad mobile sources (including aircraft, nonroad gasoline and diesel vehicles, and railroads), and on-road mobile sources (i.e., cars, trucks, and motorcycles) and reflects activity profiles and temperatures characteristic of the CO season (i.e., Winter). On-road estimates were made based on EPA’s MOBILE6 (high altitude) emission factors, vehicle I/M and anti-tampering programs, the oxygenated gasoline requirement, Regional Transportation Commission (RTC) transportation activity estimates (VMT, vehicle speeds, etc.), and demographic data provided by the planning departments for Washoe County, the City of Reno, and the City of Sparks. Nonroad mobile source emissions (not including aircraft or locomotives) were estimated using EPA’s NONROAD emissions model. The baseline emissions estimates reflect the basic control measures relied upon for attainment and maintenance of the CO NAAQS in Truckee Meadows: The Federal Motor Vehicle Control Program, The District’s oxygenated gasoline requirement, the State’s vehicle I/M program for motor vehicles, and the District’s residential wood combustion program.

TABLE 1.—CARBON MONOXIDE EMISSIONS INVENTORY, TRUCKEE MEADOWS, 2002, 2010, AND 2016

[Pounds per typical CO season day]

Source	2002	2010	2016
Stationary Source Fuel Combustion	2,920	3,321	3,619
Waste Disposal, Treatment & Recovery	18	20	22
Residential Wood Combustion	31,918	35,344	35,344
Miscellaneous Area Sources	613	697	760
Aircraft	4,175	4,748	5,175
Nonroad Gasoline Vehicles	68,578	68,712	77,226
Nonroad Diesel Vehicles	1,645	1,834	1,873
Railroads	155	176	192
On-road Vehicles (without safety margin)	335,508	263,938	236,754
Subtotal (excluding safety margins)	445,530	378,790	360,965
Safety Margin (assigned to on-road vehicles)	N/A	66,740	84,565
Total (including safety margin)	445,530	445,530	445,530

Source: District AQMD, Truckee Meadows CO Maintenance Plan, pages 20 and 21.

The baseline inventory estimates that on-road motor vehicles accounted for

approximately 75%, residential wood combustion accounted for

approximately 7%, and nonroad mobile sources (including locomotives and

aircraft) accounted for approximately 17% of the daily (wintertime) CO emissions within Truckee Meadows in 2002.

The methodologies used by the District AQMD to prepare the baseline (2002) CO inventory, as described in the appendices to the 2002 CO periodic inventory update SIP submittal (dated November 4, 2005), are acceptable, and we find the baseline CO inventory for Truckee Meadows to be reasonably comprehensive and accurate.

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. In either case, to satisfy the demonstration requirement, the State should project emissions for at least 10 years beyond redesignation.

Table 1, above, summarizes the baseline (2002) CO emissions estimates and future year (2010 and 2016) projections from the Truckee Meadows CO Maintenance Plan. The Truckee Meadows CO Maintenance Plan projects future year inventories (2010 and 2016) by adjusting the 2002 baseline inventory to account for changes in population, vehicle miles traveled (VMT), and the underlying composite emissions factors for such sources as motor vehicles and nonroad mobile sources (using such emissions models as MOBILE6 and NONROAD, consistent with the baseline (2002) inventory). The population projections used in developing the future year emissions projections are consistent with those that were adopted by the Truckee Meadows Regional Planning Commission for use in developing the Truckee Meadows Regional Plan. The vehicle activity assumptions used for the emissions projections are consistent with those developed and used by the local Metropolitan Planning Organization (MPO), the Regional Transportation Commission of Washoe County.

The projections for 2010 and 2016 reflect the control measures relied upon for attainment and maintenance of the CO NAAQS in Truckee Meadows, including the Federal Motor Vehicle Control Program, the District's oxygenated gasoline program, the State's vehicle I/M program, and the District's residential woodburning combustion program.

Based on the inventory estimates, CO emissions in Truckee Meadows are expected to decrease significantly

between 2002 and 2016, despite a projected 24% increase in population and 38% increase in VMT over that period, primarily due to decreases from the on-road motor vehicle category associated with increasingly stringent EPA exhaust standards for new cars and trucks and the gradual turnover from older more polluting, to newer cleaner burning, vehicles. The District AQMD has also established safety margins for years 2010 and 2016 and assigned the safety margins to the on-road motor vehicle source category. Based on our review of the emissions projections, we find that the methods used to make the future year projections are acceptable.

Assuming redesignation of Truckee Meadows for CO early in 2008, the plan does not quite project emissions for 10 years beyond redesignation, but given how close the out-year in the maintenance plan (2016) is to a 10-year horizon year (2018), the low design value (4.4 ppm) of Truckee Meadows in the attainment year (2002), the flat trend in CO emissions documented by the maintenance plan (even assuming use of the safety margin), and the expected continuation of all of the measures that brought the area to attainment, we find that the plan adequately demonstrates maintenance of the CO NAAQS for the initial maintenance period (i.e., first 10 years after redesignation).

3. Monitoring Network

Continued ambient monitoring of an area is required over the maintenance period. In the Truckee Meadows CO Maintenance Plan (see page 22 of the plan), the District AQMD indicates its intention to continue to operate an air quality monitoring network consistent with 40 CFR part 58 to verify the attainment status. The Truckee Meadows CO Maintenance Plan also states that, in addition, Washoe County's CO monitoring network will be reviewed annually pursuant to 40 CFR 58.20(d) to ensure the network meets the monitoring objectives defined in 40 CFR part 58, appendix D.

4. Verification of Continued Attainment

The District AQMD and NDEP have the legal authority to implement and enforce the requirements of the Truckee Meadows CO Maintenance Plan. This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct CO NAAQS violations. As noted above, to implement the Truckee Meadows CO Maintenance Plan, the District AQMD will continue to monitor CO levels in Truckee Meadows. To track progress on the plan, the District AQMD has also

committed to continue preparing (and submitting to EPA) CO emission inventory updates on a triennial schedule (see page 23 of the Truckee Meadows CO Maintenance Plan). The District AQMD also intends to continue residential wood combustion surveys on a triennial basis to monitor changes in the types and number of woodburning devices operating, and the amount of wood being burned, in Truckee Meadows and thereby maintain up-to-date information on this important CO source category.

5. Contingency Plan

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. As a necessary part of the plan, the State should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

The Truckee Meadows CO Maintenance Plan includes a contingency plan consisting of two tiers. As background to the first tier, we note that, under the District's emergency episode plan, now codified as District rule 050.001, an exceedance of the 8-hour CO NAAQS (i.e. a value exceeding 9 ppm (eight-hour average), which means an actual recording of 9.5 ppm or greater due to rounding conventions) at any of the monitors located in the Truckee Meadows area triggers a Stage 1 (Alert) Episode. Stage 1 (Alert) Episode actions include cessation of open burning and use of incinerators that are subject to District AQMD operating permits, and a request to the public to curtail unnecessary motor vehicle use through the District's public outreach program. Under certain conditions, Stage 1 (Alert) Episode actions may also include the suspension of the burning of any solid fuel in commercial or residential stoves and/or fireplaces unless such fuels supply the only heat available to the person burning it. We approved the current version of the District's emergency

episode plan on June 18, 2007 (72 FR 33397).

Under tier 1 of the contingency plan, the District would initiate a rulemaking process to redefine the CO stage 1 (alert) episode level from 9 ppm to 9.0 ppm. This will have the effect of triggering the actions cited above at pre-exceedance levels due to the convention of rounding all values from 9.1 ppm through 9.4 ppm down to 9 ppm. In other words, under tier 1, the Stage 1 (Alert) Episode criteria level for CO will be reduced, as a practical matter, from 9.5 ppm to 9.0 ppm. The plan indicates that the District will adopt and implement this regulatory change before the next CO season following the triggering event.

Tier 2 will be triggered by a violation of the CO NAAQS (i.e., a second non-overlapping exceedance of the 8-hour CO NAAQS in the same calendar year from any National Ambient Monitoring Station (NAMS), State and Local Monitoring Stations (SLAMS), or Special Purpose Monitoring (SPM) site operated within Washoe County). If triggered, under tier 2 of the contingency plan, the District AQMD will bring to the District Board of Health (within 45 days of the tier 2 triggering event) a recommendation for regulatory action, including a timeline for adoption and implementation. The contingency plan contains the current list of potential CO contingency measures, including an increase in the oxygen content requirement under the District's wintertime oxygenated gasoline rule, and a request to the State Environmental Commission to revise certain provisions of the vehicle I/M program to achieve additional CO emissions reductions in Truckee Meadows. The District AQMD intends to update this list of potential measures on a triennial basis.

EPA finds that the contingency plan provided in the maintenance plan is adequate to ensure prompt correction of

a violation and thereby complies with section 175A(d) of the Act.

6. Subsequent Maintenance Plan Revisions

Section 175A(b) of the CAA requires States to submit a subsequent maintenance plan revision eight years after the original redesignation request and maintenance plan have been approved by EPA. The subsequent revision is to provide for maintenance of the air quality standard for an additional 10 years following the initial ten-year maintenance period. Through adoption of the Truckee Meadows CO Maintenance Plan, the District has committed (see page 16 of the Truckee Meadows CO Maintenance Plan) to prepare, adopt and submit a revised CO maintenance plan eight years after redesignation to attainment.

7. Motor Vehicle Emissions Budgets

A maintenance plan must contain motor vehicle emissions budgets (MVEBs) that, in conjunction with all other sources, are consistent with maintenance of the applicable NAAQS. In this case, an MVEB represents the total allowable CO emissions allocated to highway and transit vehicle use during the maintenance period. The rules and requirements governing transportation conformity (codified at 40 CFR part 93, subpart A) require certain transportation activities to be consistent with the MVEBs contained in control strategy or maintenance SIPs (40 CFR 93.118). The projected emissions resulting from the transportation activities must be less than or equal to the emissions budget levels (40 CFR 93.118(a)).

The MVEBs for years 2010 and 2016 that are contained in the Truckee Meadows CO Maintenance Plan were developed using emission factors generated using EPA's MOBILE6 model

but also include a safety margin equal to the difference between the projected level of overall CO emissions in Truckee Meadows in those years and the actual CO emissions that were estimated for the baseline year (2002). Safety margins are allowed under our transportation conformity rule so long as such margins are explicitly quantified in the applicable plan and are shown to be consistent with attainment or maintenance of the NAAQS (whichever is relevant to the particular plan). See 40 CFR 93.124(a). In this instance, the safety margin has been explicitly quantified and shown to be consistent with continued maintenance of the CO NAAQS in Truckee Meadows through the applicable maintenance period. See section IX.E.2 of this document.

We found the MVEBs in the Truckee Meadows CO Maintenance Plan adequate in a letter to Leo M. Drozdoff, P.E., Administrator, NDEP, dated February 14, 2006. See 71 FR 13386 (March 15, 2006). The adequacy finding on the maintenance plan budgets was effective as of March 30, 2006.

Our adequacy finding is a preliminary determination that MVEBs are consistent with the purposes of the submitted plan (in this case, a maintenance plan) and does not constitute an approval action, and in today's action, EPA is taking the next step by proposing to approve the MVEBs in the Truckee Meadows CO Maintenance Plan for transportation conformity purposes. EPA believes that the MVEBs are consistent with the control measures identified in the SIP, and that the SIP as a whole demonstrates maintenance with the CO NAAQS. The 2010 and 2016 motor vehicle emissions budgets included in the Truckee Meadows Truckee Meadows CO Maintenance Plan are shown in Table 2 below.

TABLE 2.—ON-ROAD MOTOR VEHICLE CARBON MONOXIDE EMISSIONS BUDGETS, TRUCKEE MEADOWS, 2010 AND 2016 [Pounds per typical CO season day]

	2010	2016
On-Road Motor Vehicle Emissions Budgets	330,678	321,319

8. Conclusion

Based on the review presented above of the various elements of the submitted plan, we propose to approve the Truckee Meadows CO Maintenance Plan as a revision to the Truckee Meadows portion of the Nevada SIP. In so doing, we find that the Truckee Meadows CO Maintenance Plan, adopted on September 22, 2005 by the Washoe

County District Board of Health and submitted by NDEP to EPA on November 4, 2005, satisfies the requirements of section 175A of the Act. Our final approval of the Truckee Meadows CO Maintenance Plan would satisfy the criterion for redesignation under CAA section 107(d)(3)(E)(iv).

X. Proposed Action and Request for Comment

For the reasons given above, we are proposing to approve, under section 110(k)(3) and part D (of title I) of the Act, certain submittals by NDEP of revisions to the Nevada SIP that are required to provide for attainment of the CO NAAQS in the Truckee Meadows "moderate" CO nonattainment area, to

approve a maintenance plan under section 110(k)(3) and 175A of the Act, and to approve, under section 107(d)(3) of the Act, NDEP's request to redesignate Truckee Meadows to attainment for the CO NAAQS.

First, we are proposing to approve the local oxygenated gasoline regulation (Rule 040.095 of the Washoe County District Board of Health Regulations Governing Air Quality Management, as amended on September 22, 2005) as fulfilling the requirements of section 211(m) of the CAA.

Second, we are proposing to approve the State of Nevada's SIP revisions containing the "basic" vehicle I/M program for Truckee Meadows because we find that the program meets all applicable requirements under CAA section 187(a)(4) and EPA regulations. Specifically, we are proposing to approve three I/M-related SIP revisions submitted by NDEP:

(i) *State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada* (June 1994), submitted on June 3, 1994; we are excluding the following outdated or superseded elements included in the June 3, 1994 SIP revision: the statutory provisions and rules, the exhaust gas analyzer specifications, and a contingency measure adopted by the Washoe County District Board of Health;

(ii) Basic I/M Performance Standard Evaluation for motor vehicles in the Truck Meadows planning area, submitted on November 2, 2006; and

(iii) Current Nevada I/M statutory provisions and rules and updated exhaust gas analyzer (NV2000) specifications, submitted by NDEP on May 11, 2007. The submitted Nevada I/M statutory provisions and regulations that are proposed for approval are as follows:

- Nevada Revised Statutes (2005), chapter 365: section 365.060; chapter 366, section 366.060; chapter 445B, sections 445B.210, 445B.700–845 (excluding NRS 445B.776, 445B.777, and 445B.778); chapter 481, sections 481.019–481.087; chapter 482, sections 482.029, 482.155–482.290, 482.385, 482.461, and 482.565; and chapter 484, sections 484.101, 484.644 and 484.6441;
- Nevada Administrative Code, chapter 445B (January 2007 revision by the Legislative Counsel Bureau), sections 445B.400 to 445B.735, excluding subsection (2) of section 445B.595.

The May 11, 2007 SIP revision submittal is a comprehensive update of the statutory and regulatory portion of Nevada's mobile source SIP (excluding

the rules establishing fuels specifications, alternative fuels programs for government vehicles, and any local rules related to mobile sources) and is an update of the exhaust gas analyzer specifications as approved in 2004 for the State's I/M program in Las Vegas and Boulder City.

In connection with the approval of the State's I/M program, we are taking no action on submitted rule NAC 445B.595(2), which extends the State's I/M requirements to motor vehicles operated on Federal installations located within I/M areas because the Federal government has not waived sovereign immunity in the context of vehicle I/M programs. Furthermore, we are proposing, under CAA section 110(k)(6), to rescind our previous, and erroneous, approval of NAC 445B.595(2) into the Nevada SIP in 2004, also on the grounds of sovereign immunity.

Third, under section 107(d)(3), we are proposing to approve NDEP's request (dated November 4, 2005) to redesignate the Truckee Meadows CO nonattainment area to attainment. In so doing, we find that:

- The Truckee Meadows nonattainment area has attained the CO NAAQS;
- EPA has fully approved the applicable SIP for this area under section 110(k) of the CAA;
- The improvement in ambient CO conditions in Truckee Meadows is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
- The State has met all requirements applicable to Truckee Meadows under section 110 and part D (of title I) of the CAA;¹⁵ and
- The State has submitted a maintenance plan, the *Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area* (September 2005) ("Truckee Meadows CO Maintenance Plan"), adopted by the Washoe County District Board of Health on September 22, 2005, and submitted by NDEP to EPA on November 4, 2005, for which we are proposing approval as a revision to the Truckee Meadows portion of the Nevada SIP.

¹⁵ With respect to this criterion, we will not finalize this proposed redesignation until we have finalized proposed approvals of the District's wintertime oxygenated gasoline rule and the State's basic I/M program, both of which are addressed herein. Also, we find that we need not fully approve either the District's nonattainment new source review rules or conformity rules as a precondition to redesignation of Truckee Meadows to attainment for the CO NAAQS.

In connection with the Truckee Meadows CO Maintenance Plan, we find the following plan elements to be acceptable:

- Baseline (2002) emissions inventory and future year (2010 and 2016) inventory projections;
- Commitment to continue operating an appropriate ambient CO monitoring network;
- Commitment to verify continued attainment through ambient monitoring and the preparation and submittal of periodic inventory updates and surveys of residential woodburning;
- Contingency provisions under CAA section 175A(d), specifically, the adopted two-tier approach with specific triggering events and regulatory responses: the first involving a lowering of the stage 1 (alert) episode level (tier 1) by the next CO season and the second involving a recommendation and timetable for action by the Washoe County District Board of Health or the State Environmental Commission to tighten certain requirements, potentially including a higher wintertime gasoline oxygen content or higher waiver amounts in the State's vehicle I/M program, to promptly correct any violation of the CO NAAQS after redesignation;
- Commitment to prepare and submit a subsequent CO maintenance plan for the Truckee Meadows area eight years after redesignation; and
- CO motor vehicle emissions budgets (in terms of pounds per typical CO season day) of 330,678 pounds per typical CO season day in year 2010 and 321,319 pounds per typical CO season day in year 2016.

We are soliciting comments on all aspects of this proposed SIP and redesignation rulemaking action. We will consider your comments in deciding our final action if your comments are received by *February 6, 2008*.

XI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed action merely proposes to approve state plan revisions as meeting Federal requirements and redesignate an area to attainment for air quality planning purposes and imposes no additional requirements beyond those imposed by

state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposed 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 proposes to approve state plan revisions implementing a Federal standard and to redesignate an area to attainment for air quality planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

In reviewing SIP submissions and redesignation requests, 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 or redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or redesignation request, 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 proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: December 26, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E7-25636 Filed 1-4-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07-51; FCC 07-189]

Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The *Further Notice of Proposed Rulemaking* ("Notice") solicits comment on whether providers of Direct Broadcast Satellite ("DBS") service and Private Cable Operators ("PCOs") should be allowed to have exclusive access to so-called Multiple Dwelling Units ("MDUs," such as apartment and condominium buildings). Also, the *Notice* considers prohibiting all providers of video programming service from using exclusive marketing arrangements (which allow one MVPD to be the preferred video provider in an MDU) and bulk billing arrangements (which require MDU dwellers to pay for a video provider in their rental or condominium fees). The intended effect of the *Notice* is to determine whether each of these practices benefits or harms video consumers in MDUs on the whole.

DATES: Comments for this proceeding are due on or before February 6, 2008; reply comments are due on or before March 7, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 07-51, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact John W. Berresford, (202) 418-1886, or Holly Saurer, (202) 418-7283, both of the Policy Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Further Notice of Proposed Rulemaking in MB Docket No. 07-51, FCC 07-189, adopted October 31, 2007, and released November 13, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary of the Further Notice of Proposed Rulemaking

I. Further Notice of Proposed Rulemaking

1. The *Report and Order* released simultaneously with this *Notice* addresses primarily those providers of multichannel video programming distribution (“MVPDs”) covered by section 628 of the Communications Act of 1934, as amended, in part because the record before us predominantly addressed building exclusivity clauses involving cable operators. Therefore, in order to assess whether we should take action to address such clauses entered into by DBS providers, PCOs, and other MVPDs who are not subject to section 628, the *Notice* asks for comment on several matters. Do DBS service providers, PCOs, and other MVPD providers not subject to section 628 use any or all forms of exclusivity clauses (e.g., building, marketing)? If they do, what kinds of exclusivity do those clauses provide? Is it likely that an MVPD provider subject to section 628, in reaction to the foregoing *Report and Order* and seeking to avoid its effects, would partner with a DBS provider or PCO? What are the effects of the use of exclusivity clauses by MVPD providers not subject to section 628 on consumer choice, competition for multi-channel video and other services, and on the deployment of broadband and other advanced communications facilities? Are those effects and the balance of benefits and harms the same as we have found in the *Report and Order* with respect to the use of exclusivity clauses by providers that are subject to Section 628?

2. If the net effect of the use of exclusivity clauses by MVPD providers not subject to section 628 is harmful to consumers, what remedy should we impose—the same kind of prohibition we adopt in the *Report and Order*, or something different? We also ask for comment about two legal matters. First, do our Over-the-Air Reception Devices rules (47 CFR 1.4000) affect the remedy we should impose on DBS providers? Second, we ask for comment about our legal authority. Does the Commission have the authority to regulate the use of exclusivity clauses by MVPD providers not subject to section 628? Does the Commission have authority over DBS providers under section 335 of the Act? Does the Commission have authority over DBS and other providers under Title III generally, Title VI, its ancillary authority, or some other source? We ask for comment on all the foregoing factual, analytical, and legal issues.

3. We also seek comment on whether the Commission should prohibit exclusive marketing and bulk billing arrangements. For example, we are aware that certain clauses in contracts allow one MVPD into a MDU or real estate development but constrain the ability of competitive MVPDs to market their services directly to MDU residents. These arrangements provide for what is called “marketing exclusivity,” and may be anticompetitive. Some argue that in order for MDU residents to exercise freely their choice, they must know about their MVPD options.

4. In particular, we seek comment on a number of questions. How pervasive are these exclusive marketing arrangements? What is the typical scope of such arrangements? In other words, we seek comment on how the Commission should define them for regulatory purposes. Have they been used to impede competition in the video marketplace? Can other MVPDs effectively communicate with MDU residents in those MDUs that have signed exclusive marketing agreements? Do the costs of marketing, promotions and sales substantially increase when a competitive video provider confronts exclusive marketing arrangements? Do these arrangements constitute an unfair method of competition or an unfair act or practice in violation of section 628(b) of the Act? If so, how should the Commission act to address this problem? Should we prohibit the enforcement of all existing exclusive marketing arrangements as well as the execution of new ones? That is, should we treat them in the same manner as we treat exclusive building access arrangements in the *Report and Order*? Is our legal authority to address such agreements the same as our legal authority for addressing exclusive building access arrangements?

5. We also seek comment on these same questions with respect to “bulk billing” arrangements. Some have argued that bulk contracts are anti-competitive. As we understand them, bulk billing arrangements may be exclusive contracts because MDU owners agree to these arrangements with only one MVPD, barring others from a similar arrangement. Such arrangements may not prohibit MDU residents from selecting a competitive video provider. However, because of the “bulk billing” nature of the contract, residents would have to continue paying a fee to the provider with the bulk billing contract as well as pay a subscription fee to the new service provider. We seek comment on whether these “bulk billing” arrangements are typically formalized as agreements between cable operators and

MDUs or between MDUs and residents (or both)? Do these arrangements have the same practical effect as exclusive access arrangements in that most customers would be dissuaded from switching video providers?

6. The Commission will conclude this rulemaking and release an order within six months of publication of this *Order*.

II. Procedural Matters

A. Filing Requirements

7. *Ex Parte Rules.* The *Further Notice of Proposed Rulemaking* in this proceeding will be treated as a “permit-but-disclose” subject to the “permit-but-disclose” requirements under § 1.1206(b) of the Commission’s rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

8. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing

instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call

the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or bill.cline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their Web site at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

B. Initial Regulatory Flexibility Analysis

- As required by the Regulatory Flexibility Act of 1980, as amended (the "RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact of the policies and rules proposed in the Further Notice of Proposed Rulemaking ("FNPRM") on a substantial number of small entities.

C. Paperwork Reduction Act Analysis

10. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burdens 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).

D. Additional Information

11. For additional information on this proceeding, please contact John W. Berresford, (202) 418-1886, or Holly Saurer, (202) 418-7283, both of the Policy Division, Media Bureau.

III. Ordering Clauses

12. *It is ordered* that, pursuant to sections 1, 4(i), 303(r), 335, 623 and 628(b, c) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 303(r), 335, 543, and 548(b, c), this Further Notice of Proposed Rulemaking *is hereby adopted*.

13. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-25214 Filed 1-4-08; 8:45 am]

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Notices

Federal Register

Vol. 73, No. 4

Monday, January 7, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0044]

Environmental Impact Statement; Determination of Regulated Status of Alfalfa Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and proposed scope of study.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement in connection with making a determination on the status of the Monsanto Company and Forage Genetics International alfalfa lines designated as events J101 and J163 as regulated articles. This notice identifies potential issues and alternatives that will be studied in the environmental impact statement and requests public comment to further delineate the scope of the issues and regulatory alternatives.

DATES: We will consider all comments that we receive on or before February 6, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0044> to submit or view public comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2007-0044, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700

River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0044.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Huberty, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-0659.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

In a notice published in the **Federal Register** on June 27, 2005 (70 FR 36917-36919, Docket No. 04-085-3), APHIS advised the public of its determination, effective June 14, 2005, that the Monsanto/Forage Genetics International (FGI) alfalfa events J101 and J163 were no longer considered regulated articles under the regulations governing the introduction of certain genetically engineered organisms. That determination was subsequently challenged in the United States District Court for the Northern District of

California by the Center for Food Safety, other associations, and several organic alfalfa growers. The lawsuit alleged that APHIS' decision to deregulate the genetically engineered glyphosate-tolerant alfalfa events J101 and J163 violated the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Plant Protection Act.

On February 13, 2007, the court in that case issued its memorandum and order in which it determined that APHIS had violated NEPA by not preparing an Environmental Impact Statement (EIS) in connection with its deregulation determination. The court ruled that the environmental assessment prepared by APHIS for its deregulation determination failed to adequately consider certain environmental impacts in violation of NEPA. The deregulation determination was vacated and APHIS was directed by the court to prepare an EIS in connection with its new determination on the regulated status of the events.

On March 23, 2007, APHIS published a notice in the **Federal Register** (72 FR 13735-13736, Docket No. 04-085-4) announcing that the Monsanto/FGI alfalfa events J101 and J163 were once again regulated articles under 7 CFR part 340 and that the requirements pertaining to regulated articles under those regulations would again apply as of March 30, 2007, for those alfalfa events.

Under the provisions of NEPA, agencies must examine the potential environmental impacts of proposed Federal actions and regulatory alternatives. We intend to prepare an EIS in connection with making a new determination on the status of J101 and J163 alfalfa as regulated articles. This notice identifies potential issues and regulatory alternatives we will study in the EIS and requests public comment to further delineate the issues and the scope of the different alternatives.

We have identified three broad regulatory alternatives for study in the EIS:

A. No Action: Continuation as a Regulated Article

Under the "no action" alternative, APHIS would not change the regulated status of these regulated J101 and J163 alfalfa plants under the regulations in 7 CFR part 340. Permits issued or notifications acknowledged by APHIS

would be required for new introductions of J101 and J163 alfalfa plants. APHIS might choose this alternative if there was insufficient evidence to demonstrate that the regulated alfalfa events were not plant pests or the lack of plant pest risk from the unconfined cultivation of glyphosate-tolerant alfalfa.

B. Determination That J101 and J163 Alfalfa Plants Are No Longer Regulated Articles, in Whole

Under this alternative, these glyphosate-tolerant alfalfa plants would no longer be regulated articles under the regulations at 7 CFR part 340. Permits issued or notifications acknowledged by APHIS would no longer be required for introductions of glyphosate-tolerant alfalfa derived from these events.

C. Determination That J101 and J163 Alfalfa Plants Are No Longer Regulated Articles, in Part

The regulations at 7 CFR 340.6(d)(3)(i) state that APHIS may “approve the petition in whole or in part.” Approval in part can be given in different ways. APHIS proposes three alternatives that employ approval in part:

- Under one type of approval in part, some but not all lines requested in the petition may be approved. APHIS could approve only one of the two glyphosate-tolerant lines (events J101 and J163) requested in this petition.

- Under a second type of approval in part, the petition may be approved with geographic restrictions. APHIS could determine that the two regulated alfalfa events pose no significant risk in certain geographic areas, but may pose a significant risk in others. In such a case, APHIS could choose to approve the petition with a geographic limitation stipulating that the approved glyphosate-tolerant lines could only be grown without APHIS authorization in certain geographic areas.

- Under a third type of approval in part, some but not all lines requested in the petition may be approved with geographic restrictions. APHIS could approve one of the two glyphosate-tolerant alfalfa events with geographic limitations, stipulating that the approved line could only be grown without APHIS authorization in certain geographic areas.

Scope of the Issues To Be Addressed in the EIS

The review of the petition for deregulation of glyphosate-tolerant alfalfa by APHIS raised the following potential issues that APHIS may address in the EIS:

(1) What are the particular management practices for organic alfalfa, conventional alfalfa, and glyphosate-tolerant alfalfa? What are the procedures and associated costs of establishing, growing, harvesting, and marketing (includes selling prices and premiums for various quality standards) for each of the three types of alfalfa? What crop rotation regimes are used with each type of alfalfa?

(2) What are the production levels of organic and conventional alfalfa seed and hay by region, State, and county? Which regions of the country areas may be affected more than others with the deregulation of glyphosate-tolerant alfalfa? What is the acreage of cultivated, volunteer, or feral alfalfa? What are the potential impacts on adjacent, nonagricultural lands such as natural areas, forested lands, or along transportation routes that may occur with the use of glyphosate-tolerant alfalfa?

(3) What is the expected effect of glyphosate-tolerant alfalfa release on animal production systems?

(4) What are the potential impacts of glyphosate-tolerant alfalfa release on food and feed? How does glyphosate tolerance affect food or feed value or nutritional quality? Should the low level presence of glyphosate-tolerant alfalfa occur in situations where it is unwanted, unintended, or unexpected, what impact would this have on the ability of producers to market affected organic or conventional alfalfa or livestock fed this material? What are the negative impacts, if any, on food or feed value or quality from the use of glyphosate?

(5) What differences are there in weediness traits of conventional alfalfa versus glyphosate-tolerant alfalfa under managed crop production systems as well as in unmanaged ecosystems?

(6) What is the occurrence of common and serious weeds found in organic alfalfa systems, in conventional alfalfa systems, and in glyphosate-tolerant alfalfa systems? What are the current impacts of weeds, herbicide-tolerant weeds, weed management practices, and unmet weed management needs for organic and conventional alfalfa cultivation? How may the weed impacts change with the use of glyphosate-tolerant alfalfa?

(7) What are the particular management practices for controlling weeds in organic alfalfa systems, in conventional alfalfa systems, and in glyphosate-tolerant alfalfa systems? What are the potential changes in crop rotation practices and weed management practices for control of volunteer alfalfa or herbicide-tolerant

weeds in rotational crops that may occur with the use of glyphosate-tolerant alfalfa? What are the potential effects on alfalfa stand termination and renovation practices that may occur with the use of glyphosate-tolerant alfalfa? What is the potential weediness of glyphosate-tolerant alfalfa?

(8) What is the potential cumulative impact of glyphosate resistant weeds, especially with the increase in acreage of glyphosate-tolerant crops? Are there glyphosate resistant weeds and what is their prevalence in crops and in non-crop ecosystems? Will the release of glyphosate-tolerant alfalfa cause an increase in glyphosate resistant weeds in alfalfa and in other crops? Which weeds are the most likely to gain glyphosate resistance with the use of glyphosate-tolerant alfalfa? What are the alternatives for management of glyphosate-tolerant or other herbicide-tolerant weeds in glyphosate-tolerant alfalfa stands or in subsequent crops? What are the potential changes that may occur in glyphosate-tolerant alfalfa as to susceptibility or tolerance to other herbicides?

(9) What are current or prospective herbicide-tolerant weed mitigation options, including those addressed by the Environmental Protection Agency-approved label for glyphosate herbicides?

(10) What is the potential for gene flow in all combinations between seed fields, hay fields, and feral plants? To what extent will deregulation of glyphosate-tolerant alfalfa impact hybridization between cultivated and feral alfalfa, alfalfa's introgression or establishment outside of cultivated lands, and alfalfa's persistence in situations where it is unwanted, unintended, or unexpected? What are the risks associated with feral glyphosate-tolerant alfalfa plants? How will the removal of glyphosate-tolerant alfalfa in situations where it is unwanted, unintended, or unexpected result in adverse impacts? In such situations, how will glyphosate-tolerant alfalfa be controlled or managed differently from other unwanted, unintended, or unexpected alfalfa? To what extent can organic or conventional alfalfa farmers prevent their crops from being commingled with unwanted, unintended, or unexpected glyphosate-tolerant alfalfa?

(11) What are the potential economic and social impacts of glyphosate-tolerant alfalfa release on organic and conventional alfalfa farmers? What are the potential impacts of the presence of glyphosate-tolerant alfalfa caused by pollen movement or seed admixtures? What are the economic issues associated

with using alfalfa seed or hay commingled with glyphosate-tolerant alfalfa? What are the particular economics of growing seed or hay of organic alfalfa, conventional alfalfa, or glyphosate-tolerant alfalfa? What are the potential changes in the economics of growing and marketing organic and conventional alfalfa that may occur with the use of glyphosate-tolerant alfalfa? What are the potential changes in production levels of other crops that may occur with the use of glyphosate-tolerant alfalfa (i.e., will the release of glyphosate-tolerant alfalfa result in more or fewer acres of corn, wheat, other forage crops, etc.)? What are the potential changes in growing practices, management practices, and crop rotational practices in the production of alfalfa hay or seed for planting or sprouting purposes that may occur with the use of glyphosate-tolerant alfalfa? What are the potential changes in the choice of seeds available for organic and conventional alfalfa farmers that may occur with the use of glyphosate-tolerant alfalfa?

(12) What are the potential impacts of the deregulation of glyphosate-tolerant alfalfa on U.S. trade? If the presence of glyphosate-tolerant alfalfa should occur in organic or conventional alfalfa where it is unwanted, unintended, or unexpected, what are the expected impacts on trade with countries that normally import alfalfa seed or hay? What are the expected impacts on trade with countries that do not normally import alfalfa? Is there an expected impact on trade in other commodities?

(13) What is the potential cumulative impact of increased glyphosate usage with the release of glyphosate-tolerant crops? Have changes in glyphosate usage impacted soil quality, water quality, air quality, weed populations, crop rotations, soil microorganisms, diseases, insects, soil fertility, food or feed quality, crop acreages, and crop yields? Does the level of glyphosate tolerance within glyphosate-tolerant alfalfa plants have a major impact on the amount of glyphosate applied on the glyphosate-tolerant alfalfa crop on a routine basis?

(14) What are the potential impacts of the release of glyphosate-tolerant alfalfa on threatened or endangered species and designated critical habitat? What are the potential effects of glyphosate-tolerant alfalfa use on listed threatened or endangered species, species proposed for listing, designated critical habitat, or habitat proposed for designation? What are the potential effects of glyphosate use on listed threatened or endangered species, species proposed for listing, designated critical habitat, or habitat

proposed for designation; including glyphosate used on glyphosate-tolerant alfalfa?

(15) What are the potential health and safety risks to field workers or other workers that would come into contact with glyphosate-tolerant alfalfa?

(16) Can any of the potential negative environmental impacts resulting from the deregulation of glyphosate-tolerant alfalfa be reasonably mitigated and what is the likelihood that mitigation measures will be successfully implemented? The EIS will consider the stewardship measures outlined in the Addendum to section VIII of the petition, as well as any other mitigation measures APHIS considers applicable and viable. Such measures, some of which may be outside the jurisdiction of APHIS, are designed to reduce inadvertent gene flow of glyphosate-tolerant alfalfa to negligible levels as well as to monitor and minimize the potential development of glyphosate-tolerant weeds.

(17) What are the impacts of the mitigation measures on coexistence with organic and conventional alfalfa production and export markets?

(18) Are there any other potential direct, indirect or cumulative impacts from the release of glyphosate-tolerant alfalfa other than those mentioned above?

Comments that identify other issues or alternatives that should be examined in the EIS would be especially helpful. APHIS realizes that alfalfa growth, crop management, and crop utilization (seed versus hay or forage) may vary considerably by geographic region, and therefore, when providing comments on a topic or issue, please provide relevant information on the specific locality or region in question.

We will fully consider all comments we receive in developing a final scope of analysis for the draft EIS. When the draft EIS is completed, we will publish a notice in the **Federal Register** announcing its availability and inviting public comment.

Done in Washington, DC, this 28th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-25662 Filed 1-4-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0155]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held on January 23, 2008, from 1:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Georgia World Congress Center, 285 Andrew Young International Boulevard, NW., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922-3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meeting include:

1. Appointment of a Member-at-Large;
2. National animal identification program for poultry;
3. Portland, ME, Biennial Planning Conference and proposed changes to the NPIP;
4. Compartmentalization of notifiable avian influenza free zones;
5. Interstate and intrastate movement of table eggs in the event of a highly pathogenic avian influenza outbreak;
6. Update on *Mycoplasma* diseases;
7. Update on *Salmonella enteritidis* and *S. montevideo*;
8. National Chicken Council report; and
9. Proposed changes to the NPIP for 2008.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements

on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS-2007-0155 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 31st day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8-13 Filed 1-4-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; California; Moonlight Fire Recovery and Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, Plumas National Forest will prepare an Environmental Impact Statement (EIS) on a proposal to harvest fire-killed trees on approximately 14,000 acres in the Moonlight Fire area. The Moonlight Fire burned about 65,000 acres in September 2007 on the Plumas National Forest.

DATES: The draft environmental impact statement is expected in June 2008 and the final environmental impact statement is expected in September 2008.

ADDRESSES: Send written comments to Rich Bednarski, Interdisciplinary Team Leader, Mt. Hough Ranger District, 39696 Highway 70, Quincy, CA 95971. Comments may be: (1) Mailed; (2) hand delivered between the hours of 8 a.m. to 4:30 p.m. weekdays Pacific Time; (3) faxed to (530) 283-1821; or (4) electronically mailed to: *comments-pacificsouthwest-plumas-mthough@fs.fed.us*. Please indicate the name "Moonlight Fire Recovery and Restoration Project" on the subject line of your email. Comments submitted electronically must be in Rich Text Format (.rtf) or Word (.doc).

FOR FURTHER INFORMATION CONTACT: Rich Bednarski, Interdisciplinary Team Leader, Mt. Hough Ranger District, 39696 Highway 70, Quincy, CA 95971. Telephone: (530) 283-7641 or electronic address: *rbednarski@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The proposed action is designed to meet the

standards and guidelines for land management activities in the Plumas National Forest Land and Resource Management Plan (1988), as amended by the Herger-Feinstein Quincy Library Group (HFQLG) Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD) (1999, 2003), and as amended by the Sierra Nevada Forest Plan Amendment FSEIS and ROD (2004).

The proposed project is located in Plumas County, California, within the Mt. Hough Ranger District of the Plumas National Forest. It is located in all or portions of Sections 13, 23-27, 34-35, T28N, R10E; all or portions of Sections 13-14, 17-19, 23-24, 29-34, T28N, R11E; all or portions of Sections 19-20, 29-32, T28N, R12E; all or portions of Sections 1-2, 13-14, 23-25, T27N, R10E; all or portions of Section 2-11, 13-15, 17, 19-22, 25, 35-36, T27N, R11E; and all or portions of Sections 5, 8, 17-20, 29-32, T27N, R12E.

Purpose and Need for Action

The purpose of the project would be to contribute to the stability and economic health of rural communities. The project would provide for local economic benefit by creating jobs from the sale of dead merchantable trees, as well as contribute to local and regional areas with net revenues and receipts. The wood quality, volume, and value of dead trees deteriorate rapidly. The value of trees would cover the cost of their removal and possibly other activities associated with the project.

As a result of the Moonlight Fire, thousands of acres burned with high vegetation burn severity resulting in deforested condition. As a result, shrub species will dominate these areas for decades and experience a delay in returning to a forested condition. The early establishment of conifers through reforestation will expedite forest regeneration.

Proposed Action

The proposed action would harvest fire-killed conifer trees on approximately 14,000 acres using the following methods: Ground based, skyline, and helicopter. Trees greater than 14 inches diameter at breast height (dbh) would be whole tree harvested on the ground-based areas. Trees less than 14 inches dbh would be removed as biomass material on the ground-based areas. About 600 acres would have trees less than 14 inches dbh removed as biomass material. Ground-based equipment would be restricted to slopes less than 35 percent, except on decomposed granitic soils where equipment would be restricted to slopes

less than 25 percent. On the skyline and helicopter areas, trees greater than 16 inches dbh would be harvested. Limbs and tops in the skyline and helicopter areas would be lopped and scattered to a depth less than 18 inches in height. Skyline yarding would require one end suspension, with full suspension over intermittent or perennial streams. Fire-killed conifers would be harvested from Riparian Habitat Conservation Areas. Equipment restriction zone widths within Riparian Habitat Conservation Areas would be established based on the stream type and steepness of the slope adjacent to the streams. Snags would be retained in snag retention areas, that are approximately ten acres in size, on approximately ten percent of the project area. Salvage harvest would not occur within the snag retention areas except for operability (safety) reasons. Approximately 25 miles of temporary roads would be constructed. Approximately 20 acres (nine landings) of helicopter landings would be constructed. Excess fuels on landings would be piled, a fireline constructed around the piles, and the piles burned. Following completion of the project, the temporary roads and landings would be subsoiled, reforested, and closed. Approximately 14,000 acres would be reforested with conifer seedlings in widely spaced clusters to emulate a naturally established forest. The areas would be reforested with a mixture of native species.

The Moonlight Fire impacted twenty California spotted owl Protected Activity Centers (PACs). According to the Sierra Nevada Forest Plan Amendment FSEIS and ROD (2004), page 37, after a stand-replacing event, the habitat conditions are evaluated within a 1.5 mile radius around the activity center to identify opportunities for re-mapping the PAC. If there is insufficient suitable habitat for designating a PAC within the 1.5 mile radius, the PAC may be removed from the network.

Possible Alternatives

In addition to the proposed action, a no action alternative would be analyzed. Additional alternatives may be developed and analyzed throughout the environmental analysis.

Lead and Cooperating Agencies

The USDA, Forest Service is the lead agency for this proposal.

Responsible Official

Alice B. Carlton, Plumas National Forest Supervisor, P.O. Box 11500, Quincy, CA 95971.

Nature of Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) meet the purpose and need for action through some other combination of activities; or, (3) take no action at this time.

Scoping Process

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Scoping comments will be most helpful if received by January 4, 2008. Scoping is conducted to determine the significant issues that will be addressed during the environmental analysis.

Permits or Licenses Required

An Air Pollution Permit and a Smoke Management Plan are required by local agencies. *Early Notice of Importance of Public Participation in Subsequent Environmental Review*: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

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 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: December 21, 2007.

Maria T. Garcia,

Acting Forest Supervisor.

[FR Doc. 07-6301 Filed 1-4-08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-816]

Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 2, 2007, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the administrative review of the order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 72 FR 35970 (July 2, 2007) ("*Preliminary Results*"). The merchandise covered by this order is certain stainless steel butt-weld pipe fittings from Taiwan as described in the "Scope of the Order" section of this notice. The period of review ("POR") is June 1, 2005, through May 31, 2006. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we did not make any changes to the margin calculation. The final weight-averaged dumping

margin is listed below in the section titled "Final Results of Review."

EFFECTIVE DATE: January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Judy Lao or John Drury, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) (202) 482-7924 or (202) 482-0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 2, 2007. *See Preliminary Results*. We invited parties to comment on the Preliminary Results. Subsequent to our *Preliminary Results*, on July 11, 2007, we issued Ta Chen Stainless Steel Pipe, Ltd. ("Ta Chen"), a supplemental questionnaire requesting additional information regarding its reporting of affiliates. *See Preliminary Results* at 72 FR 35971. Ta Chen submitted its response to our July 11, 2007, affiliations questionnaire on July 27, 2007. On August 10, 2007, Flowline Division of Markovitz Enterprise, Inc., Shaw Allow Piping Products, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc., (collectively, "petitioners") commented on Ta Chen's July 11, 2007, affiliations questionnaire response. On August 22, 2007, Ta Chen responded to petitioners' August 10, 2007 comments regarding its affiliations questionnaire response. We received case briefs from petitioners on September 10, 2007, and case briefs from Ta Chen on September 11, 2007. On September 17, 2007, we received rebuttal comments from petitioners and Ta Chen. Petitioners requested a hearing, which was conducted on September 20, 2007.

Scope of the Order

The products subject to this order are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are

contained within the system. Pipe fittings come in a variety of shapes, with the following five shapes the most basic: “elbows,” “tees,” “reducers,” “stub ends,” and “caps.” The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this order are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Partial Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. (“Liang Feng”), Tru-Flow Industrial Co., Ltd. (“Tru-Flow”), Censor International Corporation (“Censor”) and PFP Taiwan Co., Ltd. (“PFP”), because we found that they had no entries of subject merchandise during the POR. See *Preliminary Results* at 35971. As the Department received no comments on our intent to rescind, we continue to find that rescission of the review concerning Liang Feng, Tru-Flow, Censor, and PFP is appropriate. Therefore, the Department is rescinding the review with respect to Liang Feng, Tru-Flow, Censor, and PFP.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department’s findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Final Results of Antidumping Duty Administrative Review (“Decision Memorandum”), dated December 27, 2007, which is hereby adopted by this notice. A list of the issues raised and to which we have responded in the Decision Memorandum, is appended to this notice. The Decision Memorandum is on file in the Central Records Unit in room B-099 of the main Commerce building, and can also be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Affiliation

In the *Preliminary Results* the Department noted that in this proceeding there is an ongoing claim by petitioners that Ta Chen and its U.S. affiliate, Ta Chen International (“TCI”) have several related parties that were not disclosed in its financial statements. See *Preliminary Results* at 72 FR 35971. Therefore, petitioners claim that the Department should not rely on Ta Chen’s and TCI’s financial statements, and thus its underlying accounting records. The Department noted its intent to solicit additional information from Ta Chen regarding its current affiliation with certain entities alleged by petitioners. As mentioned in the “Background” section of this notice, the Department issued Ta Chen an additional supplemental questionnaire on July 27, 2007, regarding alleged affiliates. Based upon our analysis of Ta Chen’s responses, we continue to find, as in our *Preliminary Results*, that Ta Chen and TCI accurately disclosed their related parties, and that their financial statements are reliable. Therefore, the Department has relied upon information from Ta Chen’s and TCI’s financial statements, and thus underlying accounting records for the purposes of our final results of review. The Department determines that the evidence on the record does not warrant a finding that we should disregard Ta Chen’s or TCI’s financial statements. See Decision Memorandum at Comment 1 for further discussion.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period June 1, 2005, through May 31, 2006:

	Weighted-Average Margin
Ta Chen Stainless Pipe Co., Ltd	0.52 percent

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject

merchandise produced by Ta Chen. Antidumping duties for the rescinded companies, Liang Feng, Tru-Flow, Censor, and PFP, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its “automatic assessment” regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of stainless steel butt-weld pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for the companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate from the most recent review; (3) if the exporter is not a firm covered in this review, a prior review, or less-than-fair-value the investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 51.01 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 27, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

APPENDIX - Issues in Decision Memorandum

ISSUES

1. Reliability of Ta Chen's Financial Statements & Reported Affiliations
2. CEP Offset
3. LOT Adjustment
4. CEP Profit Calculation

[FR Doc. E7-25644 Filed 1-4-08; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-846]

Brake Rotors from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2006-2007 Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4295.

SUPPLEMENTARY INFORMATION:

Background

New Shipper Review

On April 18, 2007, Shanghai Tylon Company Ltd. ("Tylon") requested a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), which has an April anniversary month, in accordance with 19 CFR 351.214(c). On May 25, 2007, the Department initiated a new shipper review of Tylon covering the period April 1, 2006, through March 31, 2007. *See Brake Rotors From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 72 FR 29299 (May 25, 2007).

On August 23, 2007, Tylon agreed to waive the new shipper review time limits in accordance with 19 CFR 351.214(j)(3), to align the new shipper review with the concurrent 2006-2007 administrative review of the antidumping duty order on brake rotors from the PRC. On August 24, 2007, the Department aligned the new shipper review with the 2006-2007 administrative review of the antidumping duty order on brake rotors from the PRC.¹

Administrative Review

On April 2, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on brake rotors from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 15650 (April 2, 2006). On April 30, 2007, the Department received timely requests for an administrative review of this antidumping duty order in accordance with 19 CFR 351.213 from the following individual companies: LABEC, Winhere, Haimeng, Hongda, Meita, Wally, and Longkou Dixon Brake System Ltd. ("Dixon"). On April 30, 2007, the Department also received timely requests for an administrative review of 23 companies (or producer/exporter combinations),² from

¹ See the Department's memorandum, entitled "2006-2007 Administrative and New Shipper Reviews of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Alignment of 2006-2007 Administrative and New Shipper Reviews," dated August 24, 2007 ("NSR Alignment Memo").

² The names of these companies or producer/exporter combination are as follows: (1) Longkou Haimeng Machinery Co., Ltd. ("Haimeng"); (2)

petitioner. As a result of the above-mentioned companies' and petitioner's requests for a review, this administrative review covers 24 companies.

As mentioned above, on August 24, 2007, the Department aligned the new shipper review with the 2006-2007 administrative review of the antidumping duty order on brake rotors from the PRC.³ The preliminary results of these reviews are currently due no later than December 31, 2007.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department determines that completion of the preliminary results of these reviews within the statutory time period is not practicable. The Department requires additional time to analyze issues regarding the respondents, including 12 separate-rate respondents and two mandatory respondents in the administrative review and one respondent in the new shipper review. Therefore, given the

Qingdao Meita Automotive Industry Co., Ltd. ("Meita"); (3) Laizhou Auto Brake Equipment Factory ("LABEC"); (4) Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"); (5) Laizhou Hongda Auto Replacement Parts Co., Ltd. ("Hongda"); (6) Laizhou City Luqi Machinery Co., Ltd. ("Luqi"); (7) Laizhou Wally Automobile Co., Ltd. ("Wally"); (8) Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP"); (9) Zibo Golden Harvest Machinery Limited Company ("ZGOLD"); (10) Longkou TLC Machinery Co., Ltd. ("TLC"); (11) Longkou Jinzheng Machinery Co. ("Jinzheng"); (12) Qingdao Gren Co. ("Gren"); (13) Shenyang Yinghao Machinery Co. ("Yinghao"); (14) Shanxi Zhongding Auto Parts Co., Ltd. ("SZAP"); (15) Shandong Huanri Group Company ("Huanri"); (16) Longkou Qizheng Auto Parts Co. ("Qizheng"); (17) China National Automotive Industry Import & Export Corporation ("CAIEC"), excluding entries manufactured by Shandong Laizhou CAPCO Industry ("CAPCO"); (18) CAPCO, excluding entries manufactured by CAPCO; (19) Laizhou Luyuan Automobile Fittings Co. ("Luyuan"), excluding entries manufactured by Laizhou Luyuan or Shenyang Honbase Machinery Co., Ltd. ("Honbase"); (20) Honbase, excluding entries manufactured by Laizhou Luyuan or Honbase; (21) China National Industrial Machinery Import & Export Corporation ("CNIM"); (22) Xianghe Xumingyuan Auto Parts Co. ("Xumingyuan"); and (23) Qingdao Golrich Autoparts Co., Ltd. ("Golrich").

³ See NSR Alignment Memo.

complexity of the issues and the number of companies in this case, and in accordance with sections 751(a)(3)(A) and 751(a)(2)(B)(iv) of the Act, we are extending the time period for issuing the preliminary results of review by 30 days until January 30, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 28, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-25645 Filed 1-4-08; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-825]

Notice of Extension of Time Limit for Final Results of Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-0780.

Background

On September 29, 2006, the Department of Commerce (the Department) published a notice of initiation for this antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 57465 (September 29, 2006). On September 11, 2007, the Department published the preliminary results of this administrative review of the antidumping duty order on oil country tubular goods (OCTG), other than drill pipe, from Korea. *See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51793 (September 11, 2007) (*Preliminary Results*). We received case briefs on October 11, 2007 and rebuttal briefs on October 16, 2007.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"),

requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested, and issue the final results within 120 days after the date on which the preliminary results are published. However, if the Department finds it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the final results of this review within current statutory limits. Due to the complexity of issues raised in the interested parties' case briefs, specifically regarding the appropriate valuation of constructed value profit, selling expenses, and general and administrative expense ratios, the Department requires additional time to evaluate these issues properly. Therefore, we are extending the deadline for the final results of this review by 60 days, from January 9, 2008 until no later than March 10, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1), 751(a)(3)(A), and 777(i)(1) of the Act.

Dated: December 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-25646 Filed 1-4-08; 8:45 am]

BILLING CODE 3510-DS-S

COMMODITY FUTURES TRADING COMMISSION

Requests Pursuant to Section 4(c) of the Commodity Exchange Act To Extend the Exemption Granted Under Part 35 of the Commission's Regulations to Certain Over-The-Counter Swaps and To Determine as Eligible Swap Participants Certain Floor Brokers and Traders

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of Comment Period.

SUMMARY: The Commodity Futures Trading Commission ("Commission") published on December 6, 2007, a notice of request for comment on exemption requests.¹ Specifically, the Commission requested comment on whether to extend the exemption granted under

Part 35 of the Commission's regulations to certain over-the-counter ("OTC") swaps that do not meet certain of the requirements otherwise imposed by Commission Regulation 35.2., as requested by ICE Clear U.S., Inc., a registered derivatives clearing organization, pursuant to section 4(c) of the Commodity Exchange Act ("Act"). The Commission also requested comment on a request from ICE Futures U.S., Inc. pursuant to section 4(c) of the Act that certain floor traders and floor brokers who are registered with the Commission, when trading for their own accounts, may be determined to be eligible swap participants and permitted to enter into certain specified OTC swap transactions.

A potential commenter has asked for an extension of the comment period in light of fact that much of the initial comment period fell during the end-of-year holiday period. The Commission is extending the comment period by 30 days.

DATES: Comments must be received on or before February 6, 2007.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving>. Follow the instructions for submitting comments.

- *E-mail:* secretary@cftc.gov. Include "ICE Clear Section 4(c) Request" in the subject line of the message.

- *Fax:* 202-418-5521.

- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as mail above.

All comments received will be posted without change to <http://www.cftc.gov/>.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Special Counsel, 816-960-7719, lgregory@cftc.gov, or Robert B. Wasserman, Associate Director, 202-418-5092, rwasserman@cftc.gov, Division of Clearing and Intermediary Oversight; or Duane C. Andresen, Special Counsel, 202-418-5492, Andresen@cftc.gov, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC, on January 2, 2008 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8-11 Filed 1-4-08; 8:45 am]

BILLING CODE 6351-01-P

¹ 72 FR 68862 (December 6, 2007).

DEPARTMENT OF DEFENSE**Department of the Army****Notice of Availability of the Record of Decision for Army Growth and Force Structure Realignment****AGENCY:** Department of the Army, DoD.**ACTION:** Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of the Record of Decision (ROD) for Army Growth and Force Structure Realignment. This ROD announces the Army's decisions for growing and realigning U.S. Army forces within the Continental United States (CONUS). Pursuant to the National Environmental Policy Act (NEPA), the Department of the Army prepared a Programmatic Environmental Impact Statement (PEIS) that evaluated the potential environmental and socio-economic effects associated with alternatives for Army growth and realignment. In the Final PEIS, which was published on 26 OCT, 2007, the Army identified Alternative Three as the preferred alternative. The Record of Decision explains that the Army will proceed with its preferred alternative, Alternative Three. This alternative best supports Army Modular Transformation; implements Global Defense Posture Realignment (GDPR) decisions; adds the necessary Combat Support and Combat Service Support Soldiers to the Active and Reserve components of the Army; and grows the Army by six Active component Brigade Combat Teams (BCTs) and fifteen Active and Reserve component support brigades. Each of the BCTs will be Infantry BCTs. In addition, the PEIS analysis was used to relocate a Maneuver Enhancement Brigade (MEB) headquarters and two Heavy Brigade Combat Teams (HBCTs). The HBCTs will be activated in Germany and retained until FY12 and FY13 before returning to the United States. A return of these BCTs to the United States is not a part of previous decisions to implement Base Realignment and Closure (BRAC) 2005. This decision and analysis within this PEIS do not include BRAC 2005 stationing actions, which are considered part of the baseline condition for analysis. This decision will result in a total growth in Army forces by approximately 74,200 Soldiers, and will realign forces to improve readiness and responsiveness to meet future challenges.

ADDRESSES: Comments or questions regarding the ROD can be sent to the Public Affairs Office, U.S. Army Environmental Command, Building

E4460, Attention: IMAE-PA 5179 Hoadley Road, Aberdeen Proving Ground, MD 21010-5401.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office at (410) 436-2556; facsimile at (410) 436-1693 (during normal business hours Monday through Friday).

SUPPLEMENTARY INFORMATION: In January 2007, President Bush asked Congress for authority to increase the overall strength of the Army by 74,200 Soldiers over the next five years. This growth will mitigate shortages in units, Soldiers, and time to train that would otherwise inhibit the Army from meeting readiness goals and supporting strategic requirements. In September 2007, the Secretary of Defense approved the Army's proposal to accelerate growth for the Active component and Army National Guard. The Army must grow, adjust its force structure, and station its units and Soldiers to meet the strategic requirements of the contemporary global security environment.

The Final PEIS examined major Army installations within CONUS and their ability to support new unit stationing actions in connection with growth and realignment. The Final PEIS provided the Army Senior Leadership with an assessment of environmental and socio-economic impacts that would be associated with these actions in addition to the feedback and concerns of the public. This information was considered as part of the decision-making process for selecting the final stationing locations for new units.

Stationing decisions included in the ROD for Army Growth and Force Structure Realignment include: retaining one IBCT at Ft Carson, CO as the 43rd BCT in Fiscal Year (FY) 08; activating the 44th BCT at Ft Bliss, TX in FY09; converting one Heavy Brigade Combat Team (HBCT) to an IBCT at Ft Stewart, GA in FY10; and growing three IBCTs in FY11, one each at Ft Stewart, GA, Ft Carson, CO, and Ft Bliss, TX. Two BCTs stationed in Germany will relocate back to CONUS in FY12 and 13, respectively. These units are selected for stationing at Ft Bliss, TX and White Sands Missile Range, NM. The Army will also activate eight Active component support brigades and restation two others. These actions will occur at the following locations: In FY08, an Air Defense Artillery Brigade headquarters activates at Ft Hood, TX; in FY09, a Maneuver Enhancement Brigade (MEB) activates at Ft Leonard Wood, MO; in FY10 a Fires Brigade activates at Ft Bliss, TX; in FY11, an Expeditionary Sustainment Command Headquarters activates at Ft Lewis, WA,

and a Sustainment Brigade activates at Ft Hood, TX; in FY13, a (BfSB) activates at Ft Polk, LA and a MEB will be restationed to Fort Drum, NY.

The restationing of a MEB is tentatively being considered for Fort Richardson, AK in FY 2010. The Army is considering the stationing of an Engineer Brigade and a Military Police Brigade at Schofield Barracks, HI. These actions will ensure the proper balance of combat support units and command and control functions are available in the Pacific theater to support training and operational requirements. A final decision on these actions will not be made until a supplemental NEPA analysis is completed to analyze impacts of stationing actions in the Pacific theater.

A copy of the ROD and Final PEIS are available at <http://www.aec.army.mil>.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 07-6222 Filed 1-4-08; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**Department of the Navy****Notice of Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel****AGENCY:** Department of the Navy, DoD.**ACTION:** Notice of Closed Meeting.

SUMMARY: The CNO Executive Panel will report on the findings and recommendations of the Defense of the Sea Bed Subcommittee to the Chief of Naval Operations. The meeting will consist of discussions of the threats and vulnerabilities of the changing undersea environment, to include the undersea networks of pipelines, cables and sensors.

DATES: The meeting will be held on January 30, 2008, from 9 a.m. to 11 p.m.

ADDRESSES: The meeting will be held in CNA Corporation Building, 4825 Mark Center Drive, Alexandria, VA 22311, SCIF.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney MacArthur, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, tel: 703-681-4907.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive order to be kept

secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Individuals or interested groups interested may submit written statements for consideration by the Chief of Naval Operations Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the Chief of Naval Operations Executive Panel Chairperson, and ensure they are provided to members of the Chief of Naval Operations Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311-1846.

Dated: January 2, 2008.

T.M. Cruz,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8-25 Filed 1-4-08; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC-019]

Energy Conservation Program for Commercial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Application for Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from Daikin AC (Americas), Inc. (Daikin). The Petition for Waiver (hereafter "Daikin Petition") requests a waiver of the Department of Energy (DOE) test procedure applicable to commercial package air-cooled central air conditioners and heat pumps. The waiver request is specific to the Daikin variable speed and variable refrigerant volume (VRV-III) (commercial) multi-split heat pumps and heat recovery systems. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Daikin Petition; and (2) announcing our determination to grant an Interim Waiver to Daikin from the applicable DOE test procedure for the subject commercial air-cooled, multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than February 6, 2008.

ADDRESSES: You may submit comments, identified by case number "CAC-018," by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* Michael.Raymond@ee.doe.gov. Include either the case number [CAC-019], and/or "Daikin Petition" in the subject line of the message.

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J/1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. Russell Tavolacci, Director of Product Marketing, Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, TX 75006. Telephone: (972) 245-1510. E-mail: Russell.Tavolacci@daikinac.com.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: Michael.Raymond@ee.doe.gov.

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-9507. E-mail: Francine.Pinto@hq.doe.gov or Eric.Stas@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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- IV. Alternate Test Procedure
- V. Summary and Request for Comments

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part C of Title III provides for an energy efficiency program entitled "Certain Industrial Equipment," which is similar to the program in Part B, and which includes commercial air conditioning and heating equipment, packaged boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

This notice involves commercial equipment under Part C. Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, it generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 340/360–2004, "Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment," for small and large commercial package air-cooled heat pumps with capacities $\geq 65,000$

Btu/h and $< 760,000$ British thermal units per hour (Btu/h). *Id.* at 71370. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference the relevant ARI Standard, and Table 1 to 10 CFR 431.96 directs manufacturers of commercial package air-cooled air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Daikin's commercial VRV–III multi-split heat pump products range from 72,000 Btu/hr to 240,000 Btu/hr, thereby resulting in these products falling within the range covered by ARI Standard 340/360–2004.)

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). The waiver provisions for commercial equipment are found at 10 CFR 431.401 and are substantively identical to those for covered consumer products. Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 431.401(g).

The waiver process also allows any person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant

immediate relief pending a determination on the Petition for Waiver. 10 CFR 431.401(e)(3). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and it may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On August 31, 2007, Daikin filed a Petition for Waiver from the test procedures at 10 CFR 431.96 which are applicable to commercial package air-cooled heat pumps and an Application for Interim Waiver. As noted above, the applicable test procedure for Daikin's commercial VRV–III multi-split heat pumps is ARI Standard 340/360–2004, which manufacturers are directed to use pursuant to Table 1 of 10 CFR 431.96. The capacities of the Daikin VRV–III multi-split heat pumps range from 72,000 Btu/hr to 240,000 Btu/hr. Accordingly, the applicable test procedure for all these sizes is ARI Standard 340/360–2004.¹

Daikin seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its VRV–III multi-split heat pumps and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test.

69 FR 52661 (August 27, 2004); 72 FR 17528 (April 9, 2007); 72 FR 71383 (December 17, 2007); 72 FR 71387 (December 17, 2007).

Further, Daikin states that its VRV–III indoor units have nine different indoor static pressure ratings, and the test procedure does not provide for operation of indoor units at several different static pressure ratings during a single test. The indoor units are designed to operate at many different

¹ Daikin's Petition mistakenly requested a waiver from ARI 210/240–2006. The capacities of the products for which the waiver is requested are not in the range covered by ARI 210/240. ARI 340/360–2004 is the test procedure relevant to the Daikin Petition.

external static pressure values, which compounds the difficulty of testing. The number of connectable indoor units for each outdoor unit ranges up to 64. A testing facility could not manage proper airflow at several different external static pressure values to the many indoor units that would be connected to a VRV-III outdoor unit. Daikin further states that its VRV-III products' capability to perform simultaneous heating and cooling is not captured by the DOE test procedure. This is true, but not relevant. DOE is required by EPCA to use the full-load descriptor EER for these products, and simultaneous heating and cooling does not occur when operating at full load.

Accordingly, Daikin requests that DOE grant a waiver from the applicable test procedures for its VRV-III product designs, until a suitable test method can be prescribed. DOE believes that there is no substantive difference between the Mitsubishi and Daikin equipment which would preclude it from granting the same waiver to both. Furthermore, Daikin states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its VRV-III products. Also, Daikin states that it is willing to work closely with DOE, ARI, and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On August 31, 2007, in addition to its Petition for Waiver, Daikin submitted to DOE an Application for Interim Waiver. Daikin's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship Daikin will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar product designs, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Mitsubishi, Fujitsu, and Samsung for comparable commercial multi-split air conditioners and heat pumps. 72 FR 17533 (April 9, 2007), 70 FR 5980 (Feb. 4, 2005), 70 FR 9629 (Feb. 28, 2005), respectively.

Moreover, as noted above, DOE approved the Petition for Waiver from Mitsubishi, Fujitsu, and Samsung for their comparable lines of multi-split air conditioners and heat pumps. 72 FR 17528 (April 9, 2007); 72 FR 71383 (Dec. 17, 2007); 72 FR 71387 (Dec. 17, 2007). The two principal reasons for granting

the waivers also apply to Daikin's VRV-III products: (1) Test laboratories cannot test products with so many indoor units²; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that Daikin's Petition for Waiver will be granted for its new VRV-III multi-split models. Therefore, it is ordered that:

The Application for Interim Waiver filed by Daikin is hereby granted for Daikin's VRV-III air-cooled multi-split central air conditioning heat pumps, subject to the specifications and conditions below. The Interim Waiver applies to the following models:

1. Daikin shall not be required to test or rate its VRV-III commercial air-cooled multi-split products on the basis of the currently applicable test procedure under 10 CFR 431.96, which incorporates by reference ARI Standard 340/360-2004.

2. Daikin shall be required to test and rate its VRV-III commercial air-cooled multi-split products according to the alternate test procedure as set forth in section IV(3), "Alternate test procedure."

VRV-III Series Outdoor Units:

460V/3-phase/60Hz Models:

○ Heat Pump models RXYQ72PYDN, RXYQ96PYDN, RXYQ120PYDN, RXYQ144PYDN, RXYQ168PYDN, RXYQ192PYDN, RXYQ216PYDN, RXYQ240PYDN with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

○ Heat Recovery models REYQ72PYDN, REYQ96PYDN, REYQ120PYDN, REYQ144PYDN (2x REMQ72PYDN), REYQ168PYDN (1x REMQ96PYDN + 1x REMQ72PYDN), REYQ192PYDN (1x REMQ120PYDN + 1x REMQ72PYDN), REYQ216PYDN (1x REMQ120PYDN + 1x REMQ96PYDN), REYQ240PYDN (2x REMQ120PYDN) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

208-230V/3-phase/60Hz Models:

○ Heat Pump models RXYQ72PTJU, RXYQ96PTJU, RXYQ120PTJU, RXYQ144PTJU, RXYQ168PTJU, RXYQ192PTJU, RXYQ216PTJU, RXYQ240PTJU with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

² According to the Daikin petition, up to 64 indoor units are possible candidates for testing of its commercial package multi-split heat pump and heat recovery systems. However, DOE believes that the practical limits for testing would be about five units.

○ Heat Recovery models REYQ72PTJU, REYQ96PTJU, REYQ120PTJU, REYQ144PTJU, REYQ168PTJU (1x REMQ96PTJU + 1x REMQ72PTJU), REYQ192PTJU (1x REMQ120PTJU + 1x REMQ72PTJU), REYQ216PTJU (1x REMQ120PTJU + 1x REMQ96PTJU), REYQ240PTJU (2x REMQ120PTJU) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

Compatible Indoor Units for Above-Listed Outdoor Units:

○ FXAQ Series all mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

○ FXLQ Series floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

○ FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

○ FXDQ Series low static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

○ FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000, 24,000, 30,000, 36,000, 48,000, 72,000 and 96,000 BTU/Hr.

○ FXMQ Series high static ducted indoor units with nominally rated capacities of 18,000, 24,000, 30,000, 36,000, 48,000, 72,000 and 96,000 BTU/Hr.

○ FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 15,000 and 18,000 BTU/Hr.

○ FXFQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000 and 36,000 BTU/Hr.

○ FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 BTU/Hr.

○ FXOQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000 and 48,000 BTU/Hr.

○ FXMQ-MF Series concealed ducted indoor units with nominally rated capacities of 48,000, 72,000, and 96,000 BTU/Hr.

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this Interim Waiver at any time upon a determination that the factual basis

underlying the Petition for Waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE. The ARI committee has considered a draft ISO methodology, ISO CD 15042, for multi-split systems. However, it contains no guidance that would affect this waiver.

Therefore, as discussed below, DOE is including a similar alternate test procedure as a condition in granting the Interim Waiver for Daikin's products, and plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Daikin's Petition for Waiver. Utilization of this alternate test procedure will allow Daikin to test and make energy efficiency representations for its VRV-III products. More broadly, DOE is also considering applying a similar alternate test procedure to other existing waivers for similar residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its multi-split products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its multi-split products at 72 FR 71383 (Dec. 17, 2007). As noted above, the alternate test procedure has been applied to Mitsubishi's Petition for Waiver for its R410A CITY MULTI and R22 and R410A multi-split products. 72 FR 17528 (April 9, 2007). DOE believes that an alternate test procedure is

needed so that manufacturers of such products can make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

In the present case, DOE is modifying the alternate test procedure taken from the above-referenced waiver granted to Mitsubishi for its R410A and R22 CITY MULTI products, and plans to consider inclusion of the following similar waiver language in the Decision and Order for Daikin's VRV-III commercial multi-split air-cooled heat pump models:

(1) The "Petition for Waiver" filed by Daikin AC (Americas), Inc. is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV-III variable refrigerant volume multi-split heat pump products listed above in section III, on the basis of the currently applicable test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Daikin shall test a "tested combination" selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV-III products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination* means a multi-split system with multiple indoor coils having the following features:

(1) The basic model of a system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between 2 and 5 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal capacity that is between 95% and 105% of the nominal capacity of the outdoor unit;

(iii) Not, individually, have a capacity that is greater than 50% of the nominal capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) All be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its VRV-III variable speed and variable refrigerant volume air-cooled multi-split heat pump and heat recovery system products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For VRV-III combinations tested in accordance with this alternate test procedure, Daikin must disclose these test results.

(ii) For VRV-III combinations that are not tested, Daikin must make a disclosure based on the testing results for the tested combination and which is consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Daikin Petition for Waiver from the test procedures applicable to Daikin's VRV-III commercial multi-split heat pump products, and for the reasons articulated above, DOE is granting Daikin an Interim Waiver from those procedures. As part of this notice, DOE is publishing Daikin's Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of its Interim Waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a "tested combination" which Daikin could use in lieu of testing all retail combinations of its VRV-III multi-split heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an ARM

approved by DOE, or to rate waived products the same as the specified tested combination with the same outdoor unit. DOE is also considering applying a similar alternate test procedure to other comparable Petitions for Waiver for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its Digital Variable Multi (DVM) products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 72 FR 71383 (Dec. 17, 2007).

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the section entitled **ADDRESSES** section above.

Issued in Washington, DC, on December 27, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

August 31, 2007.

Mr. Alexander Karsner,

Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585-0121.

Re: Petition for Waiver of Test Procedure

Dear Assistant Secretary Karsner: Daikin AC (Americas) Inc. (DACA) respectfully petitions the Department of Energy (DOE) pursuant to 10 CFR. §§ 430.27(a)(1) and 431.401(a)(1) for waivers of the test procedures applicable to residential and commercial package air conditioners and heat pumps, as established in ARI Standard 210/240-2006 and ARI Standard 340/360-2004,¹ for DACA's variable speed compressor driven air-cooled multi-split systems for combinations exceeding two indoor units to a single outdoor unit. The specific systems for which DACA requests these waivers are in DACA's VRV-III product classes. The specific models subject to the waiver requests are listed below. The basis for DACA's requests is that the basic model contains design criteria that prevent testing of the basic models according to the prescribed test procedures. We are simultaneously requesting an interim waiver for the same systems pursuant to 10 CFR §§ 430.27(a)(2) and 431.401(a)(2).

Particular Basic Models for Which a Waiver Is Requested

DACA requests a waiver from the test procedures for the following particular basic models:

¹Detailed citations to the test procedures for which DACA is requesting a waiver are included on page 4 of this petition.

VRV-III

- VRV III Series Outdoor Units:

460V/3-phase/60Hz Models:

Heat Pump models RXYQ72PYDN, RXYQ96PYDN, RXYQ120PYDN, RXYQ144PYDN, RXYQ168PYDN, RXYQ192PYDN, RXYQ216PYDN, RXYQ240PYDN with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

Heat Recovery models REYQ72PYDN, REYQ96PYDN, REYQ120PYDN, REYQ144PYDN (2x REMQ72PYDN), REYQ168PYDN (1x REMQ96PYDN + 1x REMQ72PYDN), REYQ192PYDN (1x REMQ120PYDN + 1x REMQ72PYDN), REYQ216PYDN (1x REMQ120PYDN + 1x REMQ96PYDN), REYQ240PYDN (2x REMQ120PYDN) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

208-230V/3-phase/60Hz Models:

Heat Pump models RXYQ72PTJU, RXYQ96PTJU, RXYQ120PTJU, RXYQ144PTJU, RXYQ168PTJU, RXYQ192PTJU, RXYQ216PTJU, RXYQ240PTJU with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

Heat Recovery models REYQ72PTJU, REYQ96PTJU, REYQ120PTJU, REYQ144PTJU, REYQ168PTJU (1x REMQ96PTJU + 1x REMQ72PTJU), REYQ192PTJU (1x REMQ120PTJU + 1x REMQ72PTJU), REYQ216PTJU (1x REMQ120PTJU + 1x REMQ96PTJU), REYQ240PTJU (2x REMQ120PTJU) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

- Compatible Indoor Units for Above Listed Outdoor Units:

FXAQ Series all mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

FXLQ Series floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

FXDQ Series low static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000, 24,000, 30,000, 36,000, 48,000, 72,000 and 96,000 BTU/Hr.

FXMQ Series high static ducted indoor units with nominally rated capacities of 18,000, 24,000, 30,000, 36,000 48,000, 72,000 and 96,000 BTU/Hr.

FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 15,000 and 18,000 BTU/Hr.

FXFQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000 and 36,000 BTU/Hr.

FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 BTU/Hr.

FXOQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000 and 48,000 BTU/Hr.

FXMQ-MF Series concealed ducted indoor units with nominally rated capacities of 48,000, 72,000, and 96,000 BTU/Hr.

The indoor units listed above are also compatible with Daikin's VRV, VRV-S and VRV-WII product lines covered in separate waiver applications.

Design Characteristics Constituting the Grounds for DACA's Petition

DACA's VRV-III product offerings consist of multiple indoor units being connected to one or more air-cooled outdoor units. The indoor units for these products are available in a very large number of potential configurations, including but not limited to the following: 4-Way Cassette, Ceiling Concealed, Wall Mounted, Ceiling Suspended, and Floor Standing. Each of these units has nine different indoor static pressure ratings as standard, with addition pressure ratings available. There are over one million combinations possible with the DACA VRV-III product offerings. It is completely impractical for testing laboratories to test a product such as the VRV-III with multiple indoor units because of the astronomical number of potential system configurations.

DACA's VRV-III products share many of the design characteristics and features of similar equipment for which DOE has already approved either interim waivers or waivers, including DACA's VRV and VRV-S product lines, and Mitsubishi Electric and Electronics USA, Inc.'s (MEUS) CITY MULTI product class.³ The same testing constraints and limitations apply to all of these products.

The DOE relied on similar rationales to grant MEUS' petition for waiver and DACA's interim waiver. DOE stated the following in its August 14, 2006 letter to DACA granting an interim waiver:

A waiver for a similar type of variable refrigerant flow zoned central air conditioner [i.e., similar to the DACA VRV, VRV-S and VRV-III products] was requested by MEUS. DOE decided to grant the waiver, based on the difficulty of testing the products. There are two major testing problems: (1) test laboratories cannot test products with so many indoor units (up to sixteen); and (2) there are too many possible combinations of indoor and outdoor units—only a small fraction of the combinations could be tested.

DOE also noted in its August 14, 2006 interim waiver approval, and in its July 2, 2007 renewal for DACA's VRV and VRV-S products that "[w]aivers for similar products have already been granted to * * * Samsung, and Fujitsu General * * *"

After reviewing its previously granted waivers for similar products under the same rationale in its August 14, 2006 letter, DOE concluded that DACA's VRV and VRV-S systems "will likely suffer the same testing

³DOE granted DACA an interim waiver for its VRV and VRV-S product lines in a letter dated August 14, 2006, and DOE renewed this interim waiver on July 2, 2007 (72 FR 35,986). DOE granted MEUS a waiver for its CITY MULTI VRFZ class of products. 69 FR 52,660 (August 27, 2004).

problems that prompted DOE to grant MEUS a waiver." DOE continued by saying that "[w]ith up to eleven indoor units of nine different types, thousands of combinations are possible, and it would not be practicable to test so many combinations [of DACA's VRV and VRV-S product class]." Based on these conclusions, the DOE proceeded to grant DACA's interim waiver request, Id., and DOE then renewed this interim waiver on the same basis. 72 FR 35,986 (July 2, 2007).

The DACA VRV-III system operates in the same configurations as the VRV and VRV-S models for which DOE previously granted an interim waiver. The reasons and rationale that DOE has already articulated to support the previous DACA, MEUS, Sanyo, and Fujitsu waivers for multi-split, multi-zoned air conditioners also apply to the DACA VRV-III products. Therefore, DOE should conclude that the design characteristics of DACA's VRV-III product classes prevent testing of these basic models according to the prescribed test procedures.

Specific Testing Requirements Sought To Be Waived

The test procedures from which DACA is requesting a waiver are ARI Standards 210/240-2006 and 340/360-2004. ARI Standard 210/240-2006, which is applicable to small commercial packaged air conditioning and heating equipment with a capacity of <65,000 Btu/hr, is referenced in Table 1 to 10 CFR § 431.96, and is made applicable to DACA's small commercial VRV-III products in 10 CFR § 431.96(a). ARI Standard 340/360-2004, which is applicable to large commercial and industrial unitary air conditioning and heat pump equipment with a capacity of ≥65,000 Btu/hr to <240,000 Btu/hr, is referenced in Table 2 to 10 CFR § 431.96, and is made applicable to DACA's large commercial VRV-III products in 10 CFR § 431.96(a).

Detailed Discussion of Need for Requested Waiver

Although the capacity of DACA's VRV-III small and large commercial air conditioning product class are within the scope of ARI Standard 210/240-2006 and ARI 340/360-2004, the design characteristics of these product classes prevent testing of the basic model according to the prescribed test procedures. The testing procedures outlined in these two ARI standards do not provide for:

- The testing of multi-split products when all connected indoor units physically cannot be located in a single room.
- The operation of indoor units at several different static pressure ratings during a single test.
- The precise number of part load tests that ARI Standard 340/360-2004 requires for fully or infinitely variable speed products.

DACA especially requires the requested waiver because ARI Standard 210/240-2006 and ARI Standard 340/360-2004 provide no direction or guidance about how to test systems with millions of combinations of indoor units configurable to a single outdoor unit.

A further reason that DACA needs the requested waiver is that ARI Standard 210/240-2006 and ARI Standard 340/360-2004

do not provide a test method to measure part load performance of a system operating in simultaneous cooling and heating modes (i.e., performing both heating and cooling functions at the same time).

Another problem that prevents testing of the VRV-III product classes under these ARI standards, and another major reason why DACA requires the requested waiver, is the wide variety of indoor unit static pressure ratings available with these and other multi-split products. Testing facilities cannot effectively control multiple indoor static pressures as would be required to test many of the indoor unit combinations available. To accomplish such testing, a testing lab would be required to use a large number of test rooms simultaneously, and each test room would have to be networked into the data recording instrumentation. Also, extensive piping configurations would need to be routed throughout the various test rooms. This process would be extraordinarily expensive, and the logistical challenges presented by the testing might be insurmountable.

Manufacturers of Other Basic Models Incorporating Similar Design Characteristics

DACA is aware of the following manufacturers that produce basic models incorporating similar design characteristics to the VRV-III in the United States market:

- Fujitsu General
- Sanyo Fisher (USA) Corp.
- Mitsubishi Electric & Electronics USA, Inc.

Alternative Test Procedures

There are no alternative test procedures available within the United States to provide a means to test and to rate the performance of such variable speed, multi-split, multi-zone product types. A draft ISO standard (ISO CD 15042 Multi-Split Systems) is nearing completion and is expected to soon be distributed as a Draft International Ballot for comments. The Engineering Committee of ARI's Ductless Section is currently working on a new draft standard to provide testing and rating of such systems, but ARI has not adopted a new standard and test method for this category of equipment as of this date.

Application for Interim Waiver

DACA also hereby applies pursuant to 10 CFR § 431.401(a)(2) for an interim waiver of the applicable test procedure requirements for its VRV-III product class models listed above. The basis for DACA's Application for Interim Waiver follows.

DACA is likely to succeed in its Petition for Waiver because there is no reasonable argument that ARI Standards 210/240-2006 and 340/360-2004 can be properly applied to DACA's VRV-III product classes. As explained above in the DACA's Petition for Waiver, the design characteristics of the VRV-III product classes clearly prevent testing of the basic model according to the prescribed test procedures. The likelihood of DOE approving DACA's Petition for Waiver is buttressed by the DOE's history of approving previous waiver requests from DACA and from several other manufacturers for other products that are similar to the VRV-III product classes, based on the same

rationale put forth by DACA in this Petition for Waiver. See preceding discussion of waivers granted by DOE to DACA, MEUS, Fujitsu General, and Sanyo Fisher (USA) Corp.

Additionally, DACA is likely to suffer economic hardship and competitive disadvantage if DOE does not grant its interim waiver request. DACA is now preparing to introduce its VRV, VRV-S and VRV-III models covered by this petition in a matter of months. If we must wait for completion of the normal waiver consideration and issuance process, DACA will be forced to delay the opportunity to begin recouping through product sales its research, development and production costs associated with the VRV-III product classes.

DOE approval of DACA's interim waiver application is also supported by sound public policy reasons. As DOE stated in its August 14, 2006 approval of DACA's interim waiver for the VRV and VRV-S product classes:

[I]n those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

The VRV-III product classes will provide superior comfort to the end user, will allow for independent zoning of facilities from a single outdoor unit, and will incorporate state of the art technology such as variable speed compressors utilizing neodymium magnets to increase efficiency and electronic control of compressor speed, fan speed and even metering device opening positions. The VRV-III product classes will introduce technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we can bring the new highly energy efficient technology represented by the VRV-III product classes to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product, and from competition for other manufacturers who may have already received waivers.

Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

Conclusion

Daikin AC (Americas), Inc. Corporation respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for the VRV-III product designs, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship and competitive disadvantage to DACA by preventing DACA from marketing these products even though DOE has previously granted a waiver to other products currently being offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact Russell Tavolacci, Assistant Vice President at 972-245-1510 or by e-mail at Russell.tavolacci@daikinac.com.

Sincerely,

Yoshinobu Inoue,
President, Daikin AC (Americas), Inc., 1645
Wallace Drive, Suite 110, Carrollton, Texas
75006.

(Submitted in triplicate)

Notice to Affected Persons

The following companies manufacture domestically marketed units of the same product type as the VRV-III product types. I hereby certify that I delivered a copy of this Petition for Waiver and Application for Interim Waiver to the persons listed below by United States First Class Mail, postage prepaid, on August 31, 2007:

Fujitsu General America, Inc., 353 Route 46
West, Fairfield, NJ 07004, Attn: Arturo
Thur De Koos, Engineering & Technical
Support.

Sanyo Fisher (USA) Corp., 1690 Roberts
Blvd., Suite 110, Kennesaw, GA 30144,
Attn: Gary Nettinger, Vice President,
Technical and Service.

Mitsubishi Electric & Electronics USA, Inc.,
4300 Lawrenceville-Suwanee Road,
Suwanee, GA 30024, Attn: William Rau,
Senior Vice President and General
Manager.

Dated August 31, 2007.

Yoshinobu Inoue,
President, Daikin AC (Americas), Inc., 1645
Wallace Drive, Suite 110, Carrollton, Texas
75006.

[FR Doc. E8-12 Filed 1-4-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 7, 2008, 9 a.m.-5 p.m.; Friday, February 8, 2008, 8:30 a.m.-4 p.m.

ADDRESSES: Columbia Basin College, Byron Gjerde Center, 2600 North 20th Avenue, Pasco, Washington 99301, Phone: (509) 547-0511, Fax: (509) 544-2023.

FOR FURTHER INFORMATION CONTACT: Erik Olds, Federal Coordinator, Department of Energy Richland Operations Office,

2440 Stevens Drive, P.O. Box 450, H6-60, Richland, WA 99352; Phone: (509) 372-8656; or E-mail:

Theodore_E_Erik_Olds@orp.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Discussion on Hanford's Fiscal Year 2008-2010 Budget.

- Tank Closure and Waste Management Environmental Impact Statement.

- Black Rock Environmental Impact Statement.

- Briefing on the State of the Columbia River Report.

- Briefing on the Technology Road Map.

- Discussion on the upcoming EM SSAB Meeting in Hanford on April 22-24, 2008.

- Hanford Advisory Board Self Evaluation.

- Hanford Advisory Board Process Manua.

- Hanford Advisory Board Budget.

- Committee Updates, including Tank Waste Committee, River and Plateau Committee, Health, Safety and Environmental Protection Committee, Public Involvement Committee, and Budgets and Contracts Committee.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Erik Olds' office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Erik Olds' office at the address or phone number listed above. Minutes will also be available at the following Web site <http://www.hanford.gov/?page=413&parent=397>.

Issued at Washington, DC on December 31, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-14 Filed 1-4-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC-018]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Application for Interim Waiver From the Department of Energy Commercial Package Water-Source Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from Daikin AC (Americas), Inc. (Daikin). The Petition for Waiver (hereafter "Daikin Petition") requests a waiver of the Department of Energy (DOE) test procedure applicable to commercial package water-source air conditioners and heat pumps. The waiver request is specific to the Daikin Variable Speed and Variable Refrigerant Volume VRV-WII (commercial) multi-split water-source heat pumps and heat recovery systems. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Daikin Petition; and (2) announcing our determination granting an Interim Waiver to Daikin from the applicable DOE test procedure for commercial water-source air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than February 6, 2008.

ADDRESSES: You may submit comments, identified by case number [CAC-018], by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:**

Michael.Raymond@ee.doe.gov. Include either the case number [CAC-018], and/or "Daikin Petition" in the subject line of the message.

- **Mail:** Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2], Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format, and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. Russell Tavolacci, Director of Product Marketing, Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, TX 75006. Telephone: (972) 245-1510. E-mail: Russell.Tavolacci@daikinac.com.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza SW, Suite 600, Washington, DC, 20024; (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: Michael.Raymond@ee.doe.gov.

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-9507. E-mail: Francine.Pinto@hq.doe.gov or Eric.Stas@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291-6309) Part C of Title III provides for an energy efficiency program titled "Certain Industrial Equipment," which is similar to the program in Part B, and which includes commercial air conditioning and heating equipment, packaged boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311-6317)

This notice involves commercial equipment under Part C. Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, it generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and

Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted the International Organization for Standardization (ISO) Standard 13256-1 (1998), "Water-source heat pumps—Testing and rating for performance: Part 1-Water-to-air and brine-to-air heat pumps" for small commercial package water-source heat pumps with capacities <135,000 British thermal units per hour (Btu/h). *Id.* at 71371. DOE's regulations at 10 CFR 431.95(b)(3) incorporate by reference the relevant ISO standard, and Table 1 to 10 CFR 431.96 directs manufacturers of commercial package water-source air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Daikin's commercial water-source multi-split heat pump products range from 60,000 Btu/hr to 252,000 Btu/hr, thereby resulting in many of these products falling in the range covered by ISO Standard 13256-1 (1998).)

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). The waiver provisions for commercial equipment found at 10 CFR 431.401 are substantively identical to those for covered consumer products. Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including

adherence to alternate test procedures. 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 431.401(g).

The waiver process also allows any person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 431.401(e)(3). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may then be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On January 22, 2007, Daikin filed a Petition for Waiver from the test procedures at 10 CFR 431.96 which are applicable to commercial package water-source heat pumps and an Application for Interim Waiver. As noted above, the applicable test procedure for Daikin's commercial VRV-WII multi-split heat pumps is ISO Standard 13256-1 (1998), which manufacturers are directed to use pursuant to Table 1 of 10 CFR 431.96. The capacities of the Daikin VRV-WII multi-split heat pumps range from 60,000 Btu/hr to 252,000 Btu/hr. DOE notes that the Daikin 60,000 Btu/hr unit is residential in size, but because it is being marketed and sold for commercial use, it is considered a commercial product. Accordingly, the appropriate test procedure is the same as for two other outdoor units with capacities less than 135,000 Btu/hr, ISO 13256-1 (1998). DOE further notes that Daikin also requested a waiver for four outdoor units with capacities greater than 135,000 Btu/hr, but because DOE does not have a test procedure for such products, there is no need for a waiver.

Daikin seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its VRV-WII water-source multi-split heat pumps

and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedure. The products covered by this petition represent the models of Daikin's multi-split product line that use water, instead of air, as a heat source and heat sink. However, Daikin asserts that the water-source VRV-WII systems operate in the same configurations as the air-source VRV and VRV-S systems, with the only relevant difference being the heat rejection medium. Specifically, Daikin asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi), Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660 (August 27, 2004); 72 FR 17528 (April 9, 2007); 72 FR 71383 (December 17, 2007); 72 FR 71387 (December 17, 2007).

Further, Daikin states that its VRV-WII indoor units have nine different indoor static pressure ratings, and the test procedure does not provide for operation of indoor units at several different static pressure ratings during a single test. The indoor units are designed to operate at many different external static pressure values, which compounds the difficulty of testing. A testing facility could not manage proper airflow at several different external static pressure values to the many indoor units that would be connected to a VRV-WII outdoor unit. The number of connectable indoor units for each outdoor unit ranges up to 32. Daikin further states that its VRV-WII products capability to perform simultaneous heating and cooling is not captured by the DOE test procedure. This is true, but not relevant. DOE is required by EPCA to use the full-load descriptor EER for these products, and simultaneous heating and cooling does not occur when operating at full load.

Accordingly, Daikin requests that DOE grant a waiver from the applicable test procedures for its VRV-WII product designs until a suitable test method can be prescribed. Furthermore, Daikin states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its VRV-WII products. Also, Daikin states that it is willing to

work closely with DOE, the Air-Conditioning and Refrigeration Institute (ARI), and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On January 22, 2007, in addition to its Petition for Waiver, Daikin submitted to DOE an Application for Interim Waiver. Daikin's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship Daikin will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar product designs, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Mitsubishi, Fujitsu, and Samsung for comparable commercial multi-split air conditioners and heat pumps. 72 FR 17533 (April 9, 2007); 70 FR 5980 (Feb. 4, 2005); 70 FR 9629 (Feb. 28, 2005), respectively.

Moreover, as noted above, DOE approved the Petition for Waiver from Mitsubishi for its comparable line of commercial water-source multi-split air conditioners and heat pumps. 72 FR 17528 (April 9, 2007). The two principal reasons for granting these waivers also apply to Daikin's VRV-WII products: (1) test laboratories cannot test products with so many indoor units;¹ and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that Daikin's Petition for Waiver will be granted for its new VRV-WII water-source multi-split models. Therefore, *it is ordered that:*

The Application for Interim Waiver filed by Daikin is hereby granted for Daikin's VRV-WII water-source multi-split central air conditioning heat pumps, subject to the specifications and conditions below.

1. Daikin shall not be required to test or rate its water-source VRV-WII commercial water-source multi-split products on the basis of the currently applicable test procedure under Table 1 of 10 CFR 431.96, which incorporates by reference ISO Standard 13256-1 (1998).

2. Daikin shall be required to test and rate its VRV-WII commercial water-

¹ According to the Daikin petition, up to 32 indoor units are possible-candidates for testing of its commercial water-source multi-split heat pumps and heat recovery systems. However, DOE believes that the practical limits for testing would be about five units.

source multi-split products according to the alternate test procedure as set forth in section IV(3), "Alternate test procedure."

The Interim Waiver applies to the following models:

VRV-WII Series Outdoor Units:

- Models RWEYQ60, RWEYQ72, RWEYQ84

Compatible Indoor Units For Above-Listed Outdoor Units:

- FXAQ Series wall mounted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
- FXLQ Series floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.
- FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.
- FXDQ Series low static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
- FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.
- FXMQ Series high static ducted indoor units with nominally rated capacities of 30,000, 36,000 and 48,000 Btu/hr.
- FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
- FXFQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 30,000 and 36,000 Btu/hr.
- FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 Btu/hr.
- FXOQ Series concealed indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 36,000, 42,000, 36,000 and 48,000 BTU/Hr.

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this Interim Waiver at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a

basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE. The ARI committee has considered a draft ISO methodology, ISO CD 15042, for multi-split systems. However, it contains no guidance that would affect this waiver.

Therefore, as discussed below, DOE is including a similar alternate test procedure as a condition in granting the Interim Waiver for Daikin's products, and plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Daikin's Petition for Waiver. Utilization of this alternate test procedure will allow Daikin to test and make energy efficiency representations for its VRV-WII products. More broadly, DOE has applied a similar alternate test procedure to other existing waivers for similar residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its multi-split products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its multi-split products at 72 FR 71383 (Dec. 17, 2007). As noted above, the alternate test procedure has been applied to Mitsubishi's Petition for Waiver for its R410A CITY MULTI and R22 multi-split products. 72 FR 17528 (April 9, 2007). DOE believes that an alternate test procedure is needed so that manufacturers of such products can make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

In the present case, DOE is modifying the alternate test procedure taken from the above-referenced waiver granted to Mitsubishi for its R410A CITY MULTI products, and plans to consider inclusion of the following similar

waiver language in the Decision and Order for Daikin's VRV-WII commercial multi-split water-source heat pump models:

(1) The "Petition for Waiver" filed by Daikin AC (Americas), Inc. is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV-WII variable refrigerant volume multi-split water-source heat pump products listed above in section III, on the basis of the current test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Daikin shall test a "tested combination" selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV-WII products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination* means a multi-split system with multiple indoor coils having the following features:

(1) The basic model of a system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between 2 and 5 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal capacity that is between 95% and 105% of the nominal capacity of the outdoor unit;

(iii) Not, individually, have a capacity that is greater than 50% of the nominal capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) All be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR part 430, subpart B, appendix M.

(C) *Representations.* In making representations about the energy efficiency of its VRV-WII variable speed and variable refrigerant volume multi-split water-source heat pumps and heat recovery system products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For VRV-WII combinations tested in accordance with this alternate test procedure, Daikin must disclose these test results.

(ii) For VRV-WII combinations that are not tested, Daikin must make a disclosure based

on the testing results for the tested combination and which is consistent with either of the two following methods, except that only method (a) may be used, if available:

- (a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or
- (b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of Daikin's Petition for Waiver from the test procedures applicable to Daikin's VRV-WII commercial multi-split heat pump products, and for the reasons articulated above, DOE is granting Daikin an Interim Waiver from those procedures. As part of this notice, DOE is publishing Daikin's Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of its Interim Waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a "tested combination" which Daikin could use in lieu of testing all retail combinations of its VRV-WII water-source multi-split heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an ARM approved by DOE, or to rate waived products the same as the specified tested combination with the same outdoor unit. DOE is also applying a similar alternate test procedure to other comparable Petitions for Waiver for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its Digital Variable Multi (DVM) products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 72 FR 71383 (Dec. 17, 2007).

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the ADDRESSES section above.

Issued in Washington, DC, on December 27, 2007.

Alexander A. Karsner,
Assistant Secretary, Energy Efficiency and Renewable Energy.

January 22, 2007

Mr. Alexander Karsner
Assistant Secretary for Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave., SW., Washington, DC 20585-0121

Re: Petition for Waiver of Test Procedure

Dear Assistant Secretary Karsner:
Daikin AC (Americas) Inc. (DACA) respectfully petitions the Department of Energy (DOE) pursuant to 10 C.F.R. §§ 430.27(a)(1) and 431.401(a)(1) for a waiver of the test procedures applicable to commercial package air conditioners and heat pumps, as established in ISO Standard 13256-1 (1998),¹ for DACA's variable speed compressor driven water-cooled multi-split systems for combinations exceeding two indoor units to a single outdoor unit. The specific systems for which DACA requests this waiver are in DACA's VRV-WII product class, and the specific models subject to the waiver request are listed below. As explained more fully below, the basis for DACA's request is that the basic model contains design criteria that prevent testing of the basic model according to the prescribed test procedures. We are simultaneously requesting an interim waiver for the same systems pursuant to 10 C.F.R. §§ 430.27(a)(2) and 431.401(a)(2).

Background

DACA is a leading manufacturer of variable speed and Variable Refrigerant Volume (VRV) zoning systems that DACA offers for sale in the North American market. These products combine advanced technologies such as high efficiency variable speed compressors and fan motors with electronic expansion valves and other devices to insure peak operating performance of the overall system and to optimize energy efficiency. DACA has designed the VRV-WII systems to operate in commercial applications, and this product class employs zoning to provide users with peak utility of the system and with significant energy savings compared to competing technologies.

General Characteristics of DACA's Water Source VRV-WII Products

DACA's VRV-WII system has the following characteristics and applications:

- DACA's water source VRV-WII is an air conditioning system that includes numerous individually controllable discrete indoor units utilizing water as a heat source. In this unique system, water is piped from a cooling tower or boiler to the VRV-WII (which is the equivalent of the outdoor unit of an air cooled conditioning system). After heat exchange, refrigerant is piped from the VRV-WII to each indoor unit.

¹ Detailed citations to the test procedures for which DACA is requesting a waiver are included on page 4 of this petition.

- The VRV-WII system consists of multi-split, multi-zone units utilizing one or multiple outdoor units that serve up to thirty-two indoor units.

- The VRV-WII system employs variable speed technology that matches system capacity to the current load thereby utilizing the minimum amount of energy required for optimal system operation.

- Due to its multi-zone applications, each VRV-WII indoor unit can be independently controlled with a local controller allowing the occupant to alter their environmental condition to meet their needs. Individually controlled system functions include temperature, fan speed and mode of operation.

- The VRV-WII system can efficiently operate the compressor at loads as small as 10% of the rated capacity of the system, resulting in significant energy savings.

- Some VRV-WII products offer a "heat recovery" mode that allows heat that is absorbed from one indoor zone (operating in the cooling mode) to be discharged into another indoor zone that is calling for heat. This function reduces the load on the outdoor unit and improves overall system performance and utility.

- The VRV-WII system employs variable speed indoor and outdoor high efficiency fan motors to precisely control operating pressures and airflow rates.

- The VRV-WII system uses electronically controlled expansion valves to precisely control refrigerant flow, superheat, sub-cooling, pump down functions and even oil flow throughout the system.

Particular Basic Models for Which a Waiver Is Requested

DACA requests a waiver from the test procedures for the following basic model groups:

- VRV-WII Series Outdoor Units:
 - Models RWEYQ60, 72, 84, 144, 168, 216, and 252 with capacities ranging from 60,000 to 252,000 Btu/hr.
- Compatible Indoor Units for Above Listed Outdoor Units:
 - FXAQ Series wall mounted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
 - FXLQ Series floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.
 - FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.
 - FXDQ Series low static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
 - FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.
 - FXMQ Series high static ducted indoor units with nominally rated capacities of 30,000, 36,000 and 48,000 Btu/hr.
 - FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.

- FFXQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 30,000 and 36,000 Btu/hr.
- FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 Btu/hr.
- FXOQ Series concealed indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 36,000, 42,000, 36,000 and 48,000 BTU/Hr.

Design Characteristics Constituting the Grounds for DACA's Petition

DACA's VRV-WII product offering consists of multiple indoor units being connected to a water-cooled outdoor unit. The indoor units for these products are available in a very large number of potential configurations, including but not limited to the following: 4-Way Cassette, Wall Mounted, Ceiling Suspended, and Floor Standing. DACA is currently developing additional indoor unit models for future market introduction. Each of these units has nine different indoor static pressure ratings as standard, with addition pressure ratings available. There are over one million combinations possible with the current DACA VRV-WII product offering. It is completely impractical for testing laboratories to test a product such as the VRV-WII with multiple indoor units because of the astronomical number of potential system configurations.

DACA's VRV-WII products share many of the design characteristics and features of DACA's VRV and VRV-S product lines, and of Mitsubishi Electric and Electronics USA, Inc.'s (MEUS) CITY MULTI product class, for both of which DOE has previously granted a waiver.² The principal design characteristic difference between DACA's VRV and VRV-S products, and its VRV-WII products, is the method of heat rejection. Similarly, the method of heat rejection is the most significant design characteristic that distinguishes the basic operation of the VRV-WII product class and the MEUS CITY MULTI product class that has received a waiver from DOE. The VRV-WII products use water instead of air to reject heat. In contrast, the VRV and VRV-S products, as well as MEUS' CITY MULTI products use air to reject heat. The same testing constraints and limitations apply to all of these products.

The DOE relied on similar rationales to grant MEUS' petition for waiver and DACA's interim waiver. DOE stated the following in its August 14, 2006 letter to DACA granting an interim waiver:

A waiver for a similar type of variable refrigerant flow zoned central air conditioner [i.e., similar to the DACA VRV and VRV-S products] was requested by MEUS. DOE decided to grant the waiver, based on the difficulty of testing the products. There are two major testing problems: (1) Test laboratories cannot test products with so

many indoor units (up to sixteen); and (2) there are too many possible combinations of indoor and outdoor units—only a small fraction of the combinations could be tested.

DOE also noted in its August 14, 2006 interim waiver approval for DACA's VRV and VRV-S products that “[w]aivers for similar products have already been granted to * * * Samsung, and Fujitsu General * * *”

After reviewing its previously granted waivers for similar products under the same rationale in its August 14, 2006 letter, DOE concluded that DACA's VRV and VRV-S systems “will likely suffer the same testing problems that prompted DOE to grant MEUS a waiver.” DOE continued by saying that “[w]ith up to eleven indoor units of nine different types, thousands of combinations are possible, and it would not be practicable to test so many combinations [of DACA's VRV and VRV-S product class].” Based on these conclusions, the DOE proceeded to grant DACA's interim waiver request. *Id.*

The DOE's basis for its August 4, 2006 approval of an interim waiver for DACA's VRV and VRV-S products is virtually identical to DOE's stated reasons for its approval of MEUS' CITY MULTI product lines, which were: “test laboratories cannot test products with so many indoor units,” and “there are too many possible combinations of indoor and outdoor units to test.” 69 Fed. Reg. 52,660 (August 27, 2004).

The DACA VRV-WII system operates in the same configurations as the VRV and VRV-S systems, with the only relevant design feature difference being that the VRV-WII system that is the subject of this waiver petition uses water to reject heat, while the VRV and VRV-S systems that have already received an interim waiver use air to reject heat. The reasons and rationale that DOE has already articulated to support the previous DACA, MEUS, Sanyo, and Fujitsu waivers for multi-split, multi-zoned air conditioners also apply to the DACA VRV-WII products. Therefore, DOE should conclude that the design characteristics of DACA's VRV-WII product class prevent testing of the basic VRV-WII model according to the prescribed test procedures.

Specific Testing Requirements Sought To Be Waived

The test procedures from which DACA is requesting a waiver are in ISO Standard 13256-1 (1998), which is applicable to water-source small commercial packaged air conditioning and heating equipment with a capacity of <135,000 Btu/hr, and which is referenced in Table 1 of 10 CFR § 431.96, and is made applicable to DACA's commercial water source VRV-WII products in 10 CFR § 431.96(a).

Detailed Discussion of Need for Requested Waiver

Although the capacity of DACA's VRV-WII commercial air conditioning product class are within the scope of ISO Standard 13256-1 (1998), the design characteristics of the VRV-WII product class prevent testing of the basic model according to the prescribed test procedures. The testing procedures outlined in these two ARI standards do not provide for:

- The testing of multi-split products when all connected indoor units physically cannot be located in a single room.
- The operation of indoor units at several different static pressure ratings during a single test.

The precise number of part load tests that ISO Standard 13256-1 (1998) requires for fully or infinitely variable speed products. DACA especially requires the requested waiver because ISO Standard 13256-1 (1998) provides no direction or guidance about how to test systems with millions of combinations of indoor units configurable to a single outdoor unit.

A further reason that DACA needs the requested waiver is that ISO Standard 13256-1 (1998) does not provide a test method to measure part load performance of a system operating in simultaneous cooling and heating modes (i.e., performing both heating and cooling functions at the same time).

Yet another problem that prevents testing of the VRV-WII product class under these two ARI standards, and another major reason why DACA requires the requested waiver, is the wide variety of indoor unit static pressure ratings available with these and other multi-split products. Testing facilities cannot effectively control multiple indoor static pressures as would be required to test many of the indoor unit combinations available. To accomplish such testing, a testing lab would be required to use a large number of test rooms simultaneously, and each test room would have to be networked into the data recording instrumentation. Also, extensive piping configurations would need to be routed throughout the various test rooms. This process would be extraordinarily expensive, and the logistical challenges presented by the testing might be insurmountable.

Manufacturers of Other Basic Models Incorporating Similar Design Characteristics

DACA is aware of the following manufacturers that produce basic models incorporating similar design characteristics to the VRV-WII in the United States market:

- Sanyo Fisher (USA) Corp.
- Mitsubishi Electric & Electronics USA, Inc.

Alternative Test Procedures

There are no alternative test procedures available within the United States to provide a means to test and to rate the performance of such variable speed, multi-split, multi-zone product types. A draft ISO standard (ISO CD 15042 Multi-Split Systems) is nearing completion and will soon be distributed as a Draft International Ballot for comments. The actual final completion date of this ISO standard is unknown. The Engineering Committee of ARI's Ductless Section is also evaluating possible methods to provide testing and rating of such systems, but the ARI Ductless Section has not developed a test method for this category of equipment as of this date.

Application for Interim Waiver

DACA also hereby applies pursuant to 10 CFR § 431.401(a)(2) for an interim waiver of the applicable test procedure requirements for the VRV-WII product class models listed

² DOE granted DACA an interim waiver for its VRV and VRV-S product lines in a letter dated August 14, 2006. DOE has not yet published notice of this interim waiver issuance in the **Federal Register**. DOE granted MEUS a waiver for its CITY MULTI VRFZ class of products. 69 FR 52660 (August 27, 2004).

above. The basis for DACA's Application for Interim Waiver follows.

DACA is likely to succeed in its Petition for Waiver because there is no reasonable argument that ISO Standard 13256-1 (1998) can be accurately applied to DACA's VRV-WII product class. As explained above in the DACA's Petition for Waiver, the design characteristics of the VRV-WII product class clearly prevent testing of the basic model according to the prescribed test procedures. The likelihood of DOE approving DACA's Petition for Waiver is buttressed by the DOE's history of approving previous waiver requests from DACA and from several other manufacturers for other products that are similar to the VRV-WII product class, based on the same rationale put forth by DACA in this Petition for Waiver. See preceding discussion of waivers granted by DOE to MEUS, Fujitsu General, and Sanyo Fisher (USA) Corp.

Additionally, DACA is likely to suffer economic hardship and competitive disadvantage if DOE does not grant its interim waiver request. DACA is now preparing to introduce its VRV-WII product class in a matter of months. If we must wait for completion of the normal waiver consideration and issuance process, DACA will be forced to delay the opportunity to begin recouping through product sales its research, development and production costs associated with the VRV-WII product class. In addition to these economic hardship costs, DACA will lose market share to MEUS, especially if DOE grants MEUS' pending interim waiver application for its CITY MULTI WR2 and WY product classes, which will compete directly with DACA's VRV-WII product class.

DOE approval of DACA's interim waiver application is also supported by sound public policy reasons. As DOE stated in its August 14, 2006 approval of DACA's interim waiver for the VRV and VRV-S product classes:

[I]n those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

The VRV-WII product class will provide superior comfort to the end user, will allow for independent zoning of facilities from a single outdoor unit, and will incorporate state of the art technology such as variable speed compressors utilizing neodymium magnets to increase efficiency and electronic control of compressor speed, fan speed and even metering device opening positions. The VRV-WII product class will introduce technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we can bring the new highly energy efficient technology represented by the VRV-WII product class to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product, and from competition for

other manufacturers who may have already received waivers.

Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

- Conclusion

Daikin AC (Americas), Inc. Corporation respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for the VRV-WII product design, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship to DACA by preventing DACA from marketing these products even though DOE has previously granted a waiver to other products currently being offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact Russell Tavolacci, Director of Product Marketing at 972-245-1510 or by email at Russell.tavolacci@daikinac.com.

Sincerely,
Yoshinobu Inoue
President, Daikin AC (Americas), Inc.
1645 Wallace Drive, Suite 110, Carrollton,
Texas 75006

[FR Doc. E7-25650 Filed 1-4-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 28, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08-26-000; EL08-21-000; EG08-26-000.

Applicants: NorthWestern Corporation, Colstrip Lease Holdings, LLC

Description: NorthWestern Corp and Colstrip Lease Holdings, LLC submit an application for authorization to transfer interest in 740 MW Colstrip Generating Unit.

Filed Date: 12/19/2007.

Accession Number: 20071221-0197.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 9, 2008.

Docket Numbers: EC08-27-000.

Applicants: Iberdrola Renovables, S.A., PPM Energy, Inc., PPM Wind Energy LLC, Aeolus Wind Power IV LLC, Atlantic Renewable Energy Corporation; Casselman Windpower, LLC.

Description: Joint application of Iberdrola Renovables, SA *et al.* for

indirect disposition of jurisdictional facilities owned by Casselman Windpower LLC.

Filed Date: 12/21/2007.

Accession Number: 20071228-0119.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08-27-000.

Applicants: Rail Splitter Wind Farm, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rail Splitter Wind Farm, LLC.

Filed Date: 12/21/2007.

Accession Number: 20071221-5046.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06-615-016; ER08-367-000.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp's filing of Fourth Replacement Version of FERC Electric Tariff.

Filed Date: 12/21/2007.

Accession Number: 20071227-0159.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER07-1192-000.

Applicants: Wisconsin Electric Power Company.

Description: Paper Hearing Reply Comments of Wisconsin Public Power Inc.

Filed Date: 12/20/2007.

Accession Number: 20071220-5092.

Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-352-000.

Applicants: The Midwest Independent Transmission System Operator, Inc.

Description: The Midwest Independent Transmission System Operator, Inc submits an unexecuted Amended and Restated Large Generator and Interconnection Agreement with Tatanka Wind Power, LLC.

Filed Date: 12/21/2007.

Accession Number: 20071227-0040.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-353-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits Substitute Eighth Revised Sheet No. 67 to FERC Electric Tariff, Second Revised Volume No. 6 effective 1/1/08.

Filed Date: 12/20/2007.
Accession Number: 20071227-0140.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-354-000.
Applicants: Wells Fargo Energy Markets, LLC.
Description: Application of Wells Fargo Energy Markets, LLC for Market-Based Rate Tariff and Granting Certain Waivers and Blanket Approvals to be effective 2/1/08.

Filed Date: 12/20/2007.
Accession Number: 20071227-0139.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-355-000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co. submits an amended Network Integration Transmission Service Agreement *et al.* with City of Carlisle, IA.

Filed Date: 12/20/2007.
Accession Number: 20071227-0138.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-356-000.
Applicants: Dynegy Power Marketing, Inc.

Description: Dynegy Power Marketing, Inc requests waiver of section 3(b) of its market-based rate tariff.

Filed Date: 12/21/2007.
Accession Number: 20071227-0137.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-357-000.
Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Co. dba Dominion Virginia Power submits a Notice of Cancellation of the Enfield Service Agreement.

Filed Date: 12/20/2007.
Accession Number: 20071227-0136.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-358-000.
Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc. submit a filing to revise Attachment H-13 of the PJM Interconnection, LLC OATT.

Filed Date: 12/21/2007.
Accession Number: 20071227-0135.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-359-000.
Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co. dba Progress Energy Carolinas, Inc.

submit a cost-based power supply and coordination agreement with the Town of Winterville, NC, to be effective 3/1/08.

Filed Date: 12/21/2007.
Accession Number: 20071227-0147.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-360-000.
Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits revisions to its Rate Schedule 10-A.

Filed Date: 12/21/2007.
Accession Number: 20071227-0146.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-361-000.
Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits an executed interconnection service agreement with Grand Ridge Energy, LLC and Commonwealth Edison Co.

Filed Date: 12/21/2007.
Accession Number: 20071227-0145.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-362-000.
Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc. on behalf of Southern Companies submits a Cancellation of Transmission Service Agreements.

Filed Date: 12/21/2007.
Accession Number: 20071227-0144.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-364-000.
Applicants: APX, Inc.

Description: APX, Inc. submits a notice of succession, notifying the Commission that Automated Power Exchange, Inc.'s name was changes to APX, Inc.

Filed Date: 12/21/2007.
Accession Number: 20071227-0202.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-365-000.
Applicants: APX, Inc.

Description: APX, Inc. submits revisions to its FERC Electric Tariff, First Revised Volume 10.

Filed Date: 12/21/2007.
Accession Number: 20071227-0203.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-366-000.
Applicants: American Electric Power System Corporation.

Description: American Electric Power Service Corp. on behalf of AEP Texas Central Co. submit an amendment to the

8/28/07 generation interconnection agreement with Texas Gulf Wind LLC.

Filed Date: 12/20/2007.
Accession Number: 20071227-0143.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-368-000.
Applicants: Desert Power, LP.
Description: Desert Power, LP submits a Notice of Cancellation of its market-based rate tariff and requests waiver of the Commission's 60-day prior notice requirement.

Filed Date: 12/20/2007.
Accession Number: 20071227-0142.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-369-000.
Applicants: MATL LLP.
Description: MATL LLP submits an executed Coordinated Operating Agreement with Montana Alberta Tie Ltd.

Filed Date: 12/21/2007.
Accession Number: 20071227-0148.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-370-000.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO and Missouri River Energy Services submits proposed revisions to the Attachment O transmission rate formula under the Midwest ISO's Open Access Transmission and Energy Markets Tariff.

Filed Date: 12/20/2007.
Accession Number: 20071227-0141.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08-372-000.
Applicants: MATL LLP.

Description: MATL LLP submits First Revised Sheet 6 *et al.* to FERC Electric Tariff, Second Revised Volume No. 1 to be effective 1/31/08.

Filed Date: 12/21/2007.
Accession Number: 20071227-0155.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-373-000.
Applicants: MATL LLP.

Description: MATL LLP submits a Transmission Line Interconnection Agreement with NorthWestern Corp., to be effective 1/31/08.

Filed Date: 12/21/2007.
Accession Number: 20071227-0156.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08-374-000.
Applicants: Atlantic Path 15, LLC.
Description: Atlantic Path 15, LLC submits a proposed decrease in the rates charged for service over the transmission line upgrade and related

substation upgrades to the Path 15 corridor.

Filed Date: 12/21/2007.

Accession Number: 20071227-0154.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-21 Filed 1-4-08; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8514-2]

Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC)

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of a public conference call meeting of the U.S. Environmental Protection Agency's Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee on January 15, 2008, from 2 p.m. until 4 p.m. (EST).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463 as amended (5 U.S.C., App. 2), notification is hereby given that the U.S. Environmental Protection Agency, Office of Research and Development (ORD) will hold a public conference call of the ACSERAC. This public conference call meeting is a follow-up to the public meeting that was held on October 22-23, 2007 (72 FR 52875, September 17, 2007).

The U.S. District Court for the District of Northern California has ordered the interagency U.S. Climate Change Science Program (CCSP) to produce the periodic scientific assessment of climate change required by the Global Change Research Act of 1990 by May 31, 2008 (*Center for Biological Diversity v. Brennan et al.*, 2007 WL 2408901 [No. 06-7062, Aug. 21, 2007]). Synthesis and Assessment Product 4.4, which is being reviewed by the ACSERAC, is an integral component of this assessment. The CCSP has directed EPA to complete and submit a final draft of Product 4.4 to the CCSP by January 31, 2008. To meet this deadline, the ACSERAC is holding this conference call meeting to review its final report on this product. This notice is being published less than 15 days before the teleconference. Product 4.4 is a very large document that has been developed under an unusually short time frame, with impacts on the authors' and committee members' schedules. January 15 is the only date that the Committee is available to hold this conference call meeting. Since EPA will likely have to make changes to the document following the teleconference, delaying this meeting would cause EPA to be late in submitting this product to the CCSP. Participants will discuss the revisions to the document that were a result of the public meeting in October. The CCSP expects to release the draft scientific assessment in April 2008. Interested parties will have an opportunity to

review and comment on the entire scientific assessment, including Product 4.4, when it is released to the public.

Public Participation: Members of the public may submit written comments to Joanna Foellmer, Designated Federal Official, ACSERAC (see the **FOR FURTHER INFORMATION CONTACT** section below). In addition, members of the public may call into the conference call meeting as observers, and there will be a limited time for comments from the public. Please contact Joanna Foellmer no later than January 11, 2008, if you wish to make oral comments during the conference call meeting. Requests to make oral comments must be in writing (via e-mail, fax or ground mail). Please send a copy of your presentation to Joanna Foellmer by January 13, 2008. Information on services for the disabled may be obtained by contacting Joanna Foellmer.

Agenda: The proposed agenda for the conference call includes, but is not limited to, an extensive discussion by the ACSERAC with respect to EPA's response to the Committee's comments on the external review draft report entitled: "Synthesis and Assessment Product 4.4; Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources" (SAP 4.4). A draft agenda may be obtained from Joanna Foellmer (see the **FOR FURTHER INFORMATION CONTACT** section below).

DATES: The conference call will take place on January 15, 2008, from 2 p.m. until 4 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Questions regarding information and logistics for the ACSERAC should be directed to Joanna Foellmer by *telephone:* 703-347-8508, by *e-mail:* Foellmer.Joanna@epa.gov, by *fax:* 703-347-8694, or by *regular mail:* Joanna Foellmer, ORD/NCEA (Mail Code 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The ACSERAC supports the U.S. Environmental Protection Agency (EPA) in its participation in the CCSP, specifically in implementation of Goal 4 of the Strategic Plan for the CCSP. Goal 4 is to understand "the sensitivity and adaptability of different natural and managed ecosystems and human systems to climate and related global changes." EPA also helps the CCSP satisfy its requirement to conduct periodic assessments of climate change and variability, as set forth in the Global Change Research Act of 1990. The ACSERAC supports EPA in performing its duties and responsibilities.

The primary responsibility of the ACSERAC is to conduct an expert peer review of the external review draft report entitled: "Synthesis and Assessment Product 4.4: Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources" (SAP 4.4). The ACSERAC will provide advice to the EPA Administrator on the conduct of this study, and within the context of the basic study plan, the ACSERAC will advise on: (1) The specific issues to be addressed; (2) appropriate technical approaches; (3) the usefulness of information provided to decision makers; (4) the quality of the content of the final report; (5) compliance with the Information Quality Act; and (6) other matters important to the successful achievement of the objectives of the study. Additionally, once the Agency completes its responses to the comments received from the ACSERAC and the public, the ACSERAC will review the Agency's responses.

EPA has already released the external draft SAP 4.4 report for public review. The **Federal Register** notice (FR72 46610) announcing a forty-five day public comment period was posted on the U.S. Climate Change Science Program (CCSP) Web site (www.climate-science.gov) on August 21, 2007. This report is accessible at www.epa.gov/ncea under *Recent Additions* and is linked to the CCSP Web site.

Dated: December 31, 2007.

Rebecca Clark,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E8-17 Filed 1-4-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8514-3]

Human Impacts of Climate Change Advisory Committee

AGENCY: U.S. Environmental Protection Agency, HICCAC.

ACTION: Notice of a public conference call meeting of the U.S. Environmental Protection Agency's Human Impacts of Climate Change Advisory Committee (HICCAC) on January 14, 2008, at 12 noon until 2 pm. (EST).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463 as amended (5 U.S.C., App. 2), notification is hereby given that the U.S. Environmental Protection Agency, Office of Research and Development

(ORD) will hold a public conference call meeting of the HICCAC. This public conference call meeting is a follow-up to the public meeting that was held on October 15-16, 2007 (72 FR 52877, September 17, 2007).

The U.S. District Court for the District of Northern California has ordered the interagency U.S. Climate Change Science Program (CCSP) to produce the periodic scientific assessment of climate change required by the Global Change Research Act of 1990 by May 31, 2008 (*Center for Biological Diversity v. Brennan, et al.*, 2007 WL 2408901 [No. 06-7062, Aug. 21, 2007]). Synthesis and Assessment Product 4.6, which is being reviewed by the HICCAC, is an integral component of this assessment. The CCSP has directed EPA to complete and submit a final draft of Product 4.6 to the CCSP by January 31, 2008. To meet this deadline, the HICCAC is holding this conference call meeting to review its final report on this product. This notice is being published less than 15 days before the teleconference. Product 4.6 is a large document that has been developed under an unusually short time frame, with impacts on the authors' and committee members' schedules. January 14 is the only date that the Committee is available to hold this conference call meeting. Since EPA will likely have to make changes to the document following the teleconference, delaying this meeting would cause EPA to be late in submitting this product to the CCSP. Participants will discuss the revisions to the document that were a result of the public meeting in October. The CCSP expects to release the draft scientific assessment in April 2008. Interested parties will have an opportunity to review and comment on the entire scientific assessment, including Product 4.6, when it is released to the public.

Public Participation: Members of the public may submit written comments to Joanna Foellmer, Designated Federal Official, HICCAC (see the **FOR FURTHER INFORMATION CONTACT** section below). In addition, members of the public may call into the conference call meeting as observers, and there will be a limited time for comments from the public. Please contact Joanna Foellmer no later than COB January 10, 2008, if you wish to make oral comments during the conference call meeting. Requests to make oral comments must be in writing (via e-mail, fax or ground mail). Please send a copy of your presentation to Joanna Foellmer by January 12, 2008. Information on services for the disabled may be obtained by contacting Joanna Foellmer.

Agenda: The proposed agenda for the conference call includes, but is not limited to, a review of the revised Synthesis and Assessment Product (SAP 4.6) that analyzes the impacts of global change on human health, human settlements, and human welfare. The HICCAC will respond to the changes made to the final report based on the review of an earlier draft of the report. There will be a discussion by the HICCAC panel with respect to their individual and collective assessment of the revised SAP 4.6 report. A draft agenda may be obtained from Joanna Foellmer (see the **FOR FURTHER INFORMATION CONTACT** section below).

DATES: The conference call will take place on January 14, 2008, at 12 noon until 2 pm (EST).

FOR FURTHER INFORMATION CONTACT: Questions regarding information and logistics for the HICCAC public conference call meeting should be directed to Joanna Foellmer by telephone: 703-347-8508, by e-mail: Foellmer.Joanna@epa.gov, by fax: 703-347-8694, or by regular mail: Joanna Foellmer, ORD/NCEA (Mail Code 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The HICCAC supports the U.S. Environmental Protection Agency (EPA) in its participation in the interagency U.S. Climate Change Science Program (CCSP), specifically in implementation of Goal 4 of the Strategic Plan for the CCSP. Goal 4 is to understand "the sensitivity and adaptability of different natural and managed ecosystems and human systems to climate and related global changes." EPA also helps the CCSP satisfy its requirement to conduct periodic assessments of climate change and variability, as set forth in the Global Change Research Act of 1990. The HICCAC serves in the public's interest and supports EPA in performing its duties and responsibilities.

The primary responsibility of the HICCAC is to conduct an expert peer review of the external review draft report entitled: "Synthesis and Assessment Product 4.6: Analyses of the effects of global change on human health and welfare and human systems" (SAP 4.6). The HICCAC will provide advice to the EPA Administrator on the results of this study, and within the context of the basic study plan, the HICCAC will advise on: (1) The specific issues to be addressed; (2) appropriate technical approaches; (3) the usefulness of information provided to decision makers; (4) the quality of the content of the final report; (5) compliance with the

Information Quality Act; and (6) other matters important to the successful achievement of the objectives of the study. Additionally, once the Agency completes its responses to the comments received from the HICCAC and the public, the HICCAC will review the Agency's responses.

EPA has already released the external draft SAP 4.6 report for public review. The **Federal Register** notice (FR 72 39798) announcing a forty-five day public comment period was posted on the U.S. Climate Change Science Program (CCSP) Web site (www.climate-science.gov) on July 20, 2007. This report is accessible at www.epa.gov/ncea under *Recent Additions* and is linked to the CCSP Web site.

Dated: December 31, 2007.

Rebecca Clark,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E8-22 Filed 1-4-08; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

GSA BULLETIN FMR 2008-B3

Use of Segways® and Similar Devices by Individuals with a Mobility Impairment in GSA-Controlled Federal Facilities

AGENCY: General Services
Administration

ACTION: Notice of Interim Policy

SUMMARY: The General Services Administration (GSA) recognizes that some persons with mobility impairments are utilizing the Segway® Personal Transporter (Segway) and similar devices as their preferred means of locomotion. GSA is committed to making all reasonable efforts to make its facilities accessible to persons with disabilities. To that end, on December 3, 2007, GSA's Public Buildings Service issued the following interim policy to permit individuals with a mobility impairment to use these devices in Federal buildings under GSA's jurisdiction, custody or control, including those buildings delegated to other Federal agencies by the Administrator of General Services. This interim policy does not cover privately-owned leased buildings. GSA will issue a final policy once the effectiveness of the interim policy has been thoroughly reviewed and assessed.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Regulations Management Division

(MPR), General Services Administration, Washington, DC 20405; stanley.langfeld@gsa.gov, (202) 501-1737. Please cite FMR Bulletin 2008-B3.

Dated: December 17, 2007.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FMR 2008-B3]

TO: Heads of Federal Agencies

SUBJECT: Use of Segways® and Similar Devices by Individuals with a Mobility Impairment in GSA-Controlled Federal Facilities

Interim Segway® Personal Transporter Policy

The General Services Administration (GSA) recognizes that some persons with mobility impairments are utilizing the Segway® Personal Transporter (Segway) and similar devices as their preferred means of locomotion. GSA is committed to making all reasonable efforts to make its facilities accessible to persons with disabilities. To that end, GSA's Public Buildings Service is issuing this interim policy to permit individuals with a mobility impairment to use these devices in Federal buildings under GSA's jurisdiction, custody or control, including those buildings delegated to other Federal agencies by the Administrator of General Services. This interim policy does not cover privately-owned leased buildings. The use of Segways and other similar devices in leased locations should be negotiated with the building lessor. No alterations or modifications should be required for Segways or similar devices to enter GSA-controlled buildings. GSA will continue to comply with the building accessibility standards identified in 41 C.F.R. § 102-76.65.

GSA will issue a final policy once the effectiveness of the interim policy has been thoroughly reviewed and assessed. The following interim policy is designed to facilitate the safe integration of these mobility devices into the Federal workplace.

Definition of Segway and Scope of Interim Policy

A Segway is a two-wheeled, gyroscopically stabilized, battery-powered personal transportation device. Additional information on this device is available at the following link: <http://www.segway.com>. This policy applies not only to the brand name Segway®, but also to any similar device that is being used as a mobility aid by an individual with a mobility impairment.

This policy does not cover motorcycles, mopeds, tricycles, bicycles (whether or not motor-powered), or other similar devices not permitted to be operated in Federal buildings.

For purposes of this policy, an "individual with a mobility impairment" means any person who is subject to any physical impairment or condition regardless of its cause, nature or extent that renders the person unable to move about without the aid of crutches, a wheelchair or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, or rise, or to perform any related function.

Applicability

Individual with a Mobility Impairment - An individual with a mobility impairment is permitted to operate a Segway in a Federal building under the jurisdiction, custody or control of GSA in any areas open to pedestrian use.

Individual without a Mobility Impairment - An individual without a mobility impairment is not permitted to operate a Segway within a Federal building under the jurisdiction, custody or control of GSA. An individual may bring a Segway into a Federal building, provided the "power assist" mode, or any other mode that engages the battery, is not used when walking the Segway, unless the on-site security personnel or building manager determines that bringing the device into the building is not reasonable in the specific circumstances. Requests for waivers to the policy prohibiting an individual without a mobility impairment from operating a Segway in a Federal building under the jurisdiction, custody or control of GSA will be considered on a case-by-case basis and will require the approval of the appropriate GSA Assistant Regional Administrator, Public Buildings Service, where such specific authorization may facilitate improvements in the efficiency in performing work assignments. One example of a circumstance in which a waiver could be appropriate is an individual without a mobility impairment who performs work in areas that are spacious, such as a warehouse, where four-wheeled, battery-operated devices are currently in use.

Safety

The Segway must be operated in a manner that does not compromise the safety of the user, the building occupants or the building infrastructure. Those individuals operating a Segway within a Federal building must remain in control at all times and must exercise caution when turning corners and

entering or exiting elevators. GSA requires users to operate their Segway at a speed no greater than a walking pace of three (3) miles per hour. Security personnel, as well as GSA personnel and other agency personnel in delegated buildings, shall monitor, to the extent practical, the safe and responsible operation of Segway devices by their users. Should security or building management personnel observe the unsafe operation of a Segway device, these individuals shall remind the user of their responsibility for the safe operation of the Segway and the user's accountability for not operating the device at a speed that exceeds three (3) miles per hour.

Security (where access is controlled by security personnel and screening devices)

Magnetometer and X-ray security screening devices are ineffective for the evaluation of Segways. Segway representatives have reported that magnetometer devices affect the operation and software programs of the transporter device when coming in contact with or close proximity to magnetic fields. Accordingly, Segway recommends that the transporter device not be operated within five (5) feet of any magnetometer or X-ray security screening device. If within five (5) feet of a magnetometer or X-ray security screening device, the user of the transporter device should place the unit in standby mode or powered off mode to prevent damage to the transporter device.

GSA and associated building security personnel reserve the right to inspect Segway devices upon entrance to a Federal building. Upon entering a Federal building under the jurisdiction, custody or control of GSA, security personnel shall notify the individual that only those persons with a mobility impairment are authorized to operate a Segway within the building. The security personnel may not ask a person using the device questions about the nature and extent of the person's disability. Security personnel shall inspect Segways in the same manner as

other motorized devices that enter the building, including electric wheelchairs and scooters. Security personnel may request that the Segway user demonstrate that the device is operational thereby ensuring that the device contains its propulsion and battery equipment. The Segway user will be subject to the appropriate screening protocols established by security personnel for the protection of occupants, visitors and facilities, while maintaining the dignity of all persons who enter the building.

Vertical Transportation

Segway devices are permitted on elevators, but are not permitted on escalators, as per manufacturer guidance.

[FR Doc. E7-25592 Filed 1-4-08; 8:45 am]

BILLING CODE 6820-RH-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: Grants.gov-4040-0002]

Agency Information Collection Request. 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be received with 60 days.

Proposed Project: SF-424
Mandatory—OMB No. 4040-0002-Revision—Grants.gov.

Abstract: This collection is the government-wide form used for mandatory grant programs. Proposed revision to the form includes the addition of a data block that will collect the "Descriptive Title of Applicant's Project." The data field labeled "County" will be revised to read "County/Parish." The instructions are also being revised to incorporate the new descriptive title block and also, revisions to the instructions for areas affected by funding and the congressional district. Changes to the instructions will increase data quality and clarity for the collection.

Adding an additional data block is necessary to comply with the requirements of the Federal Funding Accountability and Transparency Act (FFATA). FFATA was signed into law on September 26, 2006 (Pub. L. 109-282). The legislation requires the Office of Management and Budget (OMB) to establish a publicly available, online database containing information about entities that are awarded federal grants, loans, and contracts. The revised form will assist agencies in collecting the required data elements for the database through the SF-424 applications. This form will be utilized on occasion by up to 26 Federal grant making agencies with mandatory grant programs. We are requesting a 2-year clearance of this form. The affected public includes, Federal, State, local or tribal governments, business or other for profit, and not for profit institutions.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
DOL	110	2.6	1	286
DOT	50	1.1	1	55
DoED	114	1	1	114
NEA	65	1	32/60	35
USDA	317	1	1	317

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Total	807

Dated: December 20, 2007.

Terry Nicolosi,

Office of the Secretary, Director, Office of Resources Management.

[FR Doc. E7-25431 Filed 1-4-08; 8:45 am]

BILLING CODE 4151-AE-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N-0487]

Meeting Being Planned to Obtain Public Input for Ensuring the Safety of Pet Food

AGENCY: Food and Drug Administration, HHS

ACTION: Notice of intent to schedule and hold public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to schedule and hold a public meeting early in 2008 to obtain input from stakeholder groups, including, but not limited to, the Association of American Feed Control Officials (AAFCO), veterinary medical associations, animal health organizations, and pet food manufacturers for the development of ingredient, processing, and labeling standards to ensure the safety of pet food. These standards were mandated by the FDA Amendments Act of 2007 (FDAAA).

Date, Time, and Location: The date, time, and location for the 2008 public meeting will be announced in a subsequent notice that will be published in the **Federal Register** a later date.

Addresses: A docket has been opened at FDA to receive any comments in advance of the public meeting. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Walter Osborne, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9024,

FAX: 240-276-9101, or e-mail:

walter.osborne@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDAAA was signed into law by the President on September 27, 2007 (Public Law 110-085). Title X of the FDAAA includes several provisions pertaining to food safety, including the safety of pet food. Sec. 1002(a) of the new law directs that, within 2 years, FDA is to issue new regulations to establish ingredient standards and definitions, processing standards, and updated standards for labeling to include nutritional and ingredient information. This same provision of the law also directs that, in developing these new regulations, FDA obtain input from its stakeholders, including AAFCO, veterinary medical associations, animal health organizations, and pet food manufacturers. In order to obtain such input, FDA intends to hold a public meeting to hear directly from interested stakeholders.

II. Public Meeting Details

Because FDA is mandated by Congress to establish the new pet food requirements within 2 years of enactment of the FDAAA, it is imperative that the agency begin the rulemaking process as soon as possible. To that end, FDA intends to hold a public meeting in the greater Rockville, MD area sometime within the first 3 months of 2008. After the meeting, FDA will review all of the comments submitted to the docket prior to initiating the regulation drafting process.

III. Comments

FDA will publish a subsequent notice in the **Federal Register** announcing the details of the 2008 public meeting. However, anyone wishing to submit general comments about the new law as it relates to pet food safety or the planned public meeting may do so to the Division of Dockets Management (see *Addresses*). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments should be identified with the full title and the docket

number found in brackets in the heading of this document. Received comments will be available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. You may also view received comments on the FDA's Internet site at: <http://www.fda.gov/ohrms/dockets>.

Dated: December 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-25599 Filed 1-4-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of 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 a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 24, 2008.

Open: 8 a.m. to 12:15 p.m.

Agenda: (1) A report by the Director, NICHD; (2) Obstetric and Pediatric Pharmacology Branch Presentation; (3) a report of the subcommittee on Planning and Policy; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496-1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nichd.nih.gov/about/nachhd.htm, where an agenda and any additional information for the meeting will be posted when available.

(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: December 27, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6292 Filed 01-04-08; 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 Workshops

Notice is hereby given of a series of four scientific workshops organized by the Interagency Autism Coordinating Committee (IACC).

The workshops will be closed to the public with attendance limited to invited participants. The purpose of the scientific workshops is to generate research priorities that will be used to

develop the IACC strategic plan for Autism Spectrum Disorder (ASD) research. The next meeting of the IACC when research priorities will be discussed is March 14, 2008.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Scientific workshops.

Date: January 15-18, 2008.

Time: 9 a.m. to 5 p.m. each day.

Agenda: Review of research accomplishments, funding initiatives and research resources for ASD by scientists and other ASD stakeholders; discussion and generation of high priority research areas and initiatives for developing the IACC strategic plan for ASD research.

Place: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203, 703-717-6200.

Contact Person: Joyce Y. Chung, MD, Interagency Autism Coordinating Committee, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6198, Bethesda, MD 20892-9669, 301-443-3621.

Information about the IACC is available on the Web site: <http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml>.

Dated: December 27, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6293 Filed 1-4-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse Draft Strategic Plan

AGENCY: National Institute on Drug Abuse, NIH, HHS.

ACTION: Notice.

SUMMARY: The National Institute on Drug Abuse (NIDA) is developing a strategic plan for the next 5 years, and invites the public to provide comments on a draft of this plan. The draft plan will be publicly available through the NIDA Draft Strategic Plan Web page (<http://www.drugabuse.gov/StrategicPlan/Index.html>) for 30 days from the publication of this Notice. The public is invited to provide comments via the e-mail address or the postal address listed on the NIDA Draft Strategic Plan Web page.

Background: NIDA is the lead Federal agency for research on drug abuse and addiction. For the past three decades, NIDA has led the way in supporting research to prevent and treat drug abuse and addiction and mitigate the impact of their consequences—particularly the spread of HIV/AIDS and other infectious

diseases. Given recent revolutionary advances in drug abuse research, NIDA has recently undergone a strategic planning process gathering recommendations from the National Advisory Council on Drug Abuse and from ongoing dialogue with our various stakeholder groups to establish achievable goals and objectives for the future.

NIDA's draft Strategic Plan outlines four major goal areas—Prevention, Treatment, HIV/AIDS, and Cross Cutting Priorities—each with Strategic Objectives that will guide NIDA's research agenda for the future. The public is invited to review this draft plan and provide comments. The draft plan may be viewed at <http://www.drugabuse.gov/StrategicPlan/Index.html>, and hard copies are available by calling 301-443-1124 or by sending a letter requesting a copy (that includes your mailing address) to: National Institute on Drug Abuse, Attn: Draft Strategic Plan, 6001 Executive Blvd., Suite 5213, MSC 9561, Bethesda, MD 20892-9561.

Request for Comments: The public is invited to provide comments on the draft Strategic Plan. Comments may be sent to the email address listed on the NIDA Strategic Planning Web page at <http://www.drugabuse.gov/StrategicPlan/Index.html>, or to the postal address listed above.

Comments Due Date: Comments regarding NIDA's draft Strategic Plan should be submitted via e-mail to stratplan@nida.nih.gov no later than 30 days after the publication of this Notice. Comments mailed to the above postal address must be postmarked by the same date.

Dated: December 21, 2007.

Nora D. Volkow,

Director, National Institute on Drug Abuse, National Institutes of Health.

[FR Doc. E7-25521 Filed 1-4-08; 11:28 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5121-N-35]

Notice of Proposed Information Collection: Comment Request Loan Sales Bidder Qualification Statement

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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: *Comment Due Date:* March 7, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Lillian.L.Deitzer@HUD.gov or telephone (202)402-8048.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone 202-708-2625, extension 3927 or Gregory Bolton, Senior Attorney, Office of Insured Housing, Multifamily Division, Room 9230; telephone 202-708-0614, extension 5245. Hearing- or speech-impaired individuals may call 202-708-4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

This notice list the following information:

Title of Proposal: HUD Loan Sale Bidder Qualification Statement.

OMB Control Number: 2502—New.
Agency form numbers, if applicable: None.

Description of the need for the information and proposed use: The

Qualification Statement solicits from Prospective bidders to the HUD Loan Sales the basic qualifications required for bidding including but not limited to, Purchaser Information (Name of Purchaser, Corporate Entity, Address, Tax ID), Business Type, Net Worth, Equity Size, Prior History with HUD Loans and prior sales participation. By executing the Qualification Statement, the purchaser certifies, represents and warrants to HUD that each of the statements included are true and correct as to the purchaser and thereby qualifies them to bid.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The Bidder Qualification Statement is released to a pool of 22,900 potential investors, of which 520 respond annually. The estimated number of burden hours needed to prepare the information collection is 260; the frequency of response is on occasion; and the estimated time needed to prepare the response is near thirty (30) minutes and cost on the respondent to complete the statement is estimated to be close to ten (10) dollars.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 28, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E7-25663 Filed 1-4-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Catahoula National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan for Catahoula National Wildlife Refuge in LaSalle and Catahoula Parishes, Louisiana.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for Catahoula National Wildlife Refuge is available for distribution. The CCP was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The

compatibility determinations for hunting, fishing, wildlife observation, wildlife photography, environmental education and interpretation, all-terrain vehicle use, cooperative farming, and resource research studies, are also available within the plan.

ADDRESSES: A copy of the CCP/FONSI may be obtained by writing to: Catahoula National Wildlife Refuge, P.O. Drawer Z, Rhinehart, LA 71363. The CCP/FONSI may also be accessed and downloaded from the Service's Web site: <http://southeast.fws.gov/planning/>. **FOR FURTHER INFORMATION CONTACT:** Tina Chouinard, Natural Resource Planner, North Louisiana National Wildlife Refuge Complex; Telephone: 318/305-0643; Fax: 318/726-4667; e-mail: tina_chouinard@fws.gov; or by writing to the refuge manager at the address in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: With this notice, we finalize the CCP process for Catahoula National Wildlife Refuge, begun as announced in the **Federal Register** on March 2, 2005 (70 FR 10109). For more about the process, see that notice. We released the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) to the public, requesting comments in a notice of availability in the **Federal Register** on April 19, 2007 (72 FR 19719).

The plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. Alternative A represents no change from current management of the refuge. All management actions would be directed towards achieving the refuge's primary purposes, which include: (1) To provide migrating and wintering habitat for migratory waterfowl consistent with the overall objectives of the Mississippi Flyway; (2) to provide nesting habitat for wood ducks; (3) to provide habitat and protection for threatened and endangered species; and (4) to manage bottomland hardwoods and provide habitat for a natural wildlife diversity. Under Alternative B, the refuge would add more staff, equipment, and facilities in order to provide greater enhancement and management of bottomland hardwood forest, grassland, and moist-soil habitats for the greatest benefit of wildlife. The primary focus under Alternative C would be to maximize the endemic bottomland hardwood forest with minimal management. Under this alternative, there would be no active management of refuge resources.

Based on the environmental assessment and the comments received, the Service adopted Alternative B as its

preferred alternative. This alternative was considered to be the most effective for meeting the purposes of the refuge by conserving, restoring, and managing the bottomland hardwood forest, grassland, and moist-soil habitats and associated wildlife. Alternative B best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

Catahoula National Wildlife Refuge was established in 1958, primarily as a wintering area for migratory waterfowl. The refuge, located in east-central LaSalle Parish and west-central Catahoula Parish, Louisiana, about 30 miles northeast of Alexandria and 12 miles east of Jena, now totals 25,242 acres. The 6,671-acre Headquarters Unit borders nine miles of the northeast shore of Catahoula Lake, a 26,000-acre natural wetland renowned for its large concentrations of migratory waterfowl. The 18,571-acre Bushley Bayou Unit, located 8 miles west of Jonesville, was established in May 2001. The acquisition was made possible through a partnership agreement between The Conservation Fund, American Electric Power, and the Fish and Wildlife Service. The refuge consists of a complex of bottomland hardwood forests, moist-soil areas, and dirt access roads and trails. The six priority public uses of the refuge are fishing, hunting, wildlife photography, wildlife observation, and environmental education and interpretation.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: August 16, 2007.

Cynthia K. Dohner,
Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on January 2, 2008.

[FR Doc. E8-4 Filed 1-4-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Vieques National Wildlife Refuge, Vieques, PR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Record of decision.

SUMMARY: We, the Fish and Wildlife Service, announce the decision and availability of the Record of Decision

(ROD) for the Vieques National Wildlife Refuge Final Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS). We completed a thorough analysis of the environmental, social, and economic considerations and presented it in the Final CCP/EIS. The availability of the Final CCP/EIS was announced in the **Federal Register** on August 22, 2007. The ROD documents our decision to adopt and implement Alternative C.

DATES: The Regional Director, U.S. Fish and Wildlife Service, Southeast Region, signed the ROD on October 24, 2007.

ADDRESSES: A copy of the ROD may be obtained from Mr. Matthew Connolly, Refuge Manager, Vieques National Wildlife Refuge, Vieques Office Park, Road 200, KM 0.04, Vieques, PR 00765, or you may call Mr. Connolly at 787/741-2138. The Final CCP/EIS and a copy of the ROD are available for viewing and downloading at the Service's Web site: <http://southeast.fws.gov/planning>.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Connolly, Refuge Manager, Vieques National Wildlife Refuge, at the address in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for Vieques National Wildlife Refuge, begun as announced in the **Federal Register** on September 3, 2003 (68 FR 52418). We released the Draft CCP/EIS to the public for a 60-day review and comment period on February 28, 2007 (72 FR 9018). We announced the availability of the Final CCP/EIS on August 22, 2007 (72 FR 47063).

Vieques National Wildlife Refuge was created from former Navy managed lands by congressional actions in 2001 and 2003. It consists of approximately 17,771 acres—3,100 acres on western Vieques and 14,671 acres on eastern Vieques. The transferred lands are to be managed in accordance with the National Wildlife Refuge System Administration Act (as amended).

The refuge lands were historically used for agricultural purposes and more recently for military training activities. As a result, the wildlife habitats and communities are significantly altered and non-native invasive species are common along with remnants of native habitats. As a result of the military training, portions of the refuge contain unexploded ordnance and other contaminants. These areas have been classified as a "superfund site" under the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA). Cleanup of these portions of the refuge is being conducted by the Navy in accordance with CERCLA. In addition, a Federal Facilities Agreement between the Navy, Environmental Protection Agency, Fish and Wildlife Service, and Commonwealth of Puerto Rico will help to guide the cleanup process.

In accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces our decision and the availability of the ROD for the Final CCP/EIS. We completed a thorough analysis of the environmental, social, and economic considerations, which we included in the Final CCP/EIS. The ROD documents our selection of Alternative C, the preferred alternative.

The CCP will guide us in managing and administering Vieques National Wildlife Refuge for the next 15 years. Alternative C is the foundation for the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction to conserve wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act and NEPA.

CCP Alternatives and Selected Alternative

Our Draft CCP and NEPA document addressed several priority issues raised by us, other governmental partners, and the public. To address these priority issues, we developed and evaluated three alternatives during the planning process. Alternative A would have provided for a continuation of the existing level of management. Alternative B would have focused on

wildlife and habitat management but maintained the existing visitor programs and public uses. After considering the comments we received, we have chosen Alternative C. This alternative will direct the refuge toward a realistic and achievable level of both habitat management and public use, and will provide a management program to address the needs of the resources and, where appropriate and compatible with the refuge purposes, the needs of the community. This alternative will provide for increases in management efforts to restore the refuge habitats without diminishing the wildlife values associated with the current conditions. There will also be a focus on management activities to benefit threatened and endangered species. This alternative will best achieve the purposes and goals of the refuge, as well as the mission of the National Wildlife Refuge System. Included in the Final CCP/EIS are the goals, objectives, and strategies under each alternative, mitigation measures incorporated in each alternative, and a listing of the approved compatibility determinations.

Alternative C incorporates several components addressing a variety of needs, including providing emergency access to the area of Puerto Ferro during hurricane watches and warnings; continuing to work with the Navy, Environmental Protection Agency, Puerto Rico Environmental Quality Board, and the community to ensure that cleanup of contaminants and unexploded ordnance from former military activities is completed; developing fire suppression capabilities and agreements to ensure that refuge resources and the adjacent communities are protected; managing the former "Live Impact Area" as a wilderness in accordance with the legislation that established the refuge; seeking agreements with Commonwealth agencies and non-governmental organizations to ensure conservation of historic and archaeological sites; and removing unused former Navy structures to provide a refuge atmosphere.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: December 3, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8-5 Filed 1-4-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes the Deemed Approved Compact between the Seminole Tribe of Florida and the State of Florida.

EFFECTIVE DATE: January 7, 2008.

FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact authorizes the Seminole Tribe to operate slot machines, any banking or banked card game, poker, any devices or games that are authorized under State law to Florida State lottery and any new game authorized by Florida law. The term of the compact is 25 years. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Compact between the Seminole Tribe of Florida and the State of Florida is now in effect.

Dated: December 31, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7-25628 Filed 1-4-08; 8:45 am]

BILLING CODE 4310-4N-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1140-1142 (Preliminary)]

Uncovered Innerspring Units From China, South Africa, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary

phase antidumping duty investigations Nos. 731-TA-1140-1142 (Preliminary) under section 733(a) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, South Africa, and Vietnam of uncovered innerspring units provided for in statistical reporting number statistical reporting number 9404.29.9010 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping duty investigations in 45 days, or in this case by February 14, 2008. The Commission's views are due at Commerce within five business days thereafter, or by February 22, 2008.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on December 31, 2007, by Leggett & Platt Inc., Carthage, MO.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the

Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 22, 2008, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than January 18, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 25, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the

requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 2, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-7 Filed 1-4-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-0094]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection—Department Annual Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until March 7, 2008. This process is

conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the revision of the existing collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection; comments requested.

(2) *Title of the Form/Collection:* Department Annual Progress Report (DAPR).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies that are recipients of COPS hiring grants and/or COPS grants that have a redeployment requirement. The Department Annual Progress Report was part of a business process reengineering effort aimed at minimizing the reporting burden on COPS hiring grantees by

streamlining the collection of progress report into one annual report.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,000 respondents annually will complete the form within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,000 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 28, 2007.

Lynn Bryant,

*Department Clearance Officer, PRA,
Department of Justice.*

[FR Doc. E7-25594 Filed 1-4-08; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, Resource Conservation and Recovery Act, Clean Water Act, Emergency Planning and Community Right-to-Know Act, and Comprehensive Environmental Response, Compensation and Liability Act of 1980

Notice is hereby given that on December 17, 2007, a proposed Consent Decree ("Decree") in *United States, et al. v. Georgia Gulf Chemicals and Vinyls, LLC*, Civil Action No. 1:07-CV-3113, was lodged with the United States District Court for the Northern District of Georgia.

In this action the United States and the Mississippi Commission on Environmental Quality sought penalties and injunctive relief under the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*; and the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Oil Pollution Act of 1990, relating to a polyvinyl chloride facility owned or operated by Georgia Gulf Chemicals and Vinyls, LLC ("Georgia Gulf"), located in Aberdeen, Mississippi. The Decree requires Georgia Gulf to pay a civil penalty of \$610,000 to be split evenly

between the United States and the State of Mississippi. Georgia Gulf has also agreed to perform corrective measures, including installation of an air stripper to reduce volatile organic compounds by removing vinyl chloride from process wastewater. Georgia Gulf will also implement several standard operating procedures to ensure compliance with the Resource Conservation and Recovery Act and Clean Air Act. Further, Georgia Gulf has agreed to comply with specific Clean Water Act and Emergency Planning and Community Right-to-Know Act requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment.ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States, et al. v. Georgia Gulf Chemicals and Vinyls, LLC*, D.J. Ref. 90-5-2-1-08489.

The Decree may be examined at the Office of the United States Attorney, 600 Richard B. Russell Federal Bldg., 75 Spring Street, SW, Atlanta, Georgia 30303, and at U.S. EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303-8960. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$22.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-6295 Filed 1-4-08; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on December 18, 2007, a proposed consent decree in *United States v. Custom Climate Control, Inc.*, Civil Action No. 8:07-cv-2295-T-24TGW, was lodged with the United States District Court for the Middle District of Florida.

In this action, filed pursuant to Section 608 of Title VI of the Clean Air Act, Stratospheric Ozone Protection ("Act"), 42 U.S.C. 7671g, and the regulation codified in 40 CFR part 82 Subpart F—Recycling Emissions Reduction Program, the United States alleged claims against Custom Climate Control, Inc. ("Custom Climate") for the company's improper maintenance and disposal of ozone-depleting substances through its servicing and selling air conditioning units.

The United States Department of Justice, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), has reached a settlement with Custom Climate regarding the alleged claims. Pursuant to the Consent Decree, Custom Climate is to carry-out specific injunctive relief in order to comply with the Act and its implementing regulations. The Consent Decree also obligates Custom Climate to pay a civil penalty amount of \$5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment.ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to the Consent Decree between the United States and Custom Climate Control, Inc., DOJ Ref. No. 90-5-2-1-08600.

The proposed Consent Decree may be examined at the United States Attorney's Office, Middle District of Florida, 400 North Tampa Street, Suite 3200, Tampa, FL 33602, and at the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or

by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
 [FR Doc. 07-6296 Filed 1-4-08; 8:45 am]
BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration
[OMB Number 1117-0031]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review; Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993 DEA Forms 510 & 510A.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 7, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms

of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993 DEA Forms 510 & 510A.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: DEA Forms 510 and 510a.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.
Other: none.

Abstract: The Domestic Chemical Diversion Control Act requires that manufacturers, distributors, importers, and exporters of List I chemicals which may be diverted in the United States for the production of illicit drugs must register with DEA. Registration provides a system to aid in the tracking of the distribution of List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Respondents	Burden (minutes)	Total hour burden	@ \$10/hour =
DEA-510 (paper)	60	0.5 hours	30	\$300
DEA-510 (electronic)	125	0.25 hours	31.25	312.50
DEA-510a (paper)	580	0.5 hours	290	2,900
DEA-510a (electronic)	840	0.25 hours	210	2,100
Total	1605	.....	561.25	5,612.50

Total percentage electronic: 60.1%.

(6) An estimate of the total public burden (in hours) associated with the collection: 561.25 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 28, 2007.

Lynn Bryant,
Department Clearance Officer, PRA,
Department of Justice.
 [FR Doc. E7-25596 Filed 1-4-08; 8:45 am]
BILLING CODE 4410-09-P

NATIONAL TRANSPORTATION SAFETY BOARD

Meeting

Agenda

Time and Date: 9:30 a.m., Thursday, January 10, 2008.

Place: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

Status: The one item is open to the public.

Matter To Be Considered:

7963 *Marine Accident Report*—
Heeling Accident on M/V Crown
Princess, Atlantic Ocean Off Port
Canaveral, Florida, July 18, 2006.
News Media Contact: Telephone:
(202) 314-6100.

Individuals requesting specific
accommodations should contact Chris
Bisett at (202) 314-6305 by Friday,
January 4, 2008.

The public may view the meeting via
a live or archived webcast by accessing
a link under “News & Events” on the
NTSB home page at www.nts.gov.

For Further Information Contact:
Vicky D’Onofrio, (202) 314-6410.

Dated: December 28, 2007.

Vicky D’Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07-6294 Filed 01-04-08; 8:45 am]

BILLING CODE 7533-01-PM

**NUCLEAR REGULATORY
COMMISSION**

**Imposition of Civil Penalty on
Contractors and Subcontractors Who
Discriminate Against Employees for
Engaging in Protected Activities**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Policy Statement: Revision.

SUMMARY: The Nuclear Regulatory
Commission (NRC) is revising its
Enforcement Policy to include
contractors and subcontractors of a
licensee against whom the Commission
may impose a civil penalty for
discriminating against employees for
engaging in protected activities.

DATES: Effective date: This action is
effective February 6, 2008. Comment
date: Comments on this revision should
be submitted by March 7, 2008. The
Commission will apply the modified
Policy to violations that occur after the
effective date.

ADDRESSES: Submit written comments
to: Michael T. Lesar, Chief, Rules and
Directives Branch, Division of
Administrative Services, Office of
Administration, Mail Stop: T6D59, U.S.
Nuclear Regulatory Commission,
Washington, DC 20555-0001. Hand
deliver comments to: 11555 Rockville
Pike, Rockville, MD 20852, between
7:30 a.m. and 4:15 p.m., Federal
workdays. Copies of comments received
may be examined at the NRC Public
Document Room, Room O1F21, 11555
Rockville Pike, Rockville, MD 20852.
You may also e-mail comments to
nrcprep@nrc.gov.

The NRC maintains the current
Enforcement Policy on its Web site at
<http://www.nrc.gov>; select “About
NRC”, “Organization and Functions”,
“Office of Enforcement”, “About
Enforcement”, then “Enforcement
Policy”.

FOR FURTHER INFORMATION CONTACT:
Doug Starkey, Office of Enforcement,
U.S. Nuclear Regulatory Commission,
Washington DC 20555-0001; Telephone
(301) 415-3456; e-mail drs@nrc.gov.

SUPPLEMENTARY INFORMATION: The
Commission amended 10 CFR 30.7,
40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7,
71.9, 72.10 and 76.7 to clarify the
Commission’s authority to impose civil
penalties on contractors and
subcontractors for violations of
Commission employee protection
requirements. The changes to the
Enforcement Policy hereunder
incorporate the recent clarifying
revisions set forth in the referenced
employee protection regulations.

Paperwork Reduction Act

This final change to the NRC
Enforcement Policy does not contain
new or amended information collection
requirements subject to the Paperwork
Reduction Act of 1995 (44 U.S.C. 3501,
et seq.).

Public Protection Notification

If a means used to impose an
information collection does not display
a currently valid OMB control number,
the NRC may not conduct or sponsor,
and a person is not required to respond
to, the information collection.

**Small Business Regulatory Enforcement
Fairness Act**

In accordance with the Small
Business Regulatory Enforcement
Fairness Act of 1996, the NRC has
determined that this action is not a
“major” rule and has verified this
determination with the Office of
Information and Regulatory Affairs,
Office of Management and Budget.

Accordingly, the NRC Enforcement
Policy is amended to read as follows:

General Statement of Policy and
Procedure for NRC Enforcement Actions
* * * * *

I. Introduction and Purpose

* * * * *

Footnote 1

This policy primarily addresses the
activities of NRC licensees and
applicants for NRC licenses. However,
this policy provides for taking
enforcement action against non-
licensees and individuals in certain

cases. These non-licensees include
contractors and subcontractors, holders
of, or applicants for, NRC approvals,
e.g., certificates of compliance, early site
permits, or standard design certificates,
and the employees of these non-
licensees. Specific guidance regarding
enforcement action against individuals
and non-licensees is addressed in
Sections VII, VIII and X.

* * * * *

VI. Enforcement Actions

* * * * *

C. Civil Penalty

A civil penalty is a monetary penalty
that may be imposed for violation of (1)
certain specified licensing provisions of
the Atomic Energy Act or
supplementary NRC rules or orders; (2)
any requirement for which a license
may be revoked; or (3) reporting
requirements under section 206 of the
Energy Reorganization Act. Civil
penalties are designed to deter future
violations both by the involved licensee,
contractor, subcontractor or other
person and other licensees, contractors,
subcontractors or other persons,
conducting similar activities. Civil
penalties also emphasize the need for
licensees, contractors, subcontractors
and other persons to identify violations
and take prompt comprehensive
corrective action.

* * * * *

VII. Exercise of Discretion

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B. Mitigation of Enforcement Sanctions

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**5. Violations Involving Certain
Discrimination Issues**

Enforcement discretion may be
exercised for discrimination cases when
a licensee (including a contractor or
subcontractor) who, without the need
for government intervention, identifies
an issue of discrimination and takes
prompt, comprehensive, and effective
corrective action to address both the
particular situation and the overall work
environment for raising safety concerns.
Similarly, enforcement may not be
warranted where a complaint is filed
with the Department of Labor (DOL)
under Section 211 of the Energy
Reorganization Act of 1974, as
amended, but the licensee settles the
matter before the DOL makes an initial
finding of discrimination and addresses
the overall work environment.
Alternatively, if a finding of
discrimination is made, the licensee
may choose to settle the case before the
evidentiary hearing begins. In such

cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (*e.g.*, by using training, postings, revised policies or procedures, any necessary disciplinary action, etc.), to communicate its policy against discrimination) or in cases that involve: Allegations of discrimination as a result of providing information directly to the NRC; allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations); allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem; or allegations of discrimination which appear particularly blatant or egregious.

Generally, the NRC holds licensees responsible for maintaining control and oversight of their contractor and subcontractor activities. As such, in cases involving licensee contractors and subcontractors, the NRC will typically take enforcement action against a licensee for violations arising out of the acts of its contractor or subcontractor. In addition, enforcement action (including a civil penalty) may be taken against the licensee contractor or subcontractor. On occasion, however, circumstances may arise where the NRC may refrain from taking enforcement action or imposing a civil penalty against a licensee even though it takes enforcement action or issues a civil penalty, against the licensee contractor or subcontractor.

* * * * *

Dated at Rockville, Maryland, this 28th day of December, 2007.

For the Nuclear Regulatory Commission.
Annette Vietti-Cook,
Secretary of the Commission.
 [FR Doc. E7-25629 Filed 1-4-08; 8:45 am]
BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2007]

FY 2007 Annual Compliance Report; Comment Request

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: As required by 39 U.S.C. 3652, the Postal Service has filed an Annual Compliance Report with the Postal Regulatory Commission on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2007. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance with title 39, chapter 36 and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's FY 2007 Annual Compliance Report.

DATES: Comments due January 30, 2008; reply comments due February 13, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: Section 3652 of title 39 of the United States Code requires the Postal Service to file a report with the Postal Regulatory Commission on the costs, revenues, rates, and quality of service associated with its products within 90 days after the close of each fiscal year. That section requires that the Postal Service's annual report be sufficiently detailed to allow the Commission and the public to determine whether the rates charged and the service provided comply with all of the requirements of title 39 of the United States Code. See 39 U.S.C. 3652(a)(1) and (e)(1)(A). The Postal Service filed its annual compliance report for FY 2007 with the Commission on December 28, 2007. Appended to it are four major sets of data—the Cost and Revenue Analysis (CRA), the International Cost and Revenue Analysis (ICRA), the models of costs

avoided by worksharing, and billing determinant information.¹

After receiving the FY 2007 Annual Compliance Report, the Commission is required under 39 U.S.C. 3653 to provide an opportunity for comment to the interested public and an officer of the Commission to represent the interests of the general public. The Commission hereby solicits public comment on the degree to which the Postal Service's operations and financial results comply with the policies of title 39. Comments by interested persons are due on or before January 30, 2008. Reply comments are due on February 13, 2008.²

The Commission is aware that these are shorter comment periods than those that the Commission has provided in other recent notice and comment proceedings. The statute affords the Commission 90 days to digest the report filed by the Postal Service and evaluate the Postal Service's compliance with the broad range of policies articulated in title 39. Expediting public comment is essential if the Commission is to have sufficient time to take the public's concerns into account in making its evaluation.³

The context in which the Postal Service has filed its annual report for FY 2007 is unique in several respects. It is the first compliance report that the Postal Service has filed after passage of the Postal Accountability and Enhancement Act of 2006 (PAEA). Fiscal Year 2007 was a transition period during which the rate-setting criteria of the former Postal Reorganization Act (PRA) remained in force. The Postal Service suggests that FY 2007 rates and service should be analyzed for compliance with the rate-setting criteria of the PRA rather than the PAEA. *Id.* at 1. In its report, the Postal Service applies the rate-setting criteria of the PRA to the then-existing subclasses and concludes that FY 2007 rates and service fully complied with title 39. *Id.* at 6 and 22. Emphasizing the difficulty of developing a crosswalk between then-existing subclasses and the current list of products, the Postal Service does not

¹ United States Postal Service FY 2007 Annual Compliance Report, December 28, 2007 (FY 2007 Annual Compliance Report).

² The officer of the Commission in this matter will be appointed shortly.

³ Expedition may have an additional benefit. There is the possibility that the Postal Service may file notice of a general rate adjustment sometime in February under the provisions of 39 U.S.C. 3622(d)(1)(C). This possibility has been discussed informally throughout the postal community. If public comments on the Postal Service's annual report identify potential problem areas several weeks in advance of the Postal Service's rate filing, this may inform or influence the Postal Service's pricing decisions.

offer conclusions regarding the extent workshare discounts in effect in FY 2007 comply with the criteria of either the PRA or the PAEA. *Id.* at 19–22.

The Postal Service identifies some information as confidential and subject to protective conditions. It explains that in the absence of new rules regarding its confidential business information, it has largely followed past practice. Thus, financial data relating to international products is in a nonpublic annex while some financial information on competitive domestic products is presented publicly. The Postal Service recognizes that the appropriate identification of confidential data will be fully explored in a future Commission rulemaking. *Id.* at 30–33.

The FY 2007 Annual Compliance Report is the Postal Service's first attempt to comply with the tight production schedule that section 3652 imposes. Consequently, its report does not contain all of the information that normally would be provided in a section 3652 report. For example, 39 U.S.C. 3652(g) requires the Postal Service to submit its comprehensive statement together with its annual compliance report. The Postal Service explains that it expects to file its comprehensive statement in early to mid-January, 2008. *Id.* at 5.

Another reason that the FY 2007 Annual Compliance Report does not contain all of the information that may be included in a standard section 3652 report is that it was prepared without the guidance of Commission rules governing the Postal Service's periodic reporting. The Commission will issue a notice of proposed rulemaking containing its proposed periodic reporting rules in the near future.

Most of the analytical methods employed in producing the FY 2007 Annual Compliance Report appear to be consistent with established precedent. However, some are new and have not been subjected to critical evaluation by the Commission or the public either in a formal evidentiary hearing or an informal rulemaking.⁴ Examples of new methods are in the revisions to the cost model that the Commission used in Docket No. R2006–1 to design rates for Periodicals. In adopting that model, the Commission described it as more comprehensive than the Postal Service's alternative, but still dependent on a number of assumptions whose accuracy could be improved if they were based on more direct and/or more recent

observation. *See* PRC Op. R2006–1, paras. 5730–44.

The Postal Service, too, views the Periodicals cost model as a work in progress. It has revised the model “in order to resolve internal inconsistencies and permit transparent updates of the inputs.” Its revisions include:

(1) Inclusion of sweeping time in a productivity adjustment, (2) removing costs from bundle sorting for bundles that have already been broken into pieces, (3) including the costs of opening containers in the cost for container handling rather than container flow, and (4) elimination of bundle sortation costs when pallets flow directly to delivery units.

FY 2007 Annual Compliance Report, USPS–FY07–11, at 1. It suggests that additional refinements are warranted as well. *Id.* at 2–5.

The methodological changes employed in the FY 2007 Annual Compliance Report should be subjected to independent critical evaluation to the maximum extent possible in the narrow window afforded by sections 3652 and 3653. To achieve that end, the Commission issued a notice on December 27, 2007, scheduling an informal technical conference to be held on January 11, 2008.⁵ At that conference, Postal Service analysts will describe the changes made to the Commission's Periodicals cost model, explain the reasons for making them, and answer related questions from the Commission's technical staff and the interested public. A follow-up technical conference to give interested parties an opportunity to discuss other possible refinements of the Periodicals cost model with Postal Service analysts will be held on January 23, 2008. Notice at 2. Other technical conferences may be scheduled as appear necessary.

It is ordered:

1. Public comments on the United States Postal Service FY 2007 Annual Compliance Report are due on or before January 30, 2008.

2. Reply comments on the United States Postal Service FY 2007 Annual Compliance Report are due on February 13, 2008.

(Authority: 39 U.S.C. 3653.)

Steven W. Williams,

Secretary.

[FR Doc. E7–25656 Filed 1–4–08; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2007]

Notice of Technical Conferences

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: Technical conferences have been scheduled in Docket No. ACR2007. The conferences will discuss the cost model for Periodicals the Postal Service uses in its Cost and Revenue Analysis Report for FY 2007.

DATES: January 11, 2008 (2 p.m.); January 23, 2008 (2 p.m.).

ADDRESSES: The conference will be held in the Commission's hearing room at 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Ann C. Fisher, Chief of Staff, Postal Regulatory Commission, at 202–789–6803 or ann.fisher@prc.gov.

SUPPLEMENTARY INFORMATION: Section 3652 of title 39 of the United States Code requires the Postal Service to file an annual report with the Commission analyzing postal costs, revenues, rates, and service within 90 days of the end of each fiscal year. From that report, the Commission and the public are to determine whether the Postal Service has complied with all of the policies of title 39. *See* 39 U.S.C. 3653. The Commission shortly will receive from the Postal Service its annual compliance report for FY 2007. Upon its receipt, the Commission will promptly issue a formal notice announcing its receipt, and set a schedule for public comment, as 39 U.S.C. 3653(a) requires.

The Postal Service has notified the Commission informally that its Cost and Revenue Analysis Report for FY 2007 will employ a cost model for Periodicals that corrects and refines the model that the Commission used in Docket No. R2006–1 to design rates for Periodicals.

Under section 3653, the Commission has 90 days after receipt of the Postal Service's annual report to evaluate whether postal rates and services in FY 2007 complied with the policies of title 39. This brief evaluation period requires that the Commission set an early date for public comments. To facilitate interested parties to evaluate the anticipated changes to the Periodical cost model quickly enough to incorporate their conclusions in their comments on the Postal Service's compliance report, the Commission is scheduling an informal technical conference on January 11, 2008, at 2 p.m., in the Commission's hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC. At the conference,

⁴ The Postal Service identifies methodology changes in FY 2007 Annual Compliance Report, USPS–FY07–31, Section Two.

⁵ Notice of Technical Conferences Supplementing Postal Service Annual Compliance Report, December 27, 2007 (Notice).

Postal Service analysts will describe the model refinements that they have made, the reasons that they made them, and respond to questions from the Commission's technical staff and the public designed to clarify the nature of, and the reasons for, the Postal Service's changes to the model.

To allow further clarification once interested persons have the benefit of the Postal Service's explanations, a second conference is scheduled for January 23, 2008 at 2 p.m. in the Commission's hearing room. At this second conference, interested persons may seek additional information from Postal Service analysts, and explore the reasons for the methodologies and data employed by the Postal Service. At this conference, interested persons may also, if they wish, offer potential additional improvements or alternatives for discussion prior to submitting written comments on the Postal Service's filing.

Steven W. Williams,

Secretary.

[FR Doc. E8-36 Filed 1-4-08; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 19b-7 and Form 19b-7; OMB Control No. 3235-0553; SEC File No. 270-495.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 19b-7 (17 CFR 240.19b-7) and Form 19b-7—Filings with respect to proposed rule changes submitted pursuant to section 19(b)(7) of the Act.

The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act") provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or "SROs"), have primary

responsibility for regulating their members or participants. The role of the Commission in this framework is primarily one of oversight: the Exchange Act charges the Commission with supervising the SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 ("CFMA"). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, "security futures products"). The CFMA removed this restriction and provides that trading in security futures products would be regulated jointly by the Commission and the Commodity Futures Trading Commission ("CFTC").

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.¹ Rule 19b-7 and Form 19b-7 implemented this procedure.

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should remain in affect or abrogated.

The respondents to the collection of information are SROs.

Five respondents file an average total of 12, which corresponds to an estimated annual response burden of 207 hours. At an average cost per response of \$4,607.25, the resultant total related cost of compliance for these respondents is \$55,287 per year (12

¹ These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. See 15 U.S.C. 78s(b)(7)(A).

responses × \$4,607.25/response = \$55,287).

Compliance with Rule 19b-7 is mandatory. Information received in response to Rule 19b-7 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted within 60 days of this notice.

Dated: December 27, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E8-2 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 10f-3; SEC File No. 270-237; OMB Control No. 3235-0226.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information discussed below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 10(f) of the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act") prohibits a registered investment company ("fund") from purchasing any security during an underwriting or selling syndicate if the fund has certain relationships with a principal underwriter for the security. Congress enacted this provision in 1940 to protect funds and their shareholders by preventing underwriters from "dumping" unmarketable securities on affiliated funds.

Rule 10f-3 permits a fund to engage in a securities transaction that otherwise would violate section 10(f) if, among other things: (i) Each transaction affected under the rule is reported on Form N-SAR; (ii) the fund's directors have approved procedures for purchases made in reliance on the rule, regularly review fund purchases to determine whether they comply with these procedures, and approve necessary changes to the procedures; and (iii) a written record of each transaction affected under the rule is maintained for six years, the first two of which in an easily accessible place.¹ The written record must state: (i) From whom the securities were acquired; (ii) the identity of the underwriting syndicate's members; (iii) the terms of the transactions; and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board.

The rule also conditionally allows managed portions of fund portfolios to purchase securities offered in otherwise off-limits primary offerings. To qualify for this exemption, rule 10f-3 requires that the subadviser that is advising the purchaser be contractually prohibited from providing investment advice to any other portion of the fund's portfolio and consulting with any other of the fund's advisers that is a principal underwriter or affiliated person of a principal underwriter concerning the fund's securities transactions.

These requirements provide a mechanism for fund boards to oversee compliance with the rule. The required recordkeeping facilitates the Commission staff's review of rule 10f-3 transactions during routine fund inspections and, when necessary, in connection with enforcement actions.

The staff estimates that approximately 350 funds engage in a total of approximately 4,400 rule 10f-3 transactions each year.² Rule 10f-3

requires that the purchasing fund create a written record of each transaction that includes, among other things, from whom the securities were purchased and the terms of the transaction. The staff estimates³ that it takes an average fund approximately 30 minutes per transaction and approximately 2,200 hours⁴ in the aggregate to comply with this portion of the rule.

The funds also must maintain and preserve these transactional records in accordance with the rule's recordkeeping requirement, and the staff estimates that it takes a fund approximately 20 minutes per transaction and that annually, in the aggregate, funds spend approximately 1,467 hours⁵ to comply with this portion of the rule.

In addition, fund boards must, no less than quarterly, examine each of these transactions to ensure that they comply with the fund's policies and procedures. The information or materials upon which the board relied to come to this determination also must be maintained and the staff estimates that it takes a fund 1 hour per quarter and, in the aggregate, approximately 1,400 hours⁶ annually to comply with this rule requirement.

The staff estimates that reviewing and revising as needed written procedures for rule 10f-3 transactions takes, on average for each fund, two hours of a compliance attorney's time per year.⁷ Thus, annually, in the aggregate, the staff estimates that funds spend a total of approximately 700 hours⁸ on monitoring and revising rule 10f-3 procedures.

Based on an analysis of fund filings, the staff estimates that approximately 600 fund portfolios enter into subadvisory agreements each year.⁹ Based on discussions with industry

³ Unless stated otherwise, the information collection burden estimates contained in this Supporting Statement are based on conversations between the staff and representatives of funds.

⁴ This estimate is based on the following calculation: (30 minutes \times 4,400 = 2,200 hours).

⁵ This estimate is based on the following calculations: (20 minutes \times 4,400 transactions = 88,000 minutes; 88,000 minutes \div 60 = 1,467 hours).

⁶ This estimate is based on the following calculation: (1 hour per quarter \times 4 quarters \times 350 funds = 1,400 hours).

⁷ These averages take into account the fact that in most years, fund attorneys and boards spend little or no time modifying procedures and in other years, they spend significant time doing so.

⁸ This estimate is based on the following calculation: (350 funds \times 2 hours = 700 hours).

⁹ The use of subadvisers has grown rapidly over the last several years, with approximately 600 portfolios that use subadvisers registering between December 2005 and December 2006. Based on information in Commission filings, we estimate that 31 percent of funds are advised by subadvisers.

representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 10f-3. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3-1, 17a-10, and 17e-1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 10f-3 for this contract change would be 0.75 hours.¹⁰ Assuming that all 600 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 450 burden hours annually.¹¹

The staff estimates, therefore, that rule 10f-3 imposes an information collection burden of 6,217 hours.¹² This estimate does not include the time spent filing transaction reports on Form N-SAR, which is encompassed in the information collection burden estimate for that form.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

¹⁰ This estimate is based on the following calculation (3 hours \div 4 rules = .75 hours).

¹¹ These estimates are based on the following calculations: (0.75 hours \times 600 portfolios = 450 burden hours).

¹² This estimate is based on the following calculation: (2,200 hours + 1,467 hours + 1,400 hours + 700 hours + 450 hours = 6,217 total burden hours).

¹ 17 CFR 270.10f-3.

² These estimates are based on staff extrapolations from filings with the Commission.

Dated: December 27, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E8-3 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 7, 2008:

A Closed Meeting will be held on Thursday, January 10, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 10, 2008 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
Matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

January 3, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8-43 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57075; File No. SR-Phlx-2007-75]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Relating to Market Data Distribution Network Fees

December 31, 2007.

I. Introduction

On September 27, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to eliminate: (1) A fee assessed by the Exchange's wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"), for certain equity index values that subscribers receive over PBOT's Market Data Distribution Network ("MDDN");³ and (2) a discount applicable to certain market data vendors. Phlx filed Amendment No. 1 to the proposed rule change on November 7, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 28, 2007.⁴ On December 14, 2007, Phlx filed Amendment No. 2 to the proposed rule change.⁵ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Phlx licenses to PBOT the current and closing index values underlying most of Phlx's proprietary indexes, and Hapoalim Securities USA, Inc. licenses to PBOT the current and closing Hapoalim American Israeli Index™ (HAISM) values. PBOT distributes those values over the MDDN. The Exchange or its third-party designee calculates and makes available to PBOT a real-time

value for each index every 15 seconds during each trading day and a closing index value at the end of the day. In exchange for subscriber fees paid to PBOT, market data vendors may receive and widely disseminate this market data to their subscribers.⁶

Presently, subscriber fees are assessed in one of three ways:⁷ (a) A monthly fee of \$1.00 per "Device"⁸ that is used by vendors and their subscribers to receive and re-transmit market data on a real-time basis ("device fee"); (b) a fee of \$0.0025 per request for snapshot data,⁹ which is essentially market data that is refreshed no more frequently than once every 60 seconds, or \$1,500 per month for unlimited snapshot data requests ("snapshot fee");¹⁰ or (c) an Enterprise License Fee of \$10,000 per year or \$850 per month for unlimited real-time data as an alternative to the device fee.¹¹ All vendors that provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee credit for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay

⁶ PBOT has contracted with several major vendors to receive real-time and closing index values over the MDDN and promptly redistribute such values.

⁷ See Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) ("Original Approval Order"). The applicable subscriber fees are set out in Vendor/Subvendor Agreements that PBOT executed with various market data vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN.

⁸ The agreements provide that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. Devices may be exclusively Terminals, exclusively End Users, or a combination of Terminals or End Users, and shall be reported in a manner that is consistent with the way the vendor identifies such Subscriber's access to vendor's data. An "End User" is defined as an individual authorized or allowed by a vendor to access and display real-time market data that is distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data.

⁹ See Securities Exchange Act Release No. 55111 (January 16, 2007), 72 FR 3188 (January 24, 2007) (increasing the snapshot fee to \$0.0025 per request).

¹⁰ The index values may also be made available by vendors on a delayed basis (*i.e.*, no sooner than 20 minutes following receipt of the data by vendors) at no charge.

¹¹ A vendor is eligible for the Enterprise License Fee if it is a firm acting as a retail broker-dealer conducting a material portion of its business via one or more proprietary Internet Web sites by which the firm distributes market data to predominately non-professional market data users with whom the firm has a brokerage relationship ("Eligible Firm"). An Eligible Firm may also distribute market data to professional users with whom such firm has a brokerage relationship, provided such market data distribution is predominantly to non-professional users. The Eligible Firm's market data distribution to professional users cannot exceed 10%. See Securities Exchange Act Release No. 55424 (March 8, 2007), 72 FR 12242 (March 15, 2007) (SR-Phlx-2006-63).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications.

⁴ See Securities Exchange Act Release No. 56827 (November 20, 2007), 72 FR 67334.

⁵ In Amendment No. 2, Phlx corrected Exhibit 5 to the Form 19b-4 it submitted to accurately reflect the proposed deletions and additions of the rule text. Phlx also clarified in footnote 1 of Exhibit 5 that the Administrative Fee deduction applies only to the per-device fee and to Index Data. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

PBOT under the Vendor/Subvendor Agreement. This credit is also currently given to vendors paying the Enterprise License Fee.

Phlx proposes to eliminate the ability to access the market data on a "snapshot" basis and consequently proposes to eliminate the snapshot data fee, effective January 1, 2008. The Exchange states that only a few vendors currently elect to use snapshot data. Consequently, PBOT seeks to eliminate the associated operational and accounting expenses of administering the snapshot data fee. Phlx is also proposing to eliminate the applicability of the 15% Administrative Fee credit to market data vendors paying the Enterprise License Fee.

III. Discussion

After careful consideration, the Commission finds that the amended proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 6(b)(4) of the Act,¹⁴ which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission also continues to believe that PBOT's MDDN fee structure is consistent with Rule 603 under the Act¹⁵ regarding the distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.

The Commission believes that the Exchange's proposal to eliminate snapshot requests for index value data and the associated fee is consistent with the Act. The Exchange makes available the same market data through other means, and, in the absence of a compelling regulatory concern, it is a

reasonable exercise of the Exchange's business judgment to choose the means of delivery of this data.

With respect to Phlx's proposal to eliminate the applicability of the Administrative Fee credit to vendors electing to pay the Enterprise License Fee, the Commission believes that the rule change is reasonable. The Exchange represents that, unlike vendors electing to receive market data pursuant to the device fee, vendors electing to receive market data pursuant to the Enterprise License Fee are not required to bear the same ongoing administrative expenses. In particular, vendors paying the device fee must prepare and deliver to PBOT a detailed monthly accounting and report of Devices. By contrast, a vendor paying the Enterprise License Fee is required only to submit an initial certification, and must notify PBOT of any changes to its qualification, but has no requirement to submit any on-going accounting to PBOT.¹⁶ Thus, the administrative costs to a firm associated with monitoring its ongoing eligibility for the Enterprise License Fee should be substantially less than the administrative costs to a vendor subject to the device fee.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Phlx-2007-75), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Nancy M. Morris,

Secretary.

[FR Doc. E8-9 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57071; File No. SR-DTC-2007-15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Stock Loan and Repurchase Processing

December 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 7, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4)³ thereunder so that the proposal was 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

Under the proposed rule change, DTC will provide participants using DTC's Stock Loan REPO Adjustment Menu ("SLRM") system with new warning messages advising participants if any corrective action is needed to complete their stock loan or repurchase transaction.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 17 CFR 242.603.

¹⁶ The Exchange notes that several large vendors are currently paying the Enterprise License Fee. To be eligible for the Enterprise License Fee, a vendor must certify to PBOT that it qualifies for the Enterprise License Fee, including that market distribution is predominantly to non-professional users, and must immediately notify PBOT if it can no longer certify its qualification.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to this rule change, DTC's SLRM system did not validate the reason code used to reclaim a stock loan or repurchase ("repo") transaction. DTC participants have stated that the majority of errors associated with this process arose when the wrong reason code was used by counterparties.

To reduce the frequency of these errors and the associated burden of correcting them, DTC is modifying its system by providing warning messages that advise a participant that a transaction will be rejected due to an incorrect reason code for reclaiming these items. As a result, users will be prompted to correct the reason code. In addition, if a participant that is to return the stock of a loan or repo transaction does not have sufficient inventory in its DTC deliverer/CUSIP/contra account to cover the return, it will receive a notification advising that an insufficient position exists so that it can take corrective action. Finally, if there is an open repo position for the same major/ contra/CUSIP in DTC's system, a new warning message will be displayed stating that an open repo position for the contra/CUSIP exists.

A new help screen will be displayed in SLRM to guide users when they submit a stock loan or repo transaction. The screen will describe the impact that a given action will have on the originator's stock loan or repo account and the related dividend payment. Also, the SLRM summary screen will be modified to list outstanding adjustments for a period of twenty business days instead of the current five business days. This will give participants more time to react to open stock loan or repo items so that they may be reconciled in a more timely fashion.

Proposed system changes will necessitate revisions to existing DTC Service Guides.⁴

DTC states that the proposed rule change is consistent with Section 17A of the Act⁵ and the rules and regulations thereunder applicable to DTC as it allows for more efficient processing of certain transactions and will not adversely affect the safeguarding of funds or securities in DTC's custody and control or for which it is responsible.

⁴ The affected section of DTC's Guide is attached as Exhibit 5 to DTC's rule filing.

⁵ 15 U.S.C. 78q-1.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁶ of the Act and Rule 19b-4(f)(4)⁷ thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-DTC-2007-15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(4).

All submissions should refer to File No. SR-DTC-2007-15. 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, 450 Fifth Street, NW., 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 DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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 submission should refer to File No. SR-DTC-2007-15 and should be submitted on or before January 28, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.⁸

Nancy M. Morris,
Secretary.

[FR Doc. E7-25655 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57066; File No. SR-ISE-2007-65]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Exchange-Traded Funds Based on Fixed Income Indexes and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

December 28, 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 July 24, 2007, the International Securities Exchange, LLC (“ISE” 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 prepared substantially by the Exchange. On December 28, 2007, the Exchange filed Amendment No. 1.³ This order provides notice of the proposed rule change, as amended, and approves the amended proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rules 2123 and 2131 to include generic listing and/or trading standards for Investment Company Units (“Units”) and Portfolio Depositary Receipts (“PDRs”) that are based on indexes or portfolios consisting of fixed income securities (“Fixed Income Indexes”) or composite indexes consisting of both equity and fixed income securities (collectively, “Combination Indexes”). The text of the proposed rule change is available at the Exchange’s principal office, on the Exchange’s Web site at <http://www.ise.com>, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise ISE Rules 2123 and 2131 to include generic listing and trading standards for series of Units and PDRs (Units and PDRs, collectively referred to as “ETFs”) that are based on Fixed Income Indexes or on Combination Indexes. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Act⁴ if each of the conditions set forth in ISE Rules 2123 and 2131, as applicable, is satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,⁵ if the Commission has approved, pursuant to Section 19(b) of the Act,⁶ the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.⁷ Similar proposals by the American Stock Exchange LLC (“Amex”) and NYSE Arca, Inc. (“NYSE Arca”) have been approved by the Commission.⁸

a. ETFs

ISE Rule 2123 provides standards for the initial and continued listing of Units, which are securities issued by a unit investment trust, an open-end management investment company (open-end mutual fund), or a similar entity based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income

securities index. PDRs represent securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to ISE Rules 2123 and 2131, Units and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (“NAV”). When aggregated in the same specified minimum number, Units and PDRs must be redeemable by the issuer for securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price, dividend, and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio. An ETF using a replication strategy would invest in each security found in the underlying index in about the same proportion as that security is represented in the index itself. An ETF using a representative sampling strategy would generally invest in a significant number, but perhaps not all, of the component securities of the underlying index, and would hold the securities that, in the aggregate, are intended to approximate the full index in terms of certain key characteristics. In the context of a Fixed Income Index, such characteristics may include liquidity, duration, maturity, and yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).⁹

b. Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges as well as on indexes consisting of U.S. Components, Non-U.S. Components or both U.S. and Non-U.S. Components.¹⁰

⁹ In order for an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and the value of the ETF’s assets.

¹⁰ See ISE Rule 2123 and Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR-ISE-2006-48) (approving generic listing standards for ICUs); Securities Exchange Act Release No. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR-ISE-

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ 17 CFR 240.19b-4(e).

⁵ 17 CFR 240.19b-4(c)(1).

⁶ 15 U.S.C. 78s(b).

⁷ When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities product. See 17 CFR 240.19b-4(e)(2)(ii).

⁸ See Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR-Amex-2006-118); Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29294 (May 24, 2007) (SR-NYSEArca-2007-36).

In addition, the Commission has previously approved the listing and trading of ETFs based on fixed income securities indexes.¹¹

The Commission has also approved listing standards for other index-based derivatives that permit the listing—pursuant to Rule 19b-4(e)—of such securities where the Commission had previously approved the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards.¹²

The Exchange believes that adopting additional generic listing standards for ETFs based on Fixed Income Indexes and Combination Indexes and applying Rule 19b-4(e) thereto should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the timeframe for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular index or portfolio to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

c. Fixed Income and Combination Index ETFs

ETFs listed pursuant to the proposed generic standards would be traded in all other respects under the Exchange's existing trading rules and procedures that apply to all securities traded on ISE, including ETFs, and would be covered under the Exchange's surveillance procedures for equities.¹³

2007-60) (approving generic listing standards for ETFs based on international or global indexes or indexes described in rules previously approved by the Commission as underlying benchmarks for derivative securities).

¹¹ See Securities Exchange Act Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR-NYSE-2002-26); Securities Exchange Act Release No. 55780 (May 17, 2007), 72 FR 29022 (May 23, 2007) (SR-NYSE-2007-37).

¹² See NYSE Arca Equities Rule 5.2(j)(6); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (order approving generic listing standards for index-linked securities); Securities Exchange Act Release No. 56117 (July 23, 2007), 72 FR 41369 (July 27, 2007) (SR-ISE-2007-47) (order approving generic listing standards for index-linked securities).

¹³ The Exchange notes that its current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and

To list an ETF pursuant to the proposed generic listing standards for ETFs based on Fixed Income Indexes or Combination Indexes, the index underlying the ETF must satisfy all the conditions contained in proposed ISE Rules 2123 (for Units) or ISE Rule 2131 (for PDRs), as applicable. As with the existing generic listing standards for ETFs based on domestic and international or global indexes, the proposed generic listing standards are intended to ensure that fixed income securities with substantial market distribution and liquidity account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in Commission and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes¹⁴ as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to Fixed Income Indexes for ETFs.

d. Fixed Income Securities

As proposed, ISE Rule 2123(b)(3) and .02 of the Supplementary Material to ISE Rule 2131 define the term "Fixed Income Securities" to include, notes, bonds (including convertible bonds), debentures, or evidences of indebtedness that include, but are not limited to, U.S. Treasury securities ("Treasury Securities"), government sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities,¹⁵ supranational debt,¹⁶ and debt of a foreign country or subdivision thereof. This new definition is designed to create a category of ETFs

investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

¹⁴ See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) ("Joint Rules").

¹⁵ Trust preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust's sole asset is a subordinated note issued by the bank or bank holding company. Trust preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax deductible interest expense.

¹⁶ Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks, and multilateral financial institutions. Examples of regional multilateral development banks include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank. Examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

based on Fixed Income Indexes that may be listed and traded pursuant to Rule 19b-4(e) under the Act.

For purposes of the proposed definition, a convertible bond is deemed to be a Fixed Income Security up until the time that it is converted into its underlying common or preferred stock.¹⁷ Once converted, the equity security may no longer continue as a component of a Fixed Income Index under the proposed rules and accordingly would be removed from such index.

The Exchange proposes that, to list a series of Units or PDRs based on a Fixed Income Index pursuant to the generic standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;
- Components that in aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of \$100 million or more;
- No component Fixed Income Security (excluding Treasury Securities or GSE Securities) represents more than 30% of the weight of the index, and the five most heavily weighted component fixed income securities in the index do not in the aggregate account for more than 65% of the weight of the index;
- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:

- From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;¹⁸

- From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more;

- From issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion;

- Exempted securities as defined in Section 3(a)(12) of the Act;¹⁹ or

¹⁷ The Exchange notes that under Section 3(a)(11) of the Act, 15 U.S.C. 78c(a)(11), a convertible security is defined as an equity security. However, for the purpose of the proposed generic listing criteria, ISE believes that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed-income-based ETFs as well as the Act.

¹⁸ 15 U.S.C. 78m and 78o(d).

¹⁹ 15 U.S.C. 78c(a)(12).

○ From issuers that are governments of foreign countries or political subdivisions of foreign countries.

The Exchange believes that these proposed component criteria standards are reasonable for Fixed Income Indexes and, when applied in conjunction with the other listing requirements, would result in ETFs that are sufficiently broad-based in scope.

The Exchange notes that the proposed standards are similar to the standards set forth by the Commission and the CFTC in the Joint Rules as well as existing fixed-income-based ETFs. First, in the proposed standards, component Fixed Income Securities that in the aggregate account for at least 75% of the weight of the index or portfolio would have to have a minimum original principal amount outstanding of at least \$100 million; this is consistent with ISE Rule 2123(d)(1)(ii) and .02(a)(2) of the Supplementary Material to ISE Rule 2131. Second, the proposed standards provide that the most heavily weighted component security cannot exceed 30% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in ISE Rule 2123(c)(2)(i)(C). In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.²⁰ Third, in the proposed standards, the five most heavily weighted component securities shall not exceed 65% of the weight of the index or portfolio, which is consistent with the Joint Rules and the standard for U.S. equity ETFs set forth in ISE Rule 2123(c)(2)(i)(C) and .01(a)(1)(iii) of the Supplementary Material to ISE Rule 2131. Fourth, the minimum number of Fixed Income Securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSE Securities) from unaffiliated²¹ issuers in the proposed standards would be 13, consistent with the standard for U.S. equity ETFs set forth in ISE Rule 2123(c)(2)(i)(D), .01(a)(1)(v) of the Supplementary Material to ISE Rule 2131, and the Joint Rules. This requirement, together with the diversification standards set forth above, would provide assurance that the Fixed Income Securities comprising an index on which an overlying ETF may be

listed pursuant to this proposal, would not be overly dependent on the price behavior of a single component or small group of components.

Finally, the proposed standards would require that at least 90% of the weight of the index or portfolio must be either: (i) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;²² (ii) from issuers that each have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (iii) from issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least \$1 billion; (iv) exempted securities as defined in Section 3(a)(12) of the Act;²³ or (v) from issuers that are governments of foreign countries or a political subdivision of foreign countries. This proposed standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component Fixed Income Securities have sufficient publicly available information.

The proposed generic listing standards for fixed income ETFs would not require that component securities in an underlying index have an investment-grade rating.²⁴ In addition, the proposed requirements would not require a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets.

The proposed rules would also provide that the Exchange could not approve for listing or trading a series of ETFs based on a Combination Index under the proposed generic listing standards if such series seeks to provide investment results that either exceed the performance of a specified index by a specified multiple ("Multiple ETF") or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple ("Inverse ETF").

e. Requirements for Listing and Trading ETFs Based on Combination Indexes

The Exchange also seeks to list and trade ETFs based on Combination Indexes. An ETF listed or traded pursuant to the generic listing standards for Combination Indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to all Exchange-traded securities, including ETFs, and would be covered under the Exchange's surveillance program for equities.

To list an ETF pursuant to the proposed generic listing standards for Combination Indexes, an index underlying a Unit or PDR must satisfy all the conditions contained in proposed ISE Rule 2123(e) (for Units) and .03 of Supplementary Material to ISE Rule 2131 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions ISE Rule 2110 and paragraphs (c)(3), (c)(5), (f), (h), (i), and (l) of Rule 2123—regarding minimum price variation, disseminated information, written surveillance procedures, trading halts, hours of trading, and disclosures—would apply. For PDRs traded on the Exchange pursuant to UTP, only the provisions set forth in ISE Rules 2131(c) and 2131(e)(2)(ii), as well as paragraphs (c), (e), (f), and (g) of Commentary .02 and Commentary .03 of the Supplementary Material to ISE Rule 2131—regarding disclosures, trading halts, disseminated information, minimum price variation, hours of trading, and written surveillance procedures would apply. Further, Commentary .02(b)(ii) and Commentary .03(a)(ii), which pertain to dissemination of the current index value, would also apply to PDRs traded pursuant to UTP on the Exchange that are based on Fixed Income Indexes and Combination Indexes, respectively. These generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of an index or portfolio.

Proposed ISE Rule 2123(e) and proposed .03 of the Supplementary Material to ISE Rule 2131 provide that the Exchange may approve a series of Units and PDRs—based on a combination of indexes or a series of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market—for listing and trading pursuant to Rule 19b-4(e) under the Act. The standards that an ETF would have to comply with are as follows: (i) Such portfolio or combination of indexes has been described in an exchange rule for the trading of options, Units, PDRs, Index-Linked Exchangeable Notes, or Index-Linked Securities that has been approved by the Commission under Section 19(b)(2) of the Act, and all of the standards set forth in the Commission's approval order are satisfied; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in 2123(c)(2) (equities) and proposed ISE Rule

²⁰ See *supra* at note 10.

²¹ Rule 405 under the Securities Act of 1933, 17 CFR 230.405, defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

²² 15 U.S.C. 78m and 15 U.S.C. 78o(d).

²³ 15 U.S.C. 78c(a)(12).

²⁴ Cf. Joint Rules, 71 FR at 30538.

2123(d) (fixed income) for Units and .01 (equities) and .02 (fixed income) of the Supplementary Material to ISE Rule 2131 for PDRs. In all cases, however, Multiple or Inverse ETFs may not be listed pursuant to ISE Rules 2123 or 2131.

f. Index Methodology and Dissemination

The Exchange proposes to adopt (d)(2) and (e)(1) of ISE Rule 2123 and .02(b) and .03(a) of Supplementary Material to ISE Rule 2131 to establish requirements for index methodology and dissemination in connection with Fixed Income and Combination Indexes.

If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor would be required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.

With respect to dissemination of the index values, the Exchange proposes to adopt ISE Rules 2123(d)(2)(ii), 2123(e)(1)(ii), as well as .02(b)(ii) and .03a(ii) of Supplementary Material to ISE Rule 2131. For an ETF based on a Fixed Income Index, the underlying index value must be widely disseminated by one or more major market data vendors at least once a day during the time when the ETF shares trade on the Exchange; if the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. This reflects the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to Fixed Income Indexes. For an ETF based on a Combination Index, the underlying index value would have to be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ETF shares trade on the Exchange to reflect updates for the prices of the equity securities included in the Combination Index; the Non-U.S. Component Stock portion of the Combination Index will be updated at least every 60 seconds,²⁵ and the fixed income portion of the

Combination Index will be updated at least daily.

g. Application of General Rules

Proposed ISE Rule 2123(f) as well as .02(c)–(g) and .03(b) of the proposed Supplementary Material to ISE Rule 2131 would be added to identify those requirements of ETFs that would apply to all such series of Units or PDRs based on Fixed Income or Combination Indexes. This would include the dissemination of the Intraday Indicative Value, an estimate of the value of a share of each ETF, updated at least every 15 seconds. In addition, ISE Rule 2123(c)(5), which requires the Exchange to implement written surveillance procedures applicable to a series of Units, would apply to series of Units based on Fixed Income and Combination Indexes. Proposed .02(d)–(g) to the Supplementary Material of ISE Rule 2131, sets forth the requirements for PDRs relating to initial shares outstanding, minimum price variation, trading hours, and surveillance procedures.

Proposed Sections .02(g) and .03(b) of the Supplementary Material to ISE Rule 2131 provide that the written surveillance procedures applicable to a series of PDRs listed and traded under Section .01 would apply to Fixed Income and Combination Indexes. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ETFs traded and/or listed pursuant to the proposed generic standards. The Exchange stated that it may obtain information via the Intermarket Surveillance Group ("ISG") from exchanges that are members or affiliates of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange states that the Commission has approved generic listing standards providing for the listing pursuant to Rule 19b–4(e) of other derivative products based on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to include in the generic listing standards for the listing of Fixed Income and Combination Indexes based Units and PDRs, in ISE Rule 2123(e) and .03 of the Supplementary Material to ISE Rule 2131, indexes or portfolios described in rules that have been approved by the Commission in connection with the listing of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange

believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to Commission review in the context of the approval of listing of other derivatives.²⁶

The Exchange notes that existing ISE Rules 2123 and 2131 provide continued listing standards for all Units and PDRs. For example, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, the Exchange would commence delisting proceedings. The Exchange notes that ISE Rules 2123(a)(6) and 2131(e)(1)(ii) provide that, prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated daily and made available to all market participants at the same time.

The trading halt requirements for existing ETFs will similarly apply to fixed income and combination index ETFs. In particular, ISE Rules 2123(e) and 2131(e)(2)(ii) provide that, if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required when the Exchange is the listing market, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.²⁷

Additionally, the Exchange proposes to amend ISE Rule 2101 to include securities contemplated by ISE Rule 2131 in the list of Equity Securities that the Exchange will trade via UTP, unless and until the Exchange files with the Commission a rule change under Section 19(b)(2) of the Act and receives Commission approval to amend its rules to become a listing market. Further, the Exchange proposes to expand the definition of "Equity Securities," as set forth in ISE Rule 2100(c)(7), to include PDRs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section

²⁶ See *supra* notes 10 and 11.

²⁷ If an ETF is traded on the Exchange pursuant to unlisted trading privileges ("UTP"), the Exchange would halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See ISE Rules 2123(c)(3) and 2131(e)(2)(ii).

²⁵ See proposed ISE Rule 2123(e)(1)(ii) and proposed section .03(a)(ii) of the Supplementary Material to ISE Rule 2131.

6(b)(5) of the Act,²⁸ which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 particular, ISE believes that this filing will provide investors with access to a wider range of derivative securities products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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-2007-65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-65. 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 ISE. 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-ISE-2007-65 and should be submitted on or before January 28, 2008.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act³⁰ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Currently, the Exchange would have to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act³¹ and Rule 19b-4 thereunder³² to list or trade any ETF based on a Fixed Income Index or on a Combination Index. The Exchange also would have to file a proposed rule change to list or trade an ETF based on

a Fixed Income or Combination Index described in an exchange rule previously approved by the Commission as an underlying benchmark for a derivative security. Rule 19b-4(e), however, provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include Fixed Income Securities or (2) indexes or portfolios described in exchange rules previously approved by the Commission as underlying benchmarks for derivative securities fulfill these requirements. Use of Rule 19b-4(e) by ISE to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.³³

The Commission previously has approved generic listing standards of other exchanges that are substantially similar to those proposed here by ISE.³⁴ This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that ISE's proposal is consistent with the Act on the same basis that it approved those earlier proposals.

The Commission believes that ISE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁵ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The value of a Fixed Income Index underlying an ETF listed pursuant to this proposal is required to be widely disseminated by one or more major market data vendors at least once a day. Likewise, the value of an underlying Combination Index is required to be widely disseminated by one or more major market data vendors at least once every 15 seconds during

²⁹ 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).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78s(b)(1).

³² 17 CFR 240.19b-4.

³³ The Commission notes that failure of a particular ETF to satisfy the Exchange's generic listing standards does not preclude the Exchange from submitting a separate proposal under Rule 19b-4 to list and trade such ETF.

³⁴ See *supra* at note 8.

³⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁸ 15 U.S.C. 78f(b)(5).

the time when the corresponding ETF trades on the Exchange, provided that, with respect to the fixed income components of the Combination Index, the impact on the index is required to be updated only once each day.

Furthermore, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor would be required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel. The Commission also notes that current ISE Rules 2123(a)(6) and 2131(e)(1)(ii) provide that, in connection with approving an ETF issuer for listing on the Exchange, the Exchange would obtain a representation from the ETF issuer that the NAV per share will be calculated each business day and made available to all market participants at the same time.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency is impaired. Proposed ISE Rule 2123(h) and current ISE Rule 2131(e)(2)(ii) provide that, when the Exchange is the listing market, if the IIV or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. Also, the Exchange may commence delisting proceedings in the event that the value of the underlying index is no longer calculated or available.

The Commission further believes that the trading rules and procedures to which ETFs will be subject pursuant to this proposal are consistent with the Act. The definition of "Equity Securities" already includes Units and, by this proposed rule change, that definition would be expanded to also include PDRs.³⁶ As a result, ETFs would be subject to ISE's previously approved rules governing the trading of Equity Securities.

The Exchange will implement written surveillance procedures for ETFs based on Fixed Income Indexes or

Combination Indexes.³⁷ In approving this proposal, the Commission relied on ISE's representation that its surveillance procedures are adequate to properly monitor the trading of ICUs listed pursuant to this proposal.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. ISE's proposal is substantially similar to other proposals that have been approved by the Commission.³⁸ The Commission does not believe that ISE's proposal raises any novel regulatory issues, and accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³⁹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁰ that the proposed rule change (SR-ISE-2007-65), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Nancy M. Morris,
Secretary.

[FR Doc. E7-25652 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57060; File No. SR-Amex-2007-116]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Harmonize the Annual Listing Fees for All Exchange Traded Funds

December 28, 2007.

On October 29, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities

³⁷ See proposed ISE Rule 2123(m) and proposed sections .02(g) and .03(b) to the Supplementary Material to ISE Rule 2131.

³⁸ See *supra* at note 8.

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ *Id.*

⁴¹ 17 CFR 200.30-3(a)(12).

and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the annual listing fees for index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, and closed-end funds (collectively, "Exchange Traded Funds" or "ETFs") set forth in Section 141 of the Amex Company Guide. On November 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ On November 16, 2007, the Exchange filed Amendment No. 2 to the proposal.⁴ The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on November 27, 2007.⁵ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

Amex proposes to amend Section 141 of the Amex *Company Guide* to adopt a single annual listing fee for all ETFs. Amex's proposal would conform the annual listing fees for index fund shares with those of other ETFs and add an additional demarcation for outstanding shares or units of over 100 million, so that the maximum annual listing fee would increase to \$50,000. Each series of the securities listed as index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, or closed-end funds would be separately aggregated. The annual listing fee would then be applied to all of the outstanding securities of a particular issuer for each appropriate product class. Securities listed under Sections 106 and 107 of the Company Guide would be charged listing fees based on the shares outstanding of each individual issue.

After careful review, the Commission finds that Amex's proposal is consistent

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made clarifying changes to the purpose section of the original filing and revised the proposed annual listing fee schedule.

⁴ Amendment No. 2 made an additional clarifying change to the proposed annual listing fee schedule. Specifically, all references to a "maximum" or "minimum" identified as a parenthetical in the "Stock Issues" and "Issues Listed Under Section 106 and Section 107; Rule 1000A (Index Fund Shares); Rule 1200 (Trust Issued Receipts); Rule 1200A (Commodity Based Trust Shares); Rule 1200B (Currency Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500 (Partnership Units); and Closed-End Funds" Annual Fee Tables in the Company Guide were removed.

⁵ See Securities Exchange Act Release No. 56809 (November 16, 2007), 72 FR 66203 (November 27, 2007) and 72 FR 70374 (December 11, 2007).

³⁶ See proposed ISE Rule 2100(c)(7).

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities. The Commission notes that no comments were received on the proposed fee increase, which is based on existing annual fees for other comparable products listed on the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2007-116), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

[FR Doc. E7-25598 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57067; File No. SR-CBOE-2007-87]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Quoting Requirements Applicable to the Hybrid Opening System

December 31, 2007.

On July 25, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rule pertaining to the Hybrid Opening System ("HOSS") as well as related rules pertaining to the obligations of designated primary market-makers ("DPMs"), electronic

designated primary market-makers ("e-DPMs") and lead market-makers ("LMMs") during opening rotations. On November 19, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 26, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

I. Description of the Proposal

HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. The Exchange proposes to amend its HOSS procedures contained in CBOE Rule 6.2B. Previously, for each option class approved for trading, HOSS had been programmed to open an option series only if the DPM or LMM, as applicable, for the particular option class submitted a quote that complies with the legal quote width requirements of paragraph (b)(iv) to CBOE Rule 8.7, *Obligations of Market-Makers*. In 2005, the HOSS procedures were revised; currently, HOSS is programmed to open an option series as long as any market maker,⁴ not just the DPM or LMM, has submitted an opening quote that complies with the legal width quote requirements of CBOE Rule 8.7(b)(iv).⁵ However, even though the procedures were changed to permit HOSS to automatically open a series without a DPM's or LMM's quote, DPMs (as well as e-DPMs) and LMMs are still obligated under CBOE's rules to submit timely opening quotes.⁶

The proposed rule change modifies the HOSS procedures to allow the parameters to be configured so that an option series will open: (1) If at least one market maker has submitted an opening quote, which is how HOSS

currently operates; or (2) only if a DPM or LMM, as applicable, has submitted an opening quote, which is how HOSS operated previously. Determinations on the particular configuration would be made on a class-by-class basis by the appropriate Exchange Procedure Committee and announced to the membership via Regulatory Circular.⁷

In addition, the proposed rule change amends the opening quote obligations of DPMs, e-DPMs, and LMMs to require them to ensure a timely initiation of an opening trading rotation of each allocated class by entering opening quotes as necessary (*i.e.*, when no other market maker has entered an opening quote). This change would absolve DPMs, e-DPMs, and LMMs of their responsibility (under CBOE's current rules) to enter opening quotes when another market maker has already entered an opening quote in a particular series.⁸

II. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 proposed rule change will afford the Exchange more flexibility in the manner in which HOSS conducts opening rotations. The Commission believes that allowing the appropriate Exchange Procedure Committee to determine on a class-by-class basis how

³ See Securities Exchange Act Release No. 56814 (November 19, 2007), 72 FR 66008 ("Notice").

⁴ This could include a quote from a DPM, e-DPM, LMM, Market-Maker or Remote Market-Maker.

⁵ See Securities Exchange Act Release No. 52234 (August 10, 2005), 70 FR 48214 (August 16, 2005) (SR-CBOE-2005-40). Other factors must also be satisfied for HOSS to open an options series. For example, the opening price for the series must be within an acceptable range and the opening trade cannot create a market order imbalance. See, e.g., CBOE Rule 6.2B(e)(ii)-(iii).

⁶ Currently, DPMs, e-DPMs, and LMMs are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; whereas, other Market-Makers and Remote Market-Makers are permitted, but not obligated, to enter opening quotes in accordance with CBOE Rule 6.2B. See current CBOE Rules 6.2B, 8.15A, *Lead Market-Makers in Hybrid Classes* (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, *DPM Obligations*, and 8.93, *e-DPM Obligations*.

⁷ See Notice, *supra* note 3, 72 FR at 66008 (noting that the Exchange Procedure Committee might consider such things as "trading in the underlying or related products, trading in the option on competing exchanges, how effectively opens have occurred in the past, liquidity and/or other factors.").

⁸ Under CBOE's proposed rules, DPMs, e-DPMs, and LMMs would still be *permitted* to enter opening quotes even if another market maker has already entered an opening quote.

⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

a particular series should open may allow CBOE to achieve more competitive, efficient, and orderly openings, while allowing the Exchange to provide sufficient liquidity at the open in particular classes.

While the Commission continues to believe that the quoting obligations of LMMs, DPMs, and e-DPMs are appropriate, given the benefits (such as favorable margin treatment) that are provided to market makers, the Commission also believes that it is reasonable for CBOE to excuse them from submitting opening quotes in their assigned series when at least one other market maker has already entered an opening quote in that series. The Commission notes that if no other market maker has entered an opening quote, the DPM and e-DPM or LMM would be responsible for ensuring that an opening quote is promptly entered so that HOSS can automatically open the series. This proposal, in conjunction with another recently approved proposed rule change,¹¹ also should encourage LMMs, DPMs, and e-DPMs to quote more competitively during HOSS opening rotations.¹²

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-2007-87), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

[FR Doc. E7-25651 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

¹¹ See Securities Exchange Act Release No. 56860 (November 29, 2007), 72 FR 68919 (December 6, 2007) (SR-CBOE-2007-59) (allowing market makers to enter an opening quote for as low as one contract if the underlying primary market disseminates less than a 1,000-share best bid or offer quote immediately prior to an option series opening).

¹² Nothing in this proposal would affect a Market-Maker's obligation to honor its firm quote obligations imposed by CBOE Rule 8.51.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57065; File No. SR-NYSE-2007-119]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of New Exchange Rule 309 (Failure To Pay Fees)

December 28, 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 December 21, 2007, the New York Stock Exchange, LLC ("NYSE" 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

NYSE proposes to adopt new Exchange Rule 309, which delineates procedures for the collection of fee arrearages due the Exchange. The text of the proposed rule change is set forth below. New text is in *italics*.

Admission of Members (Rules 300-324)

* * * * *

Rule 309. Failure to Pay Exchange Fees

Any member, member organization or allied member who shall not pay a fee or any other sums due to the Exchange, within forty-five days after the same shall become payable, shall be reported to the Chief Financial Officer of the Exchange or designee who, after notice has been given to such member, member organization or allied member of such arrearages, may suspend access to some or all of the facilities of the Exchange until payment is made. Except that failure to pay any fine levied in connection with a disciplinary action shall be governed by Exchange Rule 476(k) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others).

Denial of access to some or all of the facilities of the Exchange through suspension under the provisions of this

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rule shall not prevent the member, member organization or allied member from being proceeded against for any offense other than that for which such member, member organization, or allied member was suspended.

* * * * *

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 seeks to adopt new procedures that relate to the collection of fees due the Exchange. Currently, Exchange Rule 476(k) delineates the procedures to address the failure of members, member organizations or allied members to pay a fine (*i.e.*, a fine levied in connection with a disciplinary proceeding and related fees also associated with a disciplinary proceeding), or any other sum due the Exchange. Specifically, Exchange Rule 476(k) provides that upon written notice to such members, member organizations or allied members and notification of the Chairman of the Board of Directors of the Exchange of the arrearage, the Board of Directors may suspend the member, member organization or allied member for failure to pay the arrearages due the Exchange until payment is made.

The Exchange now proposes to adopt new Exchange Rule 309 to provide procedures to address members, member organizations and allied members who fail to pay fees and any other sums due the Exchange. Types of payments that would be considered a "fee" under proposed Rule 309 include, but are not limited to, regulatory fees (*i.e.*, Gross Financial and Operational Combined Uniform Single Report (FOCUS) revenue fees and trading floor regulatory fees), trading license fees, and transaction charges. Additionally, examples of payments that would constitute "any other sums" include,

but are not limited to, charges for using Exchange Floor facilities and equipment and phone service charges.³

Pursuant to proposed Exchange Rule 309, if payment is not made within forty-five days, notice of the arrearage will be given to the member, member organization or allied member and reported to Chief Financial Officer ("CFO") of the Exchange or a designee. The CFO or designee will be responsible for determining and taking any remedial action he or she deems appropriate, including suspension of the delinquent member's, member organization's or allied member's access to one or more Exchange facilities.

The terms "fees" and "any other sums" in the text of proposed Exchange Rule 309 will not include fines levied in connection with a disciplinary proceeding. Failure to pay such disciplinary fines will continue to be governed by the provisions of Rule 476(k). In any event, the Exchange Treasurer will not be precluded from presenting notice of any arrearage to the Board pursuant to Exchange Rule 476(k) where appropriate.

The current prerequisite of applying to the Exchange Board of Directors to address the issue of other unpaid sums due the Exchange is an inefficient and onerous process. Presently, invoices for fees and any other sum due the Exchange are issued on a monthly basis to members, member organizations and allied members. Payment is due upon presentation of the invoice. After thirty days, another invoice is issued for the current month and any outstanding balance due the Exchange. Pursuant to Rule 476(k), the ability to suspend members, member organizations and allied members for arrearages becomes operative after 45 days. The relief afforded in Rule 476(k) currently is not utilized by the Exchange; instead, arrearages are referred to the Exchange's collections department for resolution.⁴ In order for the Exchange to effect the efficient operations of its business, the authority to address non-payment of sums due the Exchange, other than disciplinary fines and related fees governed by Rule 476(k), is more appropriately vested with Exchange senior management, who are more familiar with the daily operation of the Exchange and thus more adept than the

³ Telephone bills for Exchange provided portable phones are paid by the Exchange and thereafter the Exchange submits an invoice to the member, member organization, and allied member for reimbursement.

⁴ The collections department similarly does not avail itself of the recourse provided in Exchange Rule 476(k).

Board of Directors at addressing these matters.

Accordingly, the Exchange seeks to have notice of overdue fees reported to the CFO or his designee and to vest in the CFO or his designee the authority to determine what if any remedial action should be taken upon receipt of a report that a member, member organization or allied member failed to pay a fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)⁵ of the Securities Exchange Act of 1934 (the "Act")⁶ 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 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 change is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78a.

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-2007-119 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-2007-119. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-119 and should be submitted on or before January 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

[FR Doc. E7-25597 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57063; File No. SR-NYSE-2007-123]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 1000 (Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation)

December 28, 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 December 27, 2007, the New York Stock Exchange LLC (“Exchange” or “NYSE”) 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 has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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 is proposing to amend Exchange Rule 1000(a)(iv) to provide for, in specified circumstances, Liquidity Replenishment Points (“LRPs”) to be calculated based on the last published quote rather than the last sale price. 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 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 NYSE proposes to amend Exchange Rule 1000(a)(iv) to provide for, in specified circumstances, LRPs to be calculated based on the last published quote rather than the last sale price.

a. Current Exchange Rule 1000(a) (Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation)

Currently, Exchange Rule 1000(a) provides that, subject to certain exceptions, an automatically executing order shall receive an automatic execution against orders reflected in the Exchange published quotation, orders on the Display Book, e-Quotes, s-Quotes, and CAP-DI orders.⁵ One exception is where a Liquidity Replenishment Point (“LRP”) has been reached.⁶

LRPs are pre-determined price points that function as “speed bumps” to moderate volatility in a particular security, improve price continuity, and foster market quality by temporarily converting the electronic market to an auction market and permitting new orders, the Crowd, and the specialist to add liquidity.⁷ LRPs are calculated and reset automatically every 30 seconds throughout the day by both adding and subtracting a value to the last sale price on the Exchange in the relevant security.⁸ LRPs are also automatically calculated after a manual trade by a specialist.⁹ When a LRP is reached, Auto Execution is suspended and the market for the particular security temporarily changes to an auction (or

“slow”) market.¹⁰ Auto Execution resumes as soon as possible after a LRP is reached, usually in no more than 5 to 10 seconds or immediately following a manual transaction.¹¹ LRPs are automatically recalculated when Auto Execution resumes after a LRP has been reached.¹² The values used to calculate the LRPs are determined and disseminated by the Exchange and do not change intraday.¹³ LRPs are not calculated and active until a trade in the relevant security occurs on the Exchange.¹⁴

b. Proposed Amendments to Exchange Rule 1000(a)(iv)

The Exchange proposes to amend Rule 1000(a)(iv) to provide for, in specified circumstances, LRPs to be calculated based on the last published quote rather than the last sale price. Because of the way the system is currently designed, when a stock is opened on a quote, the system cannot calculate LRPs in that stock until the first new sale occurs on the Exchange. Similarly, when Auto Execution resumes after it was disabled due to quoting beyond the LRP, the system resets the LRP for the “slow” side to zero and will not recalculate a new LRP until the next sale on the Exchange. In both instances, particularly with a thinly traded stock, the next sale may not occur for some time.

In order to address these technical limitations and fill in gaps in the calculation of LRPs, proposed new Rule 1000(a)(iv) would provide for LRPs to be calculated based on the last published quote, rather than the last sale price, when (i) a stock opens on a quote, or (ii) upon resumption of Auto Execution after it was disabled due to quoting beyond the LRP.

c. Calculation of LRPs When Opening on Quote

Under the proposed new Rule 1000(a)(iv), when a stock opens on a quote, the LRPs will be calculated immediately using the opening quote by taking the offer and adding the LRP value (High LRP = offer + LRP value) and taking the bid and subtracting the LRP value (Low LRP = bid – LRP value). These LRPs will remain in effect until the first sale of the security on the Exchange, at which time the LRPs will be reset based upon that sale price.

⁵ See Exchange Rule 1000(a). Rule 1000(a)(iv), governing the calculation of LRPs, was originally adopted on March 22, 2006, as part of the Exchange’s development and implementation of the Hybrid market. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05). The Rule was subsequently amended in November 2006 to simplify the LRP procedures to their current form. See Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65).

⁶ See Exchange Rule 1000(a)(iv).

⁷ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353, at 16362 (March 31, 2006) (SR-NYSE-2004-05).

⁸ See Exchange Rules 1000(a)(iv)(A) and (C). LRPs are calculated based only on sale prices for trades executed on the Exchange and do not take into account trades executed on away markets.

⁹ See Exchange Rule 1000(a)(iv)(C).

¹⁰ See Exchange Rules 1000(a) and (b). See also Exchange Rules 60(e)(ii)(C), 79A.30(a).

¹¹ See Exchange Rule 60(e)(ii)(C).

¹² See Exchange Rule 1000(a)(iv)(C).

¹³ See Exchange Rule 1000(a)(iv)(A).

¹⁴ See Exchange Rule 1000(a)(iv)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

d. Calculation of LRPs When the Market Is Slow

Under the proposed new Rule 1000(a)(iv), upon resumption of Auto Execution after it was suspended due to quoting beyond one (or both) of the LRPs (the “slow” side), the LRP will be recalculated on the “slow” side using the last published quote for that side by taking either the offer (or the bid) and adding (or subtracting) the LRP value. Only the “slow” side LRP will be recalculated. This LRP will not be recalculated until a manual trade is entered, there is a new sale of the security on the Exchange, or the stock becomes “slow” again and the specialist again resumes Auto Execution. When a manual trade is entered or there is a new sale, both LRPs will be immediately recalculated based on the last sale price.

The Exchange believes these changes would expand the advantages of LRPs and would better inform its customers, specialists and the market as a whole what the Exchange’s trading ranges are and when Automatic Execution may be halted by the Exchange.

2. Statutory Basis

The basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act¹⁵ 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)¹⁶ of the Act in that it seeks to ensure economically efficient execution of securities transactions, to make it practicable for brokers to execute investors’ orders in the best market, and to provide an opportunity for investors’ orders to be executed without the participation of a dealer.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁷ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁸ Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.¹⁹

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day pre-operative waiting period will allow the benefits of expanding the recalculation and use of LRPs to certain times when there is no available last sale price to be realized without delay. Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative upon filing.²⁰

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b–4(f)(6).

¹⁹ Rule 19b–4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

²⁰ For purposes only of waiving the operative delay of this proposal, the Commission notes that

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR–NYSE–2007–123 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–2007–123. 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 Commissions 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

it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78k–1(a)(1).

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-2007-123 and should be submitted on or before January 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Nancy M. Morris,

Secretary.

[FR Doc. E7-25600 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57072; File No. SR-NYSE-2007-125]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 107A (Registered Competitive Market Makers) and Exchange Rule 110 (Competitive Traders)

December 31, 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 December 31, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend for three months the moratorium related to the qualification and registration of Registered Competitive Market Makers ("RCMMs") pursuant to Exchange Rule 107A and Competitive Traders ("CTs") pursuant to Exchange Rule 110. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE, and at the Commission's Public Reference Room.

²¹ 17 CFR 200.30-3(a)(12).

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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for three months the current moratorium related to the qualification and registration of RCMMs pursuant to Exchange Rule 107A and CTs pursuant to Exchange Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63³ with the Commission proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs ("Moratorium"). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the NYSE HYBRID MARKETSM ("Hybrid Market").⁴

The phased-in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional four times over the next eighteen (18) months.⁵ During each phase of the Hybrid Market, new system functionality was included in the operation of Exchange systems and new data was generated. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market.

The Exchange is now proposing to extend the Moratorium, as amended,⁶ for an additional three months to March

³ See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

⁴ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the Hybrid Market).

⁵ See Securities Exchange Act Release Nos. 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); and 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86).

⁶ See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

31, 2008 in order to finalize its determination as to the roles of RCMMs and CTs in the Exchange's Hybrid Market and to formally submit a proposal to the Commission outlining these roles. The Exchange has continued to review the data related to RCMMs and CTs generated during the phasing in of the Hybrid Market.

The Exchange is currently undergoing significant developments in its technology and market model. Accordingly, the Exchange requests additional time to decide what roles, if any, RCMMs and CTs should perform in the current Hybrid Market.

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

2. Statutory Basis

The basis under the Act⁷ for this proposed rule change is the requirement under section 6(b)(5)⁸ 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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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

⁷ 15 U.S.C. 78a.

⁸ 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Moratorium to continue without interruption so that the Exchange may have additional time to make a final determination as to the future roles of RCMs and CTs in the Hybrid Market, if any, and to file with the Commission a proposed rule change outlining such roles. For these reasons, the Commission designates that the proposed rule change become operative immediately.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement to allow the Exchange to file its proposal to extend the Moratorium, which expires on December 31, 2007, without delay.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-125 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-2007-125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-125 and should be submitted on or before January 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

[FR Doc. E7-25654 Filed 1-4-08; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management

and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or emailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: OIRA_Submission@omb.eop.gov.
(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: OPLM.RCO@ssa.gov.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Function Report—Adult—Third Party—20 CFR 404.1512, 416.912—0960-0635*. The information collected on the SSA-3380-BK is needed to make determinations on Supplemental Security Income (SSI) and Social Security disability (SSDI) claims. This information is necessary for case development and adjudication, and is used by State Disability Determination Services (DDS) evaluators as an evidentiary source used in the disability evaluation process. The respondents are third parties familiar with the functional limitations (or lack thereof) of claimants who apply for SSDI benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

¹⁴ 17 CFR 200.30-3(a)(12).

Number of Respondents: 1,000,000.
 Frequency of Response: 1.
 Average Burden per Response: 60 minutes.
 Estimated Annual Burden: 1,000,000 hours.

2. *Function Report—Adult—20 CFR 404.1512 and 419.912—0960-0681.* Form SSA-3373 is used to collect information about a disability applicant's impairment-related limitations and ability to function. It documents the types of information specified in SSA regulations and provides disability interviewers with a convenient means to record information about how the claimant's condition affects his or her ability to function. This information, together with medical evidence, forms the evidentiary basis upon which the initial disability process is founded. The respondents are SSDI and SSI applicants.

Type of Request: Revision to an OMB-approved information collection.
 Number of Respondents: 4,005,367.
 Frequency of Response: 1.
 Average Burden per Response: 60 minutes.
 Estimated Annual Burden: 4,005,367 hours.

3. *Information Collections conducted by State DDS's on Behalf of SSA—20 CFR, subpart P, 404.1503a, 404.1512, 404.1513, 404.1514 404.1517, 404.1519; 20 CFR subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR subpart J, 416.1013, 416.1024, 416.1014—0960-0555.* The State DDS's collect certain information to administer the SSDI and SSI programs. They collect information from medical sources on consultative examination (CE) medical evidence, CE credentials and Medical Evidence of

Record (MER). The DDS's collect information from claimants regarding medical appointments and pain/symptoms. The respondents are medical providers, other sources of MER and disability claimants.

Type of Request: Revision of an OMB-approved information collection.

The total combined burden is 1,803,810 hours.

CE Collections

There are two collections from CE providers: (a) Medical evidence about claimants, which DDS's use to make disability determinations when the claimant's own medical sources cannot or will not provide the required information; and (b) when CE providers offer proof of their credentials.

(a) Medical Evidence from CE Providers

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submissions	1,215,000	1	30	607,500
Electronic Records Express (ERE) Submissions	285,000	1	15	71,250
Totals	1,500,000	—	—	678,750

CE Credentials

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	3,000	1	20	1,000

There are two CE claimant collections: (a) CE claimant completion of a response form in which claimants

indicate if they intend to keep their CE appointment; and (b) CE claimant completion of a form indicating whether

they want a copy of the CE report to be sent to their doctor.

(a) Claimants re Appointment Letter

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	750,000	1	5	62,500

(b) Claimants re Report to Medical Provider

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	1,500,000	1	5	125,000

MER Collections

The DDS's collect MER information from the claimant's own medical

sources to determine a claimant's physical and/or mental status, prior to making a disability determination.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submissions	2,480,800	1	15	620,200
Connect Direct (CD), (electronic transfer)	218,400	1	15	54,600
ERE Submission	100,800	1	7	11,760
Total	2,800,000	.....	.....	686,560

Pain/Other Symptoms Information From Claimants

symptoms affect the claimant's ability to do work-related activities, prior to making a disability determination.

The DDSs use information about pain/symptoms to determine how pain/

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	1,000,000	1	15	250,000

4. *Social Security Number (SSN) Verification Services—20 CFR 401.45—0960–0660.* Under Internal Revenue Service regulations employers are obligated to provide wage and tax data to the SSA using Form W–2 or its electronic equivalent. As part of this process the employer must furnish the employee's name and their SSN. The employee's name and SSN must match SSA's records in order for the employee's earnings to be properly posted to their Earnings Record, which is maintained by SSA.

In order to better assure that employers provide accurate employee name and SSN data that match SSA's records, SSA offers several cost-free methods for employers to verify the information, as follows: (1) Internet-based service, known as the Social Security Number Verification Service (SSNVS), where the employer can verify if the reported names and SSNs of their employees matches SSA's records; (2) the Employee Verification Service (EVS), where employers can verify, via cartridge, diskette, paper and telephone

if the reported name and SSN of their employees matches SSA's records; (3) through our National 800 Number SSA, which is introducing an automated telephone employee verification service (TNEV) that will allow callers, who have been authenticated and have a pin and password to use for this process, to verify employee's names and SSNs through the telephone system.

Type of Request: Revision of an OMB-approved information collection.

Verification system	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Total annual burden (hours)
EVS	50,000	16	800,000	10	133,333
SSNVS	200,000	60	12,000,000	5	1,000,000
TNEV	5,798	60	347,880	9	52,182
Total	255,798	.....	2,347,880	.....	1,185,515

5. *Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127.* Individuals or couples who are otherwise eligible for SSI benefits but whose resources exceed the allowable limit may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayment. Form SSA–8060 is used to document this agreement and to ensure that the individuals understand their obligations. Respondents are applicants and recipients of SSI benefits who will be disposing of excess non-liquid resources.

Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 20,000.
Frequency of Response: 1.
Average Burden per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

6. *Listing of Impairments—Part 404, Subpart P, Appendix I and II—0960–0642.*

Background

The Listing of Impairments (the listings), part 404, subpart P, appendix I and II, describes for each of the major body systems, impairments which are severe enough to prevent a person from doing any gainful activity. As part of the listings, we provide a preface which identifies specific requirements that affect the body system, such as documentation requirements and other factors which must be considered when evaluating impairments within that body system. These can include requirements which include medical

and other evidence. This clearance request covers sections in parts A and B.

The Information Collection

The medical evidence documentation described in the listings is used by State DDS's to assess the alleged disability. The information, together with other evidence, is used to determine if an individual claiming disability benefits has an impairment that meets severity and duration requirements. The respondents are disability applicants and other sources of evidence. The public reporting burden is accounted for in the Information Collection Requests (ICR) for the various forms that the public uses to submit the information to SSA. Consequently, we are reporting no

burden for this regulation aside from a 1-hour placeholder burden.

Type of Request: Extension of an OMB-approved information collection.

7. *Reporting Events—SSI—20 CFR 416.701–.732—0960–0128.* The Social Security Act and regulations requires SSA to collection information to determine eligibility for SSI payments and to determine the correct payment amount. SSA periodically requests information from recipients to reevaluate their continuing SSI eligibility and payment amount using form SSA–8150–EV. Form SSA–8150–EV informs recipients of the information that needs to be reported to SSA in order to retain their benefits. Form SSA–8150–EV provides recipients with

a means of reporting changes in their circumstances in writing. SSA uses the reported changes to determine SSI eligibility and correct payment amounts.

Type of Request: Extension of an approved OMB information collection.

Number of Respondents: 27,320.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 2,277 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling

the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Advanced Notice of Termination of Child’s Benefits & Student’s Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105.* The information collected on Forms SSA–1372–BK and SSA–1372–BK–FC is needed to determine whether children of an insured worker are eligible for student benefits. The respondents are student claimants for Social Security benefits, their respective schools and, in some cases, their representative payees.

Type of Request: Revision of an OMB-approved information collection.

SSA–1372–BK:

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Individuals/Households	99,850	1	11	18,306
State/Local/Tribal Government	99,850	1	11	18,306
Totals	199,700	.....	.....	36,612

SSA–1372–BK–FC:

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Individuals/Households	150	1	11	27
State/Local/Tribal Government	150	1	11	27
Totals	300	.....	.....	54

Correction Notice: In the First **Federal Register** Notice, we inadvertently labeled this ICR as an extension instead of a revision.

2. *Authorization to Disclose Information to SSA—20 CFR 404.1512 & 20 CFR 416.912—0960–0623.* SSA must obtain sufficient medical evidence to make eligibility determinations for SSDI benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use one of the forms SSA–827, SSA–827–OP1 or SSA–827–OP2 to provide consent for the release of information. Generally, the

State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s).

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response (Average per case): 4.

Total Annual Responses: 15,415,712.

Average Burden per Response: 13 minutes to complete all 4 forms.

Estimated Annual Burden: 835,018 hours.

3. *Acknowledgement of Receipt (Notice of Hearing)—20 CFR 404.938 &*

416.1438—0960–0671. The HA–504 and HA–504–OP1 are used to acknowledge receipt of the notice of hearing issued by an Administrative Law Judge (ALJ). The ALJ uses the information collected on the HA–504 and HA–504–OP1 to: (1) Prepare for the hearing as scheduled; or (2) reschedule the hearing to a different date and/or location. The respondents are applicants for Social Security benefits or SSI payments who request a hearing to appeal an unfavorable entitlement or eligibility determination.

Type of Request: Revision of an OMB-approved information collection.

Form	Number of respondents	Frequency of response (per year)	Average burden per response (minutes)	Total annual burden (hours)
HA–504	60,000	1	1	1000
HA–504–OP1	540,000	1	1	9000
Totals	600,000	.....	.....	10,000

Correction Notice: In the notice published on October 18, 2007 at 75 FR 59132 we inadvertently labeled this ICR as an extension. It is, in fact, a revision in order to reflect both versions of the form HA-504. Also, we are correcting the burden data from 660,000 respondents and 11,000 burden hours to 600,000 respondents and 10,000 burden hours.

4. Request for Waiver of Special Veterans Benefits (SVB) Overpayment Recovery or Change in Repayment Rate—20 CFR 408.900–408.950, 408.923(b), 408.931(b), 408.932(c), (d) and (e), 408.941(b) and 408.942—0960–0698. Title VIII allows the payment of a monthly benefit by the Commissioner of Social Security to a qualified World War II veteran who resides outside the United States. When an overpayment in SVB occurs, the beneficiary can use this form to request waiver of recovery of the overpayment or a change in the repayment rate. The SSA-2032-BK will be used to obtain the information necessary to determine whether the provisions of the Act regarding waiver of recovery of the overpayment are met. The information on the form is needed

to determine a repayment rate if repayment cannot be waived. Respondents are beneficiaries who have overpayments on their Title VIII record and wish to file a claim for waiver of recovery or change in repayment rate.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 450.

Frequency of Response: 1.

Average Burden per Response: 120 minutes.

Total Annual Burden: 900 hours.

Correction Notice: We are correcting information published on September 20, 2007 at 72 FR 53803 and on November 5, 2007 at 72 FR 62510 to show updated burden information. We changed the number of respondents from 39 to 450 and the burden hours from 78 to 900 hours.

5. Request for Medical Treatment in an SSA Employee Health Facility: Patient Self-Administered or Staff Administered Care—0960–NEW. SSA operates Employee Health Clinics onsite in eight different states. These clinics provide health care for all SSA employees including treatment of personal medical conditions when

authorized by a physician. The SSA-5072 is the employee's personal physician's order form. The information collected on the SSA-5072 gives the nurses the guidance they need by law to perform certain medical procedures and to administer prescription medications such as allergy immunotherapy. Also, the information collected by the SSA-5072 allows the SSA Medical Officer to determine whether the treatment can be administered safely and appropriately in the SSA Employee Health Units. Each State has a Nurse Practice Act governing the practice of registered nurses in the State. All Nurse Practice Acts require that registered nurses administer prescription medications and certain medical treatments by following a licensed physician's orders. Form SSA-5072 provides the vehicle for the physician to provide these orders to the SSA nursing staff. Respondents are physicians of SSA employees who need to have medical treatment in the SSA Employee Health Unit.

Type of Request: Information Collection in Use without an OMB Number.

Reporting method	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated annual burden (hours)
Annual	25	1	25	5	2
Bi-Annual	75	2	150	5	13
Totals	100	.....	175	.....	15

6. Sheltered Workshop Wage Reporting—0960–NEW.

Collection Background

Section 1612(1)(C) of the Social Security Act (the Act) and 42 U.S.C. 1382a define remuneration received for services performed in a sheltered workshop as earned income for the SSI program. The amount of monthly wages determines an individual's SSI benefit amount.

Collection Description

SSA has maintained a working relationship with sheltered workshops since the inception of the SSI program. Most workshops report monthly wage totals to the local SSA office so that the client's SSI check is adjusted timely and overpayments are prevented. While participation of the workshop is strictly voluntary, they are highly motivated to report the wages because it provides a service to their clients. Sheltered Workshop reporting reduces the number of overpayments to SSI recipients. Processing these wage reports

electronically reduces the cost of administering the program. SSA uses the information collected to verify and post monthly wages to the SSI recipient's record. Respondents are sheltered workshops that report monthly wages for services performed in the workshop.

Type of Request: New information collection.

Number of Respondents: 1,000.

Frequency of Response: 12.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 3,000 hours.

Correction Notice: We are updating information that was contained in the notices that were published at 72 FR 46529 on August 20, 2007 and 725 FR 62510 on November 5, 2007. We are changing the burden estimate from 5 to 15 minutes.

7. Request for Social Security Earnings Information—20 CFR 404.810 & 401.100—0960–0525. The Social Security Act provides that a wage earner, or someone authorized by a

Security earnings information from SSA using form SSA-7050. SSA uses the information collected on the form to verify that the requestor is authorized to access the earnings record and to produce the earnings statement. The respondents are wage earners and organizations and legal representatives authorized by the wage earner.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden per Response: 11 minutes.

Estimated Annual Burden: 11,000 hours.

Dated: December 31, 2007.

Elizabeth A. Davidson,
Reports Clearance Officer, Social Security Administration.

[FR Doc. E8-10 Filed 1-4-08; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE**[Public Notice 6052]****Culturally Significant Objects Imported for Exhibition Determinations: Assorted Objects of Greek and Roman Art**

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be exhibited include assorted objects of Greek and Roman art, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Greek and Roman Art galleries of The Metropolitan Museum of Art, New York, NY, from on or about January 14, 2008, until on or about January 31, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202-453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 28, 2007.

C. Miller Crouch,*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-18 Filed 1-4-08; 8:45 am]

BILLING CODE 4710-05-P**DEPARTMENT OF STATE****[Public Notice 6053]****Culturally Significant Objects Imported for Exhibition Determinations: "Luxury for Export: Artistic Exchange Between India and Portugal Around 1600"**

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Luxury for Export: Artistic Exchange Between India and Portugal Around 1600," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Isabella Stewart Gardner Museum, Boston, MA, from on or about February 8, 2008, until on or about May 4, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 28, 2007.

C. Miller Crouch,*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-20 Filed 1-4-08; 8:45 am]

BILLING CODE 4710-05-P**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Orlando Executive Airport; Orlando, Florida**

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Greater Orlando Airport Authority for Orlando Executive Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with the applicable requirements. The FAA also

announces that it is reviewing a proposed Noise Compatibility Program that was submitted for Orlando Executive under Part 150 in conjunction with the Noise Exposure Map, and that this program will be approved or disapproved on or before June 28, 2008.

EFFECTIVE DATE: The effective date of the FAA's determination on the Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is December 31, 2007. The public comment period ends February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407-812-6331). Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This Notice announces that the FAA finds that the Noise Exposure Maps submitted for Orlando Executive Airport are in compliance with applicable requirements of Part 150, effective December 31, 2007. Further, FAA is reviewing a proposed Noise Compatibility Program for that Airport which will be approved or disapproved on or before June 28, 2008. This notice also announces the availability of this Program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, (the Act)), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Greater Orlando Airport Authority submitted to the FAA on December 18, 2007 Noise Exposure Maps, descriptions and other

documentation that were produced during the Orlando Executive Airport FAR Part 150 Noise and Land Use Compatibility Study conducted between November, 2003 and December, 2006. It was requested that the FAA review this material as the Noise Exposure Maps, as described in Section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 47504 of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by the Greater Orlando Airport Authority. The specific documentation determined to constitute the Noise Exposure Maps includes: Exhibit B—2006 Noise Contour and Existing Land Use; Exhibit C—2011 Noise Contour and Future Land Use; Table 7-1, 2004 Annual Operations; Table 7-2, 2004 Fleet Mix; Table 7-3, 2004 Fleet Mix—Operations Per Day; Table 7-4, Projected Annual Operations; Table 7-5, 2009 Fleet Mix; Table 7-6, 2009 Fleet Mix—Operations Per Day; Table 7-7, Runway Use Percentages; Exhibit 7-4, West Flow Track Use Percentages; Exhibit 7-5, East Flow Flight Corridors; Exhibit 7-6, Touch and Go Flight Tracks; Exhibit 7-7, Helicopter Flight Tracks; Table 7-8, 2004 and 2009 Arrival Corridor Percentages; Table 7-9, 2004 and 2009 Departure Corridor Percentages; Table 7-10, 2004 and 2009 Local Pattern Percentages; Table 7-11, 2004 and 2009 Time of Day Percentages by Aircraft Category; Exhibit 8-3, 2004 Noise Contours and Existing Land Use; Exhibit 8-4, 2009 Noise Contours and Future Land Use; Exhibit 8-5, Community Facilities; Table 8-3, DNL Noise Levels at Community Facilities; Table 8-4, Estimated Population within 2004 and 2009 Noise Contours; Map A—2006 Noise Exposure Map; Map B—2011 Noise Exposure Map. The FAA has determined that these maps for Orlando Executive Airport are in compliance with applicable requirements. This determination is effective on December 31, 2007. FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map

submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Orlando Executive Airport, also effective on December 31, 2007. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 28, 2008.

The FAA's detailed evaluation will be conducted under the provisions of Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950

Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, December 31, 2007.

Juan C. Brown,

Acting Manager, Orlando Airports District Office.

[FR Doc. 08-4 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Ocala International Airport; Ocala, FL

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the City of Ocala for Ocala International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed Noise Compatibility Program that was submitted for Ocala International Airport under Part 150 in conjunction with the Noise Exposure Map, and that this program will be approved or disapproved on or before June 25, 2008.

EFFECTIVE DATE: The effective date of the FAA's determination on the Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is December 28, 2007. The public comment period ends February 26, 2008.

FOR FURTHER INFORMATION CONTACT: Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, 407-812-6331. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This Notice announces that the FAA finds that the Noise Exposure Maps submitted for Ocala International Airport are in compliance with applicable requirements of Part 150, effective December 28, 2007. Further, FAA is reviewing a proposed Noise Compatibility Program for that Airport

which will be approved or disapproved on or before June 25, 2008. This notice also announces the availability of this Program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act (the Act)), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The City of Ocala submitted to the FAA on October 2, 2007 Noise Exposure Maps, descriptions and other documentation that were produced during the Ocala International Airport FAR Part 150 Noise Study Update conducted between August 2004 and October, 2005. It was requested that the FAA review this material as the Noise Exposure Maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 47504 of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by City of Ocala. The specific documentation determined to constitute the Noise Exposure Maps includes: Figure ES-1, Existing Conditions 2005 Noise Exposure Contours; Figure ES-2, Future Conditions 2010 Noise Exposure Contours Runway Safety Area Adjustments; Table 9.1 Modeled Average Daily Aircraft Operations, Existing Conditions 2005; Table 9.2, Existing Conditions 2005 Noise Contour Interval Exposure Area, In Acres, Dwelling Units and Population, By Local Jurisdiction; Table 9.3, Modeled Average Daily Aircraft Operations, Existing Conditions 2010; Figure 9.1, Existing Conditions 2005 Noise Exposure Contours; Figure 9.2, Existing

Conditions 2005 Noise Exposure Contours Residential and Future Residential with Sensitive Receptors; Table 9.4, Five-Year Forecast Conditions 2010 Noise Exposure Area, in Acres, Dwelling Units and Population, By Local Jurisdiction; Figure 9.3 Future Conditions 2010 Noise Exposure Contours Runway Safety Area Adjustments; and Figure 9.4, Future Conditions 2010 Noise Exposure Contours Runway Safety Area Adjustments Residential and Future Residential with Sensitive Receptors. The FAA has determined that these maps for Ocala International Airport are in compliance with applicable requirements. This determination is effective on December 28, 2007. FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Ocala International Airport, also effective on December 28, 2007. Preliminary review

of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 25, 2008.

The FAA's detailed evaluation will be conducted under the provisions of Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, FL, December 28, 2007.

Krystal Hudson,

Acting Manager, Orlando Airports District Office.

[FR Doc. 08-5 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Saint Louis County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the development of a more direct and efficient roadway connection between the Cities of Hoyt Lakes and Babbitt, Saint Louis County, Minnesota and to improve connectivity across the broader East Iron Range region. Given the project area

boundaries, the alternatives studied will vary in length from 18 miles to 37 miles.

FOR FURTHER INFORMATION CONTACT:

Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291-6120; or Marcus Hall, Public Works Director/Highway Engineer, Saint Louis County Public Works Department, 4787 Midway Road, Duluth, Minnesota 55811, Telephone (218) 625-3830.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Saint Louis County Public Works Department, will prepare an EIS on a proposal to connect the Cities of Hoyt Lakes and Babbitt, Saint Louis County, Minnesota, a distance of approximately 18 to 37 miles. The proposed action is being considered to develop a more direct and efficient roadway connection between the two Cities and to improve connectivity across the broader East Iron Range region. The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build, (2) Reconstruction on existing alignment, (3) Construction on partial new alignment, and (4) Construction on new alignment.

The "Hoyt Lakes to Babbitt Scoping Document/Draft Scoping Decision Document" will be published early in 2008. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. After the scoping comment period has closed, the "Hoyt Lakes to Babbitt Scoping Decision Document" will be published in the spring of 2008. A Draft EIS will be prepared based on the outcome of and closely following the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed

or are known to have an interest in the proposed action. "Participating agencies" have been identified and a meeting will be held in February or March, 2008 to discuss the project and receive input on the "purpose and need" for the project and range of alternatives to be studied in the Draft EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(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.)

Issued on: December 28, 2007.

Cheryl B. Martin,

Environmental Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 07-6303 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

**Environmental Impact Statement;
Stearns County, MN**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the construction of a new roadway located between County State Aid Highway (CSAH) 4/CSAH 133 in St. Joseph and Trunk Highway (TH) 15 in Waite Park, a distance of approximately 7 miles, in the St. Cloud Metropolitan Area, Stearns County, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Cheryl Martin, Federal Highway Administration, Galtier Plaza, Suite 500, 380 Jackson Street, St. Paul, Minnesota 55101, Telephone (651) 291-6120; or Mitchell Anderson, P.E., Stearns County Engineer, Stearns County Department of Highways, P.O. Box 246, St. Cloud, Minnesota 56302, Telephone (320) 255-6180.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Stearns County Department of Highways, will prepare an EIS to identify a new safe and efficient minor arterial

transportation corridor within the greater southwest St. Cloud Metropolitan Area that can be preserved for future use in an area of planned growth. The proposed roadway is located between CSAH 4/CSAH 133 in St. Joseph to TH 15 in Waite Park, a distance of approximately 7 miles, in Stearns County, Minnesota. The purpose of the proposed project is to enhance mobility, enhance connectivity to regional corridors, and support the economic and social needs for the growing southwest St. Cloud Metropolitan Area by providing infrastructure support and accessibility to the planned growth areas of the communities of St. Joseph and Waite Park.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build and (2) "Build" alternatives with variations in the location of the alignment.

The "St. Cloud Metro Area Southwest Beltway Scoping Document/Draft Scoping Decision Document" will be published in early spring of 2008. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. After the scoping comment period has closed, the "St. Cloud Metro Southwest Beltway Scoping Decision Document" will be published in 2008. A Draft EIS will be prepared based on the outcome of and closely following the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. "Participating agencies" have been identified and a meeting will be held in February or March 2008 to discuss the project and receive input on the "purpose and need" for the project and range of

alternatives to be studied in the Draft EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(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.)

Dated: Issued on: December 28, 2007.

Cheryl B. Martin,

Environmental Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 07-6302 Filed 1-4-08; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: January 14, 2008, 1 p.m. to 5 p.m., and January 15, 2008, 8 a.m. to 12 p.m., Eastern Standard Time.

PLACE: This meeting will take place at the Bellevue Biltmore, 25 Bellevue Boulevard, Clearwater, Florida 33756.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Dated: December 27, 2007.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 08-19 Filed 1-3-08; 12:20 pm]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-1007X]

Colorado Springs & Eastern Railroad Company—Abandonment Exemption—in El Paso County, CO

Colorado Springs & Eastern Railroad Company (CS&E) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.3-mile line of railroad between milepost 602.70 and milepost 599.40, in Colorado Springs, El Paso County, CO. The line traverses United States Postal Service Zip Codes 80901, 80903, 80904, 80905, 80906, 80907, 80908, 80909, 80910, and 80911.

CS&E has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 6, 2008, unless stayed pending reconsideration.¹ Petitions to stay that do not involve environmental issues,²

¹ Although CS&E has indicated an effective date of January 21, 2008, the earliest this transaction may be consummated is February 6, 2008. See 49 CFR 1152.50(d)(2). Staff has informed CS&E's attorney of this discrepancy.

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 17, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 28, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.⁴

A copy of any petition filed with the Board should be sent to CS&E's representative: Monica Kadrmas, Moye White LLP, 1400 16th Street, 6th Floor, Denver, CO 80202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CS&E has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 11, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CS&E shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CS&E's filing of a notice of consummation by January 7, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: January 2, 2008.

so that the Board may take appropriate action before the exemption's effective date.

³ Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

⁴ CS&E states in its notice that it "has leased, and is in the process of selling, the property on which the line is located to the City of Colorado Springs for a public recreation hike/bike trail." CS&E is reminded that any such action cannot take place prior to the effectiveness of this exemption, including the completion of the OFA process and the handling of any requests for public use or trail use.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. E8-8 Filed 1-4-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-364 (Sub-No. 12X)]

Mid-Michigan Railroad, Inc.— Abandonment Exemption—in Kent and Ionia Counties, MI

On December 18, 2007, Mid-Michigan Railroad, Inc. (MMRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 seeking an exemption from the provisions of 49 U.S.C. 10903 for the abandonment of a 15.83-mile rail line between milepost 137.83, southeast of Lowell, and milepost 122.00, east of Prairie Center, the end of the line, in Kent and Ionia Counties, MI. The line traverses United States Postal Service Zip Codes 48846, 48881, and 49331 and includes the stations of Lowell, Saranac, and Ionia.

MMRR also seeks an exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904. In support, MMRR states that it has entered into a Memorandum of Understanding to sell the line to West Michigan Trails and Greenway Coalition for interim trail use/rail banking. This request for exemption from the OFA provision will be addressed in the final decision.

The line does not contain Federally granted rights-of-way. Any documentation in MMRR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Petitioner indicates that the proposed abandonment may generate comments, and it requests that the Board adopt a procedural schedule to allow it to file rebuttal to any comments received. Instead of addressing the request at this time, the Board will instead allow petitioner to raise the matter again, if comments and replies in response to the petition are actually filed. Comments and replies to the petition for exemption will be due on January 28, 2008. Once comments and replies are filed, MMRR may request leave to file rebuttal.

By issuance of this notice, the Board is instituting an exemption proceeding

pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 4, 2008.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a \$1,300 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 28, 2008. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27)(i).

All filings in response to this notice must refer to STB Docket No. AB-364 (Sub-No. 12X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; and (2) Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before January 28, 2008.

Persons seeking further information concerning the abandonment procedures may contact the Board's Office of Public Services at (202) 245-0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: January 2, 2008.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. E8-40 Filed 1-4-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning the collection of data for the Annual Report of Foreign-Residents' Holdings of U.S. Securities, including Selected Money Market Instruments. The next such collection is to be conducted as of June 30, 2008.

DATES: Written comments should be received on or before March 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, you may also wish to send a copy to Mr. Wolkow by e-mail (dwight.wolkow@do.treas.gov) or FAX (202-622-2009). Mr. Wolkow can also be reached by telephone (202-622-1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are unchanged from the previous survey that was conducted as of June 30, 2007, and are available on the Treasury International Capital (TIC) System Web page for "Forms SHL/SHLA & SHC/SHCA", at: <http://www.treas.gov/tic/forms-sh.shtml>. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury Department Form SHLA/SHL, Foreign-Residents' Holdings of U.S. Securities, including Selected Money Market Instruments.

OMB Number: 1505-0123.

Abstract: These forms are used to conduct annual surveys of holdings by foreign-residents of U.S. securities for

portfolio investment purposes. These data are used by the U.S. Government in the formulation of international and financial policies and for the computation of the U.S. balance of payments accounts and the U.S. international investment position. These data will also be used to provide information to the public and to meet international reporting commitments.

The benchmark survey (Form SHL) is conducted once every five years, and requires reporting by all significant U.S.-resident custodians and U.S.-resident security issuers. In non-benchmark years an annual survey (Form SHLA) is conducted, and requires reports primarily from the very largest U.S.-resident custodians and issuers. The data requested will be the same in Form SHL and, during the four succeeding years, in Form SHLA. The determination of who must report in the annual surveys (SHLA) will be based upon the securities data submitted during the previous benchmark survey. The data collected under the annual surveys (SHLA) will be used in conjunction with the results of the previous benchmark survey to compute economy-wide estimates for the non-benchmark years.

Current Actions: None. No changes in the forms or instructions will be made from the previous survey that was conducted as of June 30, 2007.

Type of Review: Extension of a currently approved collection.

Affected Public: Business/Financial Institutions.

Forms: TDF SHLA, Schedule 1 and Schedule 2 (1505-0123); TDF SHL, Schedule 1 and Schedule 2 (1505-0123).

Estimated Number of Respondents: An annual average (over five years) of 354, but this varies widely from about 1,475 in benchmark years (once every five years) to about 74 in each of the other years (four out of every five years).

Estimated Average Time per Respondent: An annual average (over five years) of about 89 hours, but this will vary widely from respondent to respondent. (a) In the year of a benchmark survey, which is conducted once every five years, it is estimated that exempt respondents will require an average of 16 hours; for custodians of securities, the estimate is a total of 321 hours on average, but this figure will vary widely for individual custodians; and for issuers of securities that have data to report and are not custodians, the estimate is 61 hours on average. (b) In a non-benchmark year, which occurs four years out of every five years: for the largest custodians of securities, the estimate is a total of 486 hours on

average; and for the largest issuers of securities that have data to report and are not custodians, the estimate is 110 hours on average.

Estimated Total Annual Burden Hours: An annual average (over five years) of 31,500 hours.

Frequency of Response: Annual.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the survey is necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; (b) the accuracy of the above burden estimates; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E7-25649 Filed 1-4-08; 8:45 am]

BILLING CODE 4811-42-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of three individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on December 27, 2007.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On December 27, 2007, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

1. GRANDE BENAVIDES, Fernando, c/o ALERO S.A., Cali, Colombia; DOB 31 Oct 1962; Cedula No. 16675553 (Colombia) (individual) [SDNT]

2. GRUESO HURTADO, Adriana, c/o INCOMMERCE S.A., Cali, Colombia; DOB 10 Oct 1974; Cedula No. 66922311 (Colombia); Passport 66922311 (Colombia) (individual) [SDNT]

3. URIBE CADAVID, Juan Guillermo, c/o REPRESENTACIONES ZATZA LTDA., Cali, Colombia; Cedula No. 16628855 (Colombia) (individual) [SDNT]

Dated: December 27, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7-25591 Filed 1-4-08; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0583]

Proposed Information Collection (Informed Consent for Patient Care); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the disclosure requirements imposed on non-VA physicians to ensure that patients have sufficient information to provide educated and informed consent for medical procedures.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 7, 2008.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: mary.stout@va.gov. Please refer to "OMB Control No. 2900-0583" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461-5867 or FAX (202) 273-9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Regulation for Informed Consent for Patient Care (Title 38 CFR 17.32).

OMB Control Number: 2900-0583.

Type of Review: Extension of a currently approved collection.

Abstract: VA informed consent regulation describes patient rights and responsibilities and the process for obtaining informed consent. It contains procedures that providers (including non-VA physicians who contract to perform services for VA on a fee-basis) must follow when seeking informed consent from a VA beneficiary (e.g., discussion of the benefits, risk and alternatives for the recommended treatment or procedure and documentation of the patient's decision). The information provided is designed to ensure that the patients (or, when appropriate, the patient's representative or surrogate) have sufficient information to provide informed consent.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 8,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 32,000.

Dated: December 27, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-25659 Filed 1-4-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (10-21086)]

Proposed Information Collection (National Survey of Women Veterans); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify the healthcare needs of the women veteran population.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 7, 2008.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: mary.stout@va.gov. Please refer to "OMB Control No. 2900-New (10-21086)" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461-5867 or FAX (202) 273-9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or

the use of other forms of information technology.

Title: National Survey of Women Veterans, VA Form 10-21086(NR).
OMB Control Number: 2900-New (10-21086).

Type of Review: New collection.

Abstract: The data collected from the survey will be used to identify the healthcare needs of women veterans, and the barriers they experience with VA healthcare use. The information will be used to improve access and the quality of healthcare for women veterans, and to evaluate the healthcare differences among women veterans of different periods of military service.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,625 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,500.

Dated: December 27, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-25660 Filed 1-4-08; 8:45 am]

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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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Tomatoes grown in Florida; comments due by 1-14-08; published 11-15-07 [FR E7-22277]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

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Mangosteen, etc.; comments due by 1-14-08; published 11-15-07 [FR E7-22278]

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Cash and share lease provisions; comments due by 1-17-08; published 12-18-07 [FR E7-24492]

AGRICULTURE DEPARTMENT**Farm Service Agency****Future Farm Programs:**

Cash and share lease provisions; comments due by 1-17-08; published 12-18-07 [FR E7-24492]

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Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Atlantic Group Spanish Mackerel Commercial Trip Limit in the Southern Zone; comments due by 1-18-08; published 1-3-08 [FR E7-25583]

Fisheries of the Exclusive Economic Zone Off Alaska: Inseason Adjustment to the 2008 Bering Sea Pollock Total Allowable Catch Amount; comments due by 1-15-08; published 1-4-08 [FR 07-06309]

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Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish, crab, salmon, and scallop; comments due by 1-14-08; published 11-13-07 [FR E7-22107]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 1-17-08; published 12-18-07 [FR 07-06077]

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Post retirement benefits; comments due by 1-14-08; published 11-15-07 [FR 07-05669]

DELAWARE RIVER BASIN COMMISSION

Water Quality Regulations, Water Code, and Comprehensive Plan:

New York City Delaware Basin reservoirs; Flexible Flow Management Program; comments due by 1-18-08; published 12-3-07 [FR E7-23383]

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Lead; criteria and standards review; comments due by 1-16-08; published 12-17-07 [FR E7-23884]

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Prevention of significant deterioration and nonattainment new source review; fugitive emissions inclusion; reconsideration; comments due by 1-14-08; published 11-13-07 [FR E7-22131]

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Illinois; comments due by 1-14-08; published 12-13-07 [FR E7-23982]

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Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 1-16-08; published 12-17-07 [FR E7-24330]

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Income taxes:

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Labor or personal services compensation; artists and athletes; comments due by 1-15-08; published 10-17-07 [FR E7-20496]

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Consolidated Reports of Conditions and Income (Call Report); conversion from Thrift Financial Report; comments due by 1-14-08; published 11-14-07 [FR E7-22175]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 366/P.L. 110-156

To designate the Department of Veterans Affairs Outpatient Clinic in Tulsa, Oklahoma, as the "Ernest Childers Department of Veterans Affairs Outpatient Clinic". (Dec. 26, 2007; 121 Stat. 1830)

H.R. 797/P.L. 110-157

Dr. James Allen Veteran Vision Equity Act of 2007 (Dec. 26, 2007; 121 Stat. 1831)

H.R. 1045/P.L. 110-158

To designate the Federal building located at 210 Walnut

Street in Des Moines, Iowa, as the "Neal Smith Federal Building". (Dec. 26, 2007; 121 Stat. 1837)

H.R. 2011/P.L. 110-159

To designate the Federal building and United States courthouse located at 100 East 8th Avenue in Pine Bluff, Arkansas, as the "George Howard, Jr. Federal Building and United States Courthouse". (Dec. 26, 2007; 121 Stat. 1838)

H.R. 2761/P.L. 110-160

Terrorism Risk Insurance Program Reauthorization Act of 2007 (Dec. 26, 2007; 121 Stat. 1839)

H.R. 2764/P.L. 110-161

Consolidated Appropriations Act, 2008 (Dec. 26, 2007; 121 Stat. 1844)

H.R. 3470/P.L. 110-162

To designate the facility of the United States Postal Service located at 744 West Oglethorpe Highway in Hinesville, Georgia, as the "John Sidney 'Sid' Flowers Post Office Building". (Dec. 26, 2007; 121 Stat. 2457)

H.R. 3569/P.L. 110-163

To designate the facility of the United States Postal Service located at 16731 Santa Ana Avenue in Fontana, California,

as the "Beatrice E. Watson Post Office Building". (Dec. 26, 2007; 121 Stat. 2458)

H.R. 3571/P.L. 110-164

To amend the Congressional Accountability Act of 1995 to permit individuals who have served as employees of the Office of Compliance to serve as Executive Director, Deputy Executive Director, or General Counsel of the Office, and to permit individuals appointed to such positions to serve one additional term. (Dec. 26, 2007; 121 Stat. 2459)

H.R. 3974/P.L. 110-165

To designate the facility of the United States Postal Service located at 797 Sam Bass Road in Round Rock, Texas, as the "Marine Corps Corporal Steven P. Gill Post Office Building". (Dec. 26, 2007; 121 Stat. 2460)

H.R. 3996/P.L. 110-

66 Tax Increase Prevention Act of 2007 (Dec. 26, 2007; 121 Stat. 2461)

H.R. 4009/P.L. 110-167

To designate the facility of the United States Postal Service located at 567 West Nepessing Street in Lapeer, Michigan, as the "Turrill Post Office Building". (Dec. 26, 2007; 121 Stat. 2462)

S. 1396/P.L. 110-168

To authorize a major medical facility project to modernize inpatient wards at the Department of Veterans Affairs Medical Center in Atlanta, Georgia. (Dec. 26, 2007; 121 Stat. 2463)

S. 1896/P.L. 110-169

To designate the facility of the United States Postal Service located at 11 Central Street in Hillsborough, New Hampshire, as the "Officer Jeremy Todd Charron Post Office". (Dec. 26, 2007; 121 Stat. 2464)

S. 1916/P.L. 110-170

Chimp Haven is Home Act (Dec. 26, 2007; 121 Stat. 2465)

S.J. Res. 13/P.L. 110-171

Granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding. (Dec. 26, 2007; 121 Stat. 2467)

H.R. 4839/P.L. 110-172

Tax Technical Corrections Act of 2007 (Dec. 29, 2007; 121 Stat. 2473)

S. 2499/P.L. 110-173

Medicare, Medicaid, and SCHIP Extension Act of 2007 (Dec. 29, 2007; 121 Stat. 2492)

S. 2271/P.L. 110-174

Sudan Accountability and Divestment Act of 2007 (Dec. 31, 2007; 121 Stat. 2516)

S. 2488/P.L. 110-175

Openness Promotes Effectiveness in our National Government Act of 2007 (Dec. 31, 2007; 121 Stat. 2524)

S. 2436/P.L. 110-176

To amend the Internal Revenue Code of 1986 to clarify the term of the Commissioner of Internal Revenue. (Jan. 4, 2008; 121 Stat. 2532)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1	(869-062-00001-4)	5.00	4 Jan. 1, 2007
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500-899	(869-062-00107-0)	61.00	⁹ July 1, 2007	260-265	(869-062-00163-1)	50.00	July 1, 2007
900-1899	(869-062-00108-8)	36.00	July 1, 2007	266-299	(869-062-00164-9)	50.00	July 1, 2007
1900-1910 (§§ 1900 to 1910.999)	(869-062-00109-6)	61.00	July 1, 2007	300-399	(869-062-00165-7)	42.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869-062-00110-0)	46.00	July 1, 2007	400-424	(869-062-00166-5)	56.00	⁹ July 1, 2007
1911-1925	(869-062-00111-8)	30.00	July 1, 2007	425-699	(869-062-00167-3)	61.00	July 1, 2007
1926	(869-062-00112-6)	50.00	July 1, 2007	700-789	(869-062-00168-1)	61.00	July 1, 2007
1927-End	(869-062-00113-4)	62.00	July 1, 2007	790-End	(869-062-00169-0)	61.00	July 1, 2007
30 Parts:				41 Chapters:			
1-199	(869-062-00114-2)	57.00	July 1, 2007	1, 1-1 to 1-10	13.00	³ July 1, 1984	
200-699	(869-062-00115-1)	50.00	July 1, 2007	1, 1-11 to Appendix, 2 (2 Reserved)	13.00	³ July 1, 1984	
700-End	(869-062-00116-9)	58.00	July 1, 2007	3-6	14.00	³ July 1, 1984	
31 Parts:				7	6.00	³ July 1, 1984	
0-199	(869-062-00117-7)	41.00	July 1, 2007	8	4.50	³ July 1, 1984	
200-499	(869-062-00118-5)	46.00	July 1, 2007	9	13.00	³ July 1, 1984	
500-End	(869-062-00119-3)	62.00	July 1, 2007	10-17	9.50	³ July 1, 1984	
32 Parts:				18, Vol. I, Parts 1-5	13.00	³ July 1, 1984	
1-39, Vol. I		15.00	² July 1, 1984	18, Vol. II, Parts 6-19	13.00	³ July 1, 1984	
1-39, Vol. II		19.00	² July 1, 1984	18, Vol. III, Parts 20-52	13.00	³ July 1, 1984	
1-39, Vol. III		18.00	² July 1, 1984	19-100	13.00	³ July 1, 1984	
1-190	(869-062-00120-7)	61.00	July 1, 2007	1-100	(869-062-00170-3)	24.00	July 1, 2007
191-399	(869-062-00121-5)	63.00	July 1, 2007	101	(869-062-00171-1)	21.00	July 1, 2007
400-629	(869-062-00122-3)	61.00	July 1, 2007	102-200	(869-062-00172-0)	56.00	July 1, 2007
630-699	(869-062-00123-1)	37.00	July 1, 2007	201-End	(869-062-00173-8)	24.00	July 1, 2007
700-799	(869-062-00124-0)	46.00	July 1, 2007	42 Parts:			
800-End	(869-062-00125-8)	47.00	July 1, 2007	1-399	(869-062-00174-6)	61.00	Oct. 1, 2007
33 Parts:				400-413	(869-060-00174-3)	32.00	Oct. 1, 2006
1-124	(869-062-00126-6)	57.00	July 1, 2007	414-429	(869-060-00175-1)	32.00	Oct. 1, 2006
125-199	(869-062-00127-4)	61.00	July 1, 2007	430-End	(869-060-00176-0)	64.00	Oct. 1, 2006
200-End	(869-062-00128-2)	57.00	July 1, 2007	43 Parts:			
34 Parts:				1-999	(869-060-00177-8)	56.00	Oct. 1, 2006
1-299	(869-062-00129-1)	50.00	July 1, 2007	1000-end	(869-060-00178-6)	62.00	Oct. 1, 2006
300-399	(869-062-00130-4)	40.00	July 1, 2007	44	(869-060-00179-4)	50.00	Oct. 1, 2006
400-End & 35	(869-062-00131-2)	61.00	⁸ July 1, 2007	45 Parts:			
36 Parts:				1-199	(869-062-00181-9)	60.00	Oct. 1, 2007
1-199	(869-062-00132-1)	37.00	July 1, 2007	200-499	(869-060-00181-6)	34.00	Oct. 1, 2006
200-299	(869-062-00133-9)	37.00	July 1, 2007	500-1199	(869-060-00182-4)	56.00	Oct. 1, 2006
300-End	(869-062-00134-7)	61.00	July 1, 2007	1200-End	(869-060-00183-2)	61.00	Oct. 1, 2006
37	(869-062-00135-5)	58.00	July 1, 2007	46 Parts:			
38 Parts:				1-40	(869-062-00185-1)	46.00	Oct. 1, 2007
0-17	(869-062-00136-3)	60.00	July 1, 2007	41-69	(869-062-00186-0)	39.00	Oct. 1, 2007
18-End	(869-062-00137-1)	62.00	July 1, 2007	70-89	(869-060-00186-7)	14.00	Oct. 1, 2006
39	(869-062-00138-0)	42.00	July 1, 2007	90-139	(869-062-00188-6)	44.00	Oct. 1, 2007
40 Parts:				140-155	(869-062-00189-4)	25.00	Oct. 1, 2007
1-49	(869-062-00139-8)	60.00	July 1, 2007	156-165	(869-060-00189-1)	34.00	Oct. 1, 2006
50-51	(869-062-00140-1)	45.00	July 1, 2007	166-199	(869-060-00190-5)	46.00	Oct. 1, 2006
52 (52.01-52.1018)	(869-062-00141-0)	60.00	July 1, 2007	200-499	(869-062-00192-4)	40.00	Oct. 1, 2007
52 (52.1019-End)	(869-062-00142-8)	64.00	July 1, 2007	500-End	(869-062-00193-2)	25.00	Oct. 1, 2007
53-59	(869-062-00143-6)	31.00	July 1, 2007	47 Parts:			
60 (60.1-End)	(869-062-00144-4)	58.00	July 1, 2007	0-19	(869-060-00193-0)	61.00	Oct. 1, 2006
60 (Apps)	(869-062-00145-2)	57.00	July 1, 2007	20-39	(869-060-00194-8)	46.00	Oct. 1, 2006
61-62	(869-062-00146-1)	45.00	July 1, 2007	40-69	(869-060-00195-6)	40.00	Oct. 1, 2006
63 (63.1-63.599)	(869-062-00147-9)	58.00	July 1, 2007	70-79	(869-060-00196-4)	61.00	Oct. 1, 2006
63 (63.600-63.1199)	(869-062-00148-7)	50.00	July 1, 2007	80-End	(869-060-00197-2)	61.00	Oct. 1, 2006
63 (63.1200-63.1439)	(869-062-00149-5)	50.00	July 1, 2007	48 Chapters:			
				1 (Parts 1-51)	(869-062-00199-1)	63.00	Oct. 1, 2007
				1 (Parts 52-99)	(869-060-00199-9)	49.00	Oct. 1, 2006
				2 (Parts 201-299)	(869-062-00201-7)	50.00	Oct. 1, 2007
				3-6	(869-060-00201-4)	34.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
7-14	(869-062-00203-3)	56.00	Oct. 1, 2007
15-28	(869-062-00204-1)	47.00	Oct. 1, 2007
29-End	(869-060-00204-9)	47.00	Oct. 1, 2006
49 Parts:			
1-99	(869-060-00205-7)	60.00	Oct. 1, 2006
100-185	(869-062-00207-6)	63.00	Oct. 1, 2007
186-199	(869-060-00207-3)	23.00	Oct. 1, 2006
200-299	(869-060-00208-1)	32.00	Oct. 1, 2006
300-399	(869-062-00210-6)	32.00	Oct. 1, 2007
400-599	(869-060-00210-3)	64.00	Oct. 1, 2006
600-999	(869-060-00211-1)	19.00	Oct. 1, 2006
1000-1199	(869-062-00213-1)	28.00	Oct. 1, 2007
1200-End	(869-062-00214-9)	34.00	Oct. 1, 2007
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
200-599	(869-062-00221-1)	45.00	Oct. 1, 2007
600-659	(869-060-00221-9)	31.00	Oct. 1, 2006
660-End	(869-060-00222-7)	31.00	Oct. 1, 2006
CFR Index and Findings			
Aids	(869-062-00050-2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
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Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		325.00	2005

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.