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Presidential Documents

Title 3—

The President

Proclamation 8225 of March 10, 2008

Women's History Month, 2008

By the President of the United States of America

A Proclamation

During Women's History Month, we celebrate the courage, foresight, and resolve of women who have strengthened our democracy.

America has been transformed by strong women whose contributions shaped the history of our country. Amelia Earhart became the first woman to fly solo across the Atlantic, and she inspired generations of women to follow their dreams. Physicist Chien-Shiung Wu helped advance our knowledge and understanding of the world through her achievements in atomic research. Harriet Tubman fought racial injustice and opened doors for more Americans to participate fully in our society.

Today, women are continuing this legacy of leadership as entrepreneurs, doctors, teachers, scientists, lawyers, artists, and public officials. They are also providing guidance and care to their loved ones and strengthening America's families and communities. We also remember the women of the United States Armed Forces who are serving our country with honor and distinction across the world.

This month, we honor the extraordinary women of our Nation's past and recognize the countless women who are demonstrating leadership in every aspect of American life.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2008 as Women's History Month. I call upon all our citizens to observe this month with appropriate programs, ceremonies, and activities that honor the history, accomplishments, and contributions of American women.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 08–1030
Filed 3–12–08; 8:45 am]
Billing code 3195–01–P

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2008–14 of March 7, 2008

Unexpected Urgent Refugee and Migration Needs Related to Kenya

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and the laws of the United States, including sections 2 and 4(a)(1) of the Migration and Refugee Assistance Act of 1962 (the ''Act''), as amended (22 U.S.C. 2601 and 2603), and section 301 of title 3, United States Code:

(1) I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $4.9 million from the United States Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and nongovernmental organizations and payment of administrative expenses of the Bureau of Population, Refugees and Migration of the Department of State, related to humanitarian needs in Kenya and for Kenyan refugees in neighboring countries; and

(2) the functions of the President in relation to this memorandum under section 2(d) of the Act, and of establishing terms and conditions under section 2(c)(1) of the Act, are assigned to you, and you may further assign such functions to any of your subordinates, consistent with applicable law.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, March 7, 2008.

[FR Doc. 08–1027
Filed 3–12–08; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0372; Directorate Identifier 2007–NM–164–AD; Amendment 39–15425; AD 2008–06–13]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212 Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing 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:

On 23 November 2006, Emergency Airworthiness Directive (EAD) Nr. (number) 2006–0351–E was published requiring an inspection to be performed on C–212 aeroplanes having been used for Maritime Patrol or other similar low altitude operations, due to the fact that, after initial examination of the evidences of a recent C–212 Maritime Patrol aircraft accident, cracks had been found in the centre wing lower skin at STA Y=1030. At the time of the accident, the aircraft had accumulated 17,000 flight hours and 7,300 flight cycles. The cracks were suspected to be caused by fatigue.

A more detailed examination in the laboratory, led to think that the initiation of the fatigue cracks was produced by fretting, and EAD 2006–0365–E, superseding EAD 2006–0351–E, was published on 4 December 2006 to address the new situation.

Further examination in the laboratory has allowed to establish that crack initiation was due to fatigue and the fretting was posterior.

* * * * * * *

The above mentioned cracks, if not timely detected, could lead to reduced structural integrity of the aircraft.* * *

* * * * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 17, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 17, 2008.

The Director of the Federal Register approved the incorporation by reference of EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006, listed in this AD as of March 14, 2007 (72 FR 8610, February 27, 2007).

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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 January 2, 2008 (73 FR 80), and proposed to supersede AD 2007–05–01, Amendment 39–14962 (72 FR 8610, February 27, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

On 23 November 2006, Emergency Airworthiness Directive (EAD) Nr. (number) 2006–0351–E was published, requiring an inspection to be performed on C–212 aeroplanes having been used for Maritime Patrol or other similar low altitude operations, due to the fact that, after initial examination of the evidences of a recent C–212 Maritime Patrol aircraft accident, cracks had been found in the centre wing lower skin at STA Y=1030. At the time of the accident, the aircraft had accumulated 17,000 flight hours and 7,300 flight cycles. The cracks were suspected to be caused by fatigue.

A more detailed examination in the laboratory, led to think that the initiation of the fatigue cracks was produced by fretting, and EAD 2006–0365–E, superseding EAD 2006–0351–E, was published on 4 December 2006 to address the new situation.

Further examination in the laboratory has allowed to establish that crack initiation was due to fatigue and the fretting was posterior. Additionally, given that some operators were reporting difficulties in performing the required inspections, a new procedure has been defined using High Frequency Eddy Currents. Finally, an inspection interval has been established to make the required inspections repetitive in the interim until a definitive solution is available.

The subject element is identified in Ref. 1 (CASA C–212 Supplemental Inspection Document (SID) C–212–PV–02–SID) as a Principal Structural Element (PSE) with No. 57.212.06 and requested to be inspected at a threshold of 20,000 landings (subject to some operational constraints defined in Ref. 1) in accordance with the inspection method and sequence described in Ref. 2 (CASA C–212 Supplemental Inspection Procedures (SIP) C–212–PV–02–SIP), Section 57–10–03.

Ref. 1 document was made mandatory by DGAC-Spain Airworthiness directive Nr. 02/88 (current status of that AD is revision 3, dated 4 February 2004).

Inspection threshold as per AD 02/88 Rev. 3 remains valid and relevant inspections have to be performed in addition to the requirements of this Emergency Airworthiness Directive (EAD).

The above mentioned cracks, if not timely detected, could lead to reduced structural integrity of the aircraft. This EAD [which supersedes EASA EAD 2006–0365–E] is intended to ensure that no other C–212 aircraft could be affected by this problem, by mandating a one time inspection of the subject area, and a repetitive inspection thereafter, until the moment a definitive design solution will be available, in accordance with the requirements under the paragraph ''Compliance'' of this EAD.

An additional inspection procedure, by using High Frequency Eddy Currents, has been introduced, which should be able to detect cracks with higher reliability.

The corrective action includes repetitive inspections for cracks, and repair if necessary. 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 33 products of U.S. registry. We also estimate that it will take about 8 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 $21,120, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 removing Amendment 39–14962 (72 FR 8610, February 27, 2007) and adding the following new AD:

2008–06–13 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–15425. Docket No. FAA–2007–0372; Directorate Identifier 2007–NM–164–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 17, 2008.

Affected ADs

(b) This AD supersedes AD 2007–05–01, Amendment 39–14962.

Applicability

(c) This AD applies to CASA Model C–212 airplanes; all series, all serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

On 23 November 2006, Emergency Airworthiness Directive (EAD) Nr. (number) 2006–0351–E was published, requiring an inspection to be performed on C–212 aeroplanes having been used for Maritime Patrol or other similar low altitude operations, due to the fact that, after initial examination of the evidences of a recent C–212 Maritime Patrol aircraft accident, cracks had been found in the centre wing lower skin at STA Y=1030. At the time of the accident, the aircraft had accumulated 17,000 flight hours and 7,300 flight cycles. The cracks were suspected to be caused by fatigue.

A more detailed examination in the laboratory, led to think that the initiation of the fatigue cracks was produced by fretting, and EAD 2006–0365–E, superseding EAD 2006–0351–E, was published on 4 December 2006 to address the new situation.

Further examination in the laboratory has allowed to establish that crack initiation was due to fatigue and the fretting was posterior. Additionally, given that some operators were reporting difficulties in performing the required inspections, a new procedure has been defined using High Frequency Eddy Currents. Finally, an inspection interval has been established to make the required inspections repetitive in the interim until a definitive solution is available.

The subject element is identified in Ref. 1 (CASA C–212 Supplemental Inspection Document (SID) C–212–PV–02–SID) as a Principal Structural Element (PSE) with No. 57.212.06 and requested to be inspected at a threshold of 20,000 landings (subject to some operational constraints defined in Ref. 1) in accordance with the inspection method and sequence described in Ref. 2 (CASA C–212 Supplemental Inspection Procedures (SIP) C–212–PV–02–SIP), Section 57–10–03.

Ref. 1 document was made mandatory by DGAC–Spain Airworthiness directive Nr. 02/88 (current status of that AD is revision 3, dated 4 February 2004).

Inspection threshold as per AD 02/88 Rev. 3 remains valid and relevant inspections have to be performed in addition to the requirements of this Emergency Airworthiness Directive (EAD).

The above mentioned cracks, if not timely detected, could lead to reduced structural integrity of the aircraft. This EAD [which supersedes EASA EAD 2006–0365–E] is intended to ensure that no other C–212 aircraft could be affected by this problem, by mandating a one time inspection of the subject area, and a repetitive inspection thereafter, until the moment a definitive design solution will be available, in accordance with the requirements under the paragraph ''Compliance'' of this EAD.

An additional inspection procedure, by using High Frequency Eddy Currents, has

been introduced, which should be able to detect cracks with higher reliability.

The corrective action includes repetitive inspections for cracks, and repair if necessary.

Restatement of Requirements of AD 2007–05–01

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

(1) For airplanes used for maritime operations and all other airplanes on which the operator cannot positively determine that the airplanes have not been flown more than ten percent of flights at altitudes below 3,000 feet as of March 14, 2007 (the effective date of AD 2007–05–01): Perform a Non-Destructive Inspection (NDI) and a complementary NDI for cracks at the applicable time specified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006; or Revision 2, dated March 20, 2007. As of the effective date of this AD, only Revision 2 may be used.

Note 1: For the purposes of this AD, the term ''maritime operations'' is defined as airplanes which are used for monitoring certain areas of water.

(i) For airplanes having accumulated 5,600 flight hours or less, and 2,400 landings or less as of March 14, 2007: Perform the inspections before the accumulation of 5,600 total flight hours, or before the accumulation of 2,400 total landings, or within 6 months after March 14, 2007, whichever occurs latest.

(ii) For airplanes having accumulated more than 5,600 flight hours but less than or equal to 8,000 flight hours, or more than 2,400 landings but less than or equal to 3,600 landings, as of March 14, 2007: Perform the inspections before the accumulation of 200 flight hours or 100 landings after March 14, 2007, whichever occurs first.

(iii) For airplanes having accumulated more than 8,000 flight hours or more than 3,600 landings as of March 14, 2007: Perform the inspections within 14 days after March 14, 2007.

(2) For airplanes other than those identified in paragraph (f)(1) of this AD: Perform the NDIs at the applicable time specified in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006; or Revision 2, dated March 20, 2007. As of the effective date of this AD, only Revision 2 may be used.

(i) For airplanes having accumulated 10,000 total flight hours or less, and 10,000 total landings or less as of March 14, 2007: Perform the inspections before the accumulation of 10,000 total flight hours, or before the accumulation of 10,000 total landings, or within 6 months after March 14, 2007, whichever occurs latest.

(ii) For airplanes having accumulated more than 10,000 flight hours but less than or equal to 15,000 flight hours, or more than 10,000 landings but less than or equal to 15,000 landings, as of March 14, 2007: Perform the inspections before the accumulation of 200 flight hours or 100 landings after March 14, 2007, whichever occurs first.

(iii) For airplanes having accumulated more than 15,000 flight hours or more than 15,000 landings as of March 14, 2007: Perform the inspections within 14 days after March 14, 2007.

New Requirements of This AD: Actions and Compliance

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

(1) For airplanes identified in paragraph (f)(1) of this AD that have accumulated 5,600 flight hours or less, and 2,400 landings or less as of the effective date of this AD: Perform the inspections at the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) At the later of the times specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this AD: Perform a high frequency eddy current (HFEC) NDI for cracks.

(A) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first.

(B) Before the accumulation of 5,600 total flight hours or 2,400 total landings, whichever occurs first.

(ii) Repeat the inspections required by paragraphs (f)(1) and (g)(1)(i) of this AD before the accumulation of 8,000 total flight hours or 3,600 total landings, whichever occurs first, and thereafter at intervals not to exceed 600 flight hours or 250 landings, whichever occurs first.

(2) For airplanes identified in paragraph (f)(1) of this AD that have accumulated more than 5,600 flight hours but less than or equal to 8,000 flight hours, or more than 2,400 landings but less than or equal to 3,600 landings, as of the effective date of this AD: Perform the inspections at the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first: Perform a HFEC NDI for cracks.

(ii) Within 600 flight hours or 250 landings, whichever occurs first, after doing the inspection required by paragraph (g)(2)(i) of this AD: Perform the inspections required by paragraphs (f)(1) and (g)(2)(i) of this AD and repeat the inspections thereafter at intervals not to exceed 600 flight hours or 250 landings, whichever occurs first.

(3) For airplanes identified in paragraph (f)(1) of this AD that are not subject to paragraph (g)(1) or (g)(2) of this AD: Perform the inspections at the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 14 days after the effective date of this AD: Perform a HFEC NDI for cracks.

(ii) Within 600 flight hours or 250 landings, whichever occurs first, after doing the inspection required by paragraph (g)(3)(i) of this AD: Perform the inspections required by paragraphs (f)(1) and (g)(3)(i) of this AD and repeat the inspections thereafter at intervals not to exceed 600 flight hours or 250 landings, whichever occurs first.

(4) For airplanes identified in paragraph (f)(2) of this AD that have accumulated 10,000 flight hours or less, and 10,000 landings or less, as of the effective date of this AD: Perform the inspections at the times specified in paragraphs (g)(4)(i) and (g)(4)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first: Perform a HFEC NDI for cracks.

(ii) Repeat the inspections required by paragraphs (f)(2) and (g)(4)(i) of this AD before the accumulation of 15,000 total flight hours or 15,000 total landings, whichever occurs first, and thereafter at intervals not to exceed 4,500 flight hours or 4,500 landings, whichever occurs first.

(5) For airplanes identified in paragraph (f)(2) of this AD that have accumulated more than 10,000 flight hours but less than or equal to 15,000 flight hours, or more than 10,000 landings but less than or equal to 15,000 landings, as of the effective date of this AD: Perform the inspections at the time specified in paragraphs (g)(5)(i) and (g)(5)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 200 flight hours or 100 landings after the effective date of this AD, whichever occurs first: Perform a HFEC NDI for cracks.

(ii) Within 4,500 flight hours or 4,500 landings, whichever occurs first, after doing the inspection required by paragraph (g)(5)(i) of this AD: Perform the inspections required by paragraphs (f)(2) and (g)(5)(i) of this AD. Repeat the inspections thereafter at intervals not to exceed 4,500 flight hours or 4,500 landings, whichever occurs first.

(6) For airplanes identified in paragraph (f)(2) of this AD that are not subject to paragraph (g)(4) or (g)(5) of this AD: Perform the inspections at the time specified in paragraphs (g)(6)(i) and (g)(6)(ii) of this AD. Do the inspections as defined in EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007.

(i) Within 14 days after the effective date of this AD: Perform a HFEC NDI for cracks.

(ii) Within 4,500 flight hours or 4,500 landings, whichever occurs first, after doing the inspection required by paragraph (g)(6)(i) of this AD: Perform the inspections required by paragraphs (f)(2) and (g)(6)(i) of this AD, and repeat the inspection thereafter at intervals not to exceed 4,500 flight hours or 4,500 landings, whichever occurs first.

(7) If any crack or loose rivet is detected during any inspection required by this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Within 30 days after cracks are detected, or within 30 days after the effective date of this AD, whichever occurs later, send a detailed report of the first inspection findings (both positive and negative) of the inspections required by paragraph (f) of this AD to EADS–CASA for evaluation at the following address: EADS–

CASA, Military Transport Aircraft Division, Integrated Customer Services, Technical Services, Avenida de Aragon 404, 28022-Madrid, Spain; telephone 34–91–624–6306; fax 34–91–585–5505; *E-mail: MTA.TechnicalService@casa.eads.net*. In any case, a confirmation of the accomplishment of this inspection is required to be sent to EADS–CASA.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) *Compliance Time:* For certain airplanes, the compliance time required by the MCAI or service information for performing the HFEC inspections is before further flight; however, to avoid inadvertently grounding airplanes, this AD requires performing those inspections within 14 days after the effective date of this AD.

(2) *Repair:* Although the MCAI or service information does not include a repair procedure for cracking, this AD requires the repair of any cracking per the FAA or EASA (or its delegated agent).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(i) Refer to MCAI EASA Emergency Airworthiness Directive 2007–0108–E, dated April 18, 2007, and EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007, for related information.

Material Incorporated by Reference

(j) You must use EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006; and EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007; as applicable; 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 EADS–CASA All Operator Letter 212–018, Revision 2, dated March 20, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of EADS–CASA All Operator Letter 212–018, Revision 1, dated December 1, 2006, on March 14, 2007 (72 FR 8610, February 27, 2007).

(3) For service information identified in this AD, contact Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain.

(4) 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 March 4, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–4936 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0270; Directorate Identifier 2007–NM–211–AD; Amendment 39–15426; AD 2008–06–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200PF, and –200CB series airplanes. This AD requires doing an ultrasound inspection for disbonded tear straps not mechanically fastened to the skin, and related investigative and corrective actions, if necessary. This AD results from reports indicating that bonded skin panels may not have been correctly anodized in phosphoric acid before the tear strap doubler was bonded to the skin. We are issuing this AD to detect and correct a weak bond between the skin and tear strap. Such disbonding could reduce the ability of the skin to resist cracks and could adversely affect the structural integrity of the airplane.

DATES: This AD is effective April 17, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 17, 2008.

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: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 757–200, –200PF, and –200CB series airplanes. That NPRM was published in the **Federal Register** on December 17, 2007 (72 FR 71277). That NPRM proposed to require an ultrasound inspection for disbonded tear straps not mechanically fastened to the skin, and related investigative and corrective actions, if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the two comments received. Boeing and Continental Airlines support the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are 744 airplanes of the affected design in the worldwide fleet. This AD

affects 487 airplanes of U.S. registry. The required actions take about 16 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $623,360, or $1,280 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

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:

2008–06–14 Boeing: Amendment 39–15426. Docket No. FAA–2007–0270; Directorate Identifier 2007–NM–211–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 17, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007.

Unsafe Condition

(d) This AD results from reports indicating that bonded skin panels may not have been correctly anodized in phosphoric acid before the tear strap doubler was bonded to the skin. We are issuing this AD to detect and correct a weak bond between the skin and tear strap. Such disbonding could reduce the ability of the skin to resist cracks and could adversely affect the structural integrity 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.

Initial Inspection

(f) At the applicable initial compliance time in paragraph (f)(1) or (f)(2) of this AD, do an external ultrasound inspection for disbonded tear straps not mechanically fastened to the skin between stations 439 to 900, and 1180 to 1621, and between stringers 10 left and 10 right, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007.

(1) For airplanes with less than or equal to 21,000 total flight cycles: Before the accumulation of 24,000 total flight cycles, but no earlier than 18,000 total flight cycles.

(2) For airplanes with more than 21,000 total flight cycles: Within 3,000 flight cycles after the effective date of this AD.

Repetitive Inspection

(g) If no disbonding is found during the ultrasound inspection required by paragraph (f) of this AD, repeat the inspection once before 36,000 total flight cycles, but no earlier than 30,000 total flight cycles.

Related Investigative and Corrective Actions

(h) If any disbonding is found during the ultrasound inspection required by paragraph (f) or (g) of this AD, do the applicable related investigative and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007, at the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of the service bulletin; except as provided by paragraph (i) of this AD.

(i) If any crack and/or corrosion is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the crack and/or corrosion using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(k) You must use Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–4944 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0291; Directorate Identifier 2008–CE–019–AD; Amendment 39–15429; AD 2008–06–17]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, and PC–12/47 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Some operators have reported occurrences where the rear stick-pusher cable clamp shifted forward on the elevator cable. This condition, if not corrected, may reduce the effectiveness of the stick-pusher and/or limit elevator control movement.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 2, 2008.

On April 2, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by April 14, 2008.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No: 2008–0047, dated February 28, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Some operators have reported occurrences where the rear stick-pusher cable clamp shifted forward on the elevator cable. This condition, if not corrected, may reduce the effectiveness of the stick-pusher and/or limit elevator control movement.

For the reason described above, this Airworthiness Directive (AD) requires the inspection of the stick-pusher servo-cables for correct installation, position and tension and replacement of the discrepant parts.

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

Relevant Service Information

PILATUS AIRCRAFT LTD. (Pilatus) has issued PC–12 Service Bulletin No. 27–018, dated November 27, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because Pilatus has confirmed four occurrences of the rear stick-pusher cable shifting forward on the elevator cable. Although all malfunction cases occurred on the ground, it cannot be excluded that flight may be attempted with a slack stick-pusher cable. If this condition happens, it could result in reduced effectivity of the stick pusher and/or limit elevator control, affecting notification of the pilot of upcoming stall and controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0291; Directorate Identifier 2008–CE–019–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 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.

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:

2008–06–17 PILATUS AIRCRAFT LTD.: Amendment 39–15429; Docket No. FAA–2008–0291; Directorate Identifier 2008–CE–019–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 2, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PC–12, PC–12/45, and PC–12/47 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

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

Some operators have reported occurrences where the rear stick-pusher cable clamp shifted forward on the elevator cable. This condition, if not corrected, may reduce the effectiveness of the stick-pusher and/or limit elevator control movement.

For the reason described above, this Airworthiness Directive (AD) requires the inspection of the stick-pusher servo-cables for correct installation, position and tension and replacement of the discrepant parts.

Actions and Compliance

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

(1) Within the next 20 hours time-in-service (TIS) after the effective date of this AD or within the next 20 days after the effective date of this AD, whichever occurs first, inspect the stick-pusher servo-cables for correct installation, position, and tension following paragraph 3.B.(1) of PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No. 27–018, dated November 27, 2007.

(2) If during the inspection required in paragraph (f)(1) of this AD you find any incorrectly installed or positioned stick-pusher servo cables, before further flight adjust the stick-pusher servo cable tension as necessary following paragraph 3.B.(2) of PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No. 27–018, dated November 27, 2007.

(3) If during the inspection required in paragraph (f)(1) of this AD you find incorrect tension and/or indications that the stick-pusher servo-cables have moved in the cable clamps, before further flight replace the affected parts following paragraph 3.B.(4) of PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No. 27–018, dated November 27, 2007.

(4) If during the inspection required in paragraph (f)(1) of this AD you find no signs that the stick-pusher servo-cables have moved in the cable clamps, before further flight replace the nuts, washers, and bolts following paragraph 3.B.(5) of PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No. 27–018, dated November 27, 2007.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. 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 (44 U.S.C. 3501 *et seq.*), 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 (EASA) AD No: 2008–0047, dated February 28, 2008; and PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No. 27–018, dated November 27, 2007, for related information.

Material Incorporated by Reference

(i) You must use PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No. 27–018, dated November 27, 2007, 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 PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; *e-mail: SupportPC12@pilatus-aircraft.com*.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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 Kansas City, Missouri on March 5, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5008 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9380]

RIN 1545–BC45

Substitute for Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations and removal of temporary regulations.

SUMMARY: This document corrects final regulations and removal of temporary regulations (TD 9380) that was published in the **Federal Register** on Wednesday, February 20, 2008 (73 FR 9188), relating to substitutes for returns.

DATES: The correction is effective March 13, 2008.

FOR FURTHER INFORMATION CONTACT: Alicia E. Goldstein at (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations and removal of temporary regulations, (TD 9380) that is the subject of this correction is under section 6020 of the Internal Revenue Code.

Need for Correction

As published, TD contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations and removal of temporary regulations (TD 9380) that were the subject of FR. Doc. E8–3100, are corrected as follows:

1. On page 9188, in the preamble, column 2, under the paragraph heading ''Background'', first full paragraph of the column, line 17, the language ''prompted the IRS and the Treasury'' is corrected to read ''prompted the Service and the Treasury''.

2. On page 9188, in the preamble, column 2, under the paragraph heading ''Background'', second full paragraph of the column, line 1, the language ''The IRS and the Treasury Department'' is corrected to read ''The Service and the Treasury Department''.

3. On page 9188, in the preamble, column 3, under the paragraph heading ''Explanation of Provisions and Summary of Comments'', second full paragraph of the column, line 12, the language ''taxpayer; and because the IRS was'' is corrected to read ''taxpayer, and because the Service was''.

4. On page 9188, in the preamble, column 3, under the paragraph heading ''Explanation of Provisions and Summary of Comments'', lines 1 through 6, the language ''After considering these comments, the IRS and the Treasury Department have concluded that they provide no basis for adopting changes in the final regulations. In particular, the argument that the IRS should not be able to decide'' is corrected to read ''After considering these comments, the Service and the Treasury Department have concluded that they provide no basis for adopting changes in the final regulations. In particular, the argument that the Service should not be able to decide''.

LaNita Van Dyke,

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

[FR Doc. E8–4863 Filed 3–12–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1074, FRL–8537–9]

Partial Removal of Direct Final Rule Revising the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial removal of direct final rule.

SUMMARY: On January 2, 2008 (73 FR 48), EPA published a direct final approval of revisions to the California State Implementation Plan (SIP). These revisions concerned local rules that address circumvention, reduction of animal matter, and volatile organic compound (VOC) emissions from gasoline bulk storage tanks, gasoline filling stations, petroleum refinery equipment, and petroleum solvent dry cleaning. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by February 1, 2008, EPA would publish a timely removal in the **Federal Register**. EPA received a timely adverse comment. Consequently, with this revision we are removing the direct final approval of SJVAPCD Rules 4104, 4402, 4404, 4453, 4454, 4625, 4641, and 4672. EPA will either address the comments in a subsequent final action based on the parallel proposal also published on January 2, 2008 (73 FR 48) or repropose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on a subsequent final action. The other rules, MBUAPCD Rules 415, 418, and 1002, approved in the January 2, 2008 direct final action, are not affected by this removal and are incorporated into the SIP as of the original effective date of March 3, 2008.

DATES: The addition of 40 CFR 52.220(c)(351)(i)(C) published at 73 FR 48 on (January 2, 2008) is removed effective March 13, 2008.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2007–1074 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, CA. While all documents in the docket are listed in the index, some information may be publicly

available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Alfred Petersen, Rules Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

List of Subjects in 40 CFR Part 52

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

Dated: February 13, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

§ 52.220 [Amended]

■ 2. Section 52.220 is amended by removing paragraph (c)(351)(i)(C).

[FR Doc. E8–4829 Filed 3–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA–HQ–OAR–2004–0072; FRL–8539–3]

RIN 2060–A–069

In-Use Testing for Heavy-Duty Diesel Engines and Vehicles; Emission Measurement Accuracy Margins for Portable Emission Measurement Systems and Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In a rule published on June 14, 2005, EPA established a manufacturer-run, in-use testing program for heavy-duty diesel vehicles. The program requires engine manufacturers to measure exhaust emissions from their diesel engines using portable emissions measurement systems during real-world operation. At the time the rule was promulgated, EPA established interim emission measurement ''accuracy'' margins for the requisite portable emission measurement devices pending the development of final accuracy margins through a comprehensive research program. This Direct Final Rule adopts the resulting final accuracy margins for gaseous pollutants. Also, this rule makes several changes to the program in the early years of in-use testing. First, we are eliminating the first calendar year, i.e., 2006, of the two-year pilot program for particulate emissions (PM) in response to engine manufacturers' concerns, which primarily relate to the availability and efficacy of the requisite portable measurement systems (PEMS) for that pollutant. Second, due to a delay in developing the final accuracy margin for PM under the aforementioned comprehensive research program, we are delaying the first year of the fully enforceable PM test program from the 2008 calendar year to the 2009 calendar year. During the 2008 calendar year, there will be another year of pilot program testing for that pollutant. Third, and finally, we are extending the normal period for reporting in-use test results during the initial years of the program and allowing certain short-term changes in how vehicles are recruited and tested. These revisions are primarily intended to address delays in initiating the gaseous emission and PM pilot programs, manufacuturers' concerns regarding the schedule for initial purchases of PM measurement systems, and manufacturers' concerns regarding potential difficulties of initially instrumenting vehicles with these units.

DATES: This is effective on May 12, 2008 without further notice, unless EPA receives adverse comment by April 14, 2008. If EPA receives adverse comment, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0072, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA Headquarters Library, EPA West Building, Room: 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0072. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/oar/dockets.html.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4390; fax number: (734) 214–4939; e-mail address: *wilcox.rich@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are received on this rule. We will not institute a second comment period on this action, however. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment or a request for public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

This action will affect companies that manufacture and certify all-terrain vehicles for sale in the United States.

Category	NAICS code [a]	Examples of potentially affected entities
Industry	336112; 336120	Engine and Truck Manufacturers.
Industry	811112; 811198	Independent commercial importers of vehicles and parts.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as (CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Background

The manufacturer-run, in-use testing program for heavy-duty diesel vehicles that are used on the highway was promulgated in June 2005 to monitor the emissions performance of the engines used in those vehicles when operated under a wide range of real world driving conditions.[1] The program is specifically intended to monitor compliance with the applicable Not-to-Exceed (NTE) exhaust emission standards for non-methane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter (PM). It requires each manufacturer of heavy-duty highway diesel engines to assess the in-use exhaust emissions from their engines using onboard, portable emission measurement systems (PEMS) during typical operation while on the road.

The in-use testing program begins with a two-year pilot (i.e., demonstration) program for gaseous emissions (i.e., NMHC, CO, and NO_X) in calendar years 2005 and 2006. As originally adopted, the program also includes a pilot program for PM emissions in calendar years 2006 and 2007. The one-year offset acknowledged that the portable measurement system technology for PM emissions was lagging that for measuring gaseous emissions. The programs are fully enforceable after their respective pilot program ends, i.e., the 2007 calendar year for gaseous emissions and the 2008 calendar year for PM emissions. The enforceable program applies to 2007 and later model year diesel engines. Each manufacturer generally has 18 months to report all required test results for the engine families that EPA selects for testing in any calendar year.

For the purposes of the in-use testing program, EPA established a vehicle pass/fail criterion for each pollutant that compares a vehicle's measured in-use emissions to a corresponding numerical compliance limit, i.e., NTE threshold. The NTE threshold for each pollutant is the sum of the NTE standard, any in-use compliance testing margin that is already allowed by the regulations, and a new emission measurement accuracy margin associated with the use of PEMS. The PEMS accuracy margin is the difference between the emission measurement error for the portable instrument and the measurement error for ''laboratory grade'' instruments that are used to test vehicles or engines on a dynamometer in a laboratory setting. The accuracy allowances are expressed in the same numerical terms as the

[1] See ''Control of Emissions of Air Pollution From New York Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles, 70 FR 34594 (June 14, 2005).''

applicable NTE emission standards, i.e., grams of pollutant per brake horsepower-hour (g/bhp-hr).

When the in-use testing program was first established in June of 2005, there was uncertainty regarding what specific accuracy margins should be used in the in-use testing program, since the portable measurement devices that were expected to be used in the program had not been rigorously tested at that time. As a result, we promulgated interim accuracy allowances for use in the pilot programs.[2] These interim values were believed to represent an upper bound of the possible instrumentation variability based on our experience with portable and laboratory instruments and test methods.

In May of 2005, shortly before the in-use test program was promulgated, EPA entered into a memorandum of agreement (MOA) with the California Air Resources Board (CARB) and the manufacturers of heavy-duty highway diesel engines (through the Engine Manufacturers Association (EMA)) to develop ''data driven'' emission measurement allowances through a comprehensive research, development, and demonstration program for the fully enforceable programs, i.e., beginning in the 2007 calendar year for gaseous emissions and the 2008 calendar year for PM.[3] The overall test program was designed to be completed in two phases. The first phase addressed gaseous emission accuracy margins and the second phase addressed PM emission accuracy margins. The program was to be managed by EPA, in close cooperation with CARB and the involved engine manufacturers.

The MOA also addressed the consequences of failing to complete the accuracy margin development work in time for the scheduled start of either the gaseous or PM enforceable programs. Two of these provisions are most relevant to today's rule. The first provision addresses short term delays in receiving the final accuracy margins. Specifically, for each month the accuracy margins are delayed beyond the agreed upon dates, then affected gaseous emissions or PM enforceable program, i.e., either gaseous emissions or PM, would be delayed by the same number of months up to three months. The second provision addresses delays in excess of three months. In particular, if the accuracy allowances were delayed beyond three months of the agreed upon dates, then the affected gaseous or PM enforceable program would be placed in abeyance for a year and the respective pilot program would be extended to include that year using the interim allowance(s).

Finally, the MOA acknowledged that if fundamental, irresolvable technical problems were identified relative to PM PEMS, the PM portion of the in-use testing program would be placed into abeyance until such time as suitable devices were identified and available, or the problems otherwise resolved.

V. Details of the Rule

This Direct Final Rule establishes new, final gaseous emission measurement margins that are required for the manufacturer-run, in-use test program for heavy-duty diesel vehicles and engines. This Direct Final Rule also makes several changes to the in-use test program in the early years of testing. First, it places the fully enforceable PM program, which would have begun in 2008, into abeyance for one year due to delays in the accuracy margin development program. In its place, the pilot program for PM will be extended into 2008. Second, it grants a request by EMA and its member companies to place the 2006 PM pilot program into abeyance to accommodate their concerns regarding the availability and efficacy of PM PEMS. Third, it provides engine manufacturers with additional time to conduct in-use testing and report the results to EPA because of delays in developing the requisite electronic reporting guidance, additional short-term delays in the PM accuracy margin development program, and to grant a request from some engine manufacturers to delay PM PEMS purchasing decisions until they could evaluate the initial results of the PM accuracy margin. That will allow them to make more refined purchasing decisions and to have the resulting PM PEMS include any instrumentation upgrades that may be forthcoming. Fourth, it grants a request from engine manufacturers for the flexibility to recruit and test separate vehicles for the 2007 and 2008 gaseous emissions and PM test programs, and to recruit test vehicles from their internal fleets and test them while being operated by company employees for the 2007 PM pilot program. This addresses the manufacturers' concerns that procuring and instrumenting test vehicles with PM PEMS could, in some instances, be more complex and time consuming than for gaseous emissions testing. Finally, this rulemaking removes references in the applicable regulations to the development of final accuracy margins for measuring gaseous emissions with portable systems because that program has been completed. Each of these changes is further described separately below.

A. Gaseous Emission Measurement Margins for Manufacturer-Run, In-Use Testing

1. Results of the Test Program Under the Memorandum of Agreement (MOA)

The MOA (described in section IV.) called for development of a comprehensive test plan for determining the final emission measurement accuracy margins for the manufacturer-run, in-use testing program. The test plan for the gaseous pollutants was subsequently agreed upon on May 20, 2005.[4] Generally, the detailed plan included a methodology that called for: (1) Comprehensive engine testing in the laboratory to assess the agreed upon sources of possible error and the resultant measurement variability between the PEMS and laboratory instrumentation and measurement methods; (2) the effects of environmental conditions on PEMS error and the variability in key engine parameters supplied by the engine's electronic controls to the PEMS; (3) the development of a statistically-based computer model to simulate effects of all sources of error on the final measurement accuracy margins; and (4) validation of the simulation model results and resulting accuracy margins against data generated through actual in-use field testing using simultaneous on-vehicle measurements from a mobile emissions laboratory (i.e., laboratory-grade instruments mounted inside a trailer) and a PEMS unit. This validation step is important because it provides confidence that the simulation model results reflect reasonable measurement allowances. If the two methods do not statistically agree, then there may be possible errors in the simulation model, the in-use mobile emissions testing results, or both.

The test plan also contained the statistically-based algorithms for calculating the data-driven margins for

[2] The interim additive accuracy margins for the pilot programs are: NMHC = 0.17 g/bhp-hr, NO_X = 0.50 g/bhp-hr, CO = 0.60 g/bhp-hr, and PM = 0.10 g/bhp-hr.

[3] See ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,'' dated May 2005. A copy of the memorandum is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

[4] See ''Test Plan to Determine PEMS Measurement Allowances for the Gaseous Emissions Regulated Under the Manufacturer-Run Heavy-Duty Diesel In-Use Testing Program,'' for the U.S. Environmental Protection Agency, California Air Resources Board, and Engine Manufacturers Association, dated May 20, 2005. A copy of the report is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

the gaseous pollutants in addition to three different brake-specific calculation methods for determining emission results (i.e., grams/bhp-hr) from in-use data. The first two of these methods (Methods 1 and 2 below) are described in 40 CFR 1065.650(a)(1) and (3). The third method has been suggested by the engine manufacturers and would require prior approval of the Administrator before it could be used as provided for in 40 CFR 1065.915(d)(5)(iv). The basic calculation is similar for each of the three methods and is shown generically in the following equation:

Brake-Specific Emissions = Mass of Pollutant/Work Performed

Where:

Mass of Pollutant = Exhaust Pollutant Concentration × Exhaust Flow Rate

The three methods differ primarily in how the exhaust flow rate or the work portion (i.e., brake horsepower-hours) of the calculation is determined. The methods are also more fully described in the test plan.

After the simulation modeling results for the three calculation methods were completed, the test plan called for the final set of accuracy margins (i.e., NMHC, CO, and NO_X) to be determined by the following generalized process. First, identify the maximum percentage measurement error associated with any of the three pollutants, i.e., without regard to the pollutant species, for each of the three calculation methods.[5] Second, from these three maximum values, select the method with the lowest or minimum value. Third, and finally, use the results from that method to determine the measurement accuracy margins for all of the pollutants.

The cooperative test program for gaseous pollutants as described in the MOA was completed and a final report issued.[6] [7] When the predicted results from the model simulations were compared to the mobile emissions laboratory results, only Method 1 could be validated for NMHC and NO_X. Methods 2 and 3 could only be validated for NMHC. None of the methods validated for CO. While unexpected, the lack of overall validation for the three methods is not necessarily surprising given the enormous amount of laboratory-based and on-vehicle testing, the number of possible errors and the model simulations (i.e., thousands of simulation runs), and complexity of the overall cooperative test program.

The emission test data, simulation model, and in-use validation data were investigated further to determine if there were any errors that could be remedied to resolve the validation problems. While this investigation identified some reasons for the lack of validation and potential additional work that might lead to fully validated results, none of additional work was judged to be possible under the schedule for determining the final set of gaseous emission accuracy allowances as required by the MOA.

In order to ensure that the fully enforceable program for gaseous emissions started on schedule and to provide an orderly transition for engines designed and produced during the early years of the program, the emission measurement accuracy margins from Method 1 were chosen for use in the fully enforceable program for 2007 through 2009 model year engine families regardless of the calendar year in which they may be selected for testing.[8] Therefore, the accuracy margins based on the completed test program only apply to the emission results calculated using Method 1 for these initial three model years.[9] The resultant emission measurement accuracy margins are: 0.02 for NMHC; 0.5 for CO; and 0.45 for NO_X.

At the time Method 1 was selected, it was anticipated that EPA would continue to develop validated results for the remaining methods, although it was unknown how long that work might take. It was also anticipated that if the work was successful, new accuracy margins could be established through rulemaking, although the above accuracy margins for Method 1 would be retained for 2007 through 2009 model year engine families, as described above.

2. Results of Additional Gaseous Measurement Margin Analysis

At the end of the cooperative test program that eventually led to using the accuracy margins for Method 1 testing for 2007 through 2009 model year engine families, EPA expressed its intent to continue work to develop more robust gaseous emission measurement accuracy margins, especially for NO_X, as originally anticipated in the test program plan. We envisioned this work would primarily focus on the reasons for the lack of validation and potential additional work that was identified at the end of the original test program, as previously discussed.

In our follow-on work we corrected an error in the previous test data, included additional valid engine test data that was not used in the original work, and eliminated or corrected some error biases or data outliers in the data set based on engineering judgment. A total of four different modified data sets or scenarios were constructed for combinations of the changes described above for each of the three calculation methods.[10] After rerunning the simulation model for the various combinations, we found that each of the four modifications validated for all three methods and all the gaseous pollutants. Furthermore, we found that the results from the various methods for each pollutant were numerically quite close to each other.

In order to select final accuracy margins from the validated results described above, we evaluated each of the modified data sets to identify the most appropriate and reasonable revision from an engineering science perspective (or based on good engineering practice). Based on this evaluation, we selected the modification scenario where some data from three test points (emission results at specific engine speed and load combinations) from one of the test engines were excluded from the data set. These data reflected atypically elevated levels of NO_X with large and inconsistent measurement errors. The other modification scenarios, while justifiable, were judged to represent somewhat more extreme or difficult to

[5] The percentage error for each pollutant and calculation method was found by dividing the associated numerical result from the simulation model by an NTE limit. EPA determined the NTE limit by multiplying an assumed in-use emission rate from future heavy-duty diesel engines in the 2010 model year timeframe by the multiplier that is used to calculate the NTE standard. In this case the multiplier is 1.5. See 40 CFR 86.007–11(a)(4) for more information on the NTE multiplier.

[6] See ''Gaseous Emission Measurement Accuracy Margins for Portable Emission Measurement Systems Used in the Heavy-Duty Diesel Engine In-Use Testing Program: Revised Final Report,'' U.S. Environmental Protection Agency, February 2008, EPA report number: EPA420–R–08–005. A copy of the report is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

[7] The estimated cost of the gaseous emission measurement accuracy margin test program is $2.2 million.

[8] Method 1 was chosen because it was the only method that was validated for the two most environmentally important pollutants from heavy-duty diesel truck engines, i.e., NMHC and NO_X.

[9] The test program results led to no accuracy allowances for either of the other two calculation methods from 2007 through 2009 model year engine families.

[10] See ''Additional Analyses of the Monte Carlo Model Developed for the Determination of PEMS Measurement Allowances for Gaseous Emissions Regulated Under the Heavy-Duty Diesel Engine In-Use Testing Program,'' August 2007, EPA report number: EPA420–R–07–010. A copy of the report is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

defend manipulations of the data on a relative basis.

After selecting the most appropriate modified data set, we determined the final accuracy margins by applying the ''minimum of the maximums'' selection criteria from the original test plan to the three calculation methods. This showed that the largest percentage errors were associated with NO_X and that Method 2 had the lowest error for that pollutant of the three methods.[11] Therefore, pursuant to the results of the original test plan, the subsequent validation work performed by EPA, and after discussions with the other parties to the MOA, we are promulgating the final emission measurement accuracy margins shown in Table 1 for all the calculation methodologies beginning with 2010 model year engine families. Also as shown in the table, we are adopting these same numerical values for Methods 2 and 3 for 2007 through 2009 model year engines, at the discretion of the engine manufacturers, in order to provide a full compliment of calculation methods and accuracy margins for those engines.

TABLE 1.—FINAL MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins (g/bhp-hr)		
	2007–2009 model year engines		2010 and later model year engines
	Method 1 only	Methods 2 and 3	All methods
NMHC	0.02	0.01	0.01
CO	0.5	0.25	0.25
NO_X	0.45	0.15	0.15

B. NMHC Plus NO_X In-Use Testing Accuracy Margins

The June 2005 final rule that implemented the in-use testing program addressed accuracy margins for each of the gaseous pollutants and their associated individual standards, i.e., NMHC, CO, and NO_X. The MOA and subsequent gaseous emissions test program also focused on identifying the final accuracy margins for these individual pollutants. In developing the original rule and subsequent test program, however, we failed to recognize that 2004 through 2006 model year diesel engine families may be certified to a combined NO_X plus NMHC standard under § 86.004–11(a)(1) of the applicable regulations. Furthermore, under the ''phase-in options'' of § 86.007–11(g)(1) an engine manufacturer may optionally certify some of its production in model years 2007 through 2009 to the combined NO_X plus NMHC standard for 2006 model year engines under § 86.2004–11, rather than the otherwise applicable individual NO_X and NMHC standards. Therefore, we are correcting this oversight by promulgating in-use testing accuracy margins for 2004–2009 model year engines that may be certified to the combined NO_X plus NMHC standard.

The methodology for determining an accuracy margin for the combined NO_X plus NMHC emission standard is the same as that used to determine the numerical value of the combined standard itself. Specifically, the individual NO_X and NMHC accuracy margins are simply added together to provide a single value. Therefore, for 2004–2007 model year engines that may be tested under the gaseous emission pilot program for the 2006 and 2007 calendar years, the combined accuracy margin is the sum of the individual NO_X and NMHC values already contained in § 86.1912, or 0.67 g/bhp-hr. For engines tested in the enforceable program that begins in the 2007 calendar year and applies to 2007 and later model year diesel engines, the combined NO_X plus NMHC accuracy margins, using the individual values from Table 1, are shown in Table 2.

TABLE 2.—FINAL COMBINED NO_X PLUS NMHC MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins for 2007–2009 model year engines (g/bhp-hr)	
	Method 1 only	Methods 2 and 3
NO_X + NMHC	0.47	0.16

C. Delaying the Enforceable PM Program From 2008 to 2009

The MOA described in section IV. acknowledged that in order to promulgate new measurement accuracy margins with adequate lead time to begin the 2008 enforceable PM program, certain key milestone dates in the test program had to be achieved. For example, all the parties agreed that the final accuracy margins and documentation were needed by November 1, 2007. That meant the final test plan would have to be agreed upon by September 2006, given the time needed to complete the testing and analysis. Contingencies for missing the final delivery date were specified in the MOA and in the June 2005 final rulemaking.[12] Most relevant to this action was that if the final values and

[11] ''Selection of Final Gaseous Emission Measurement Accuracy Margins for Portable Emission Measurement Systems,'' memorandum from Richard S. Wilcox, U.S. Environmental Protection Agency, to Docket No. EPA–HQ–OAR–2004–0072, dated November 4, 2007. A copy of the document is available in the public docket for this rule.

[12] See 40 CFR 86.1935.

documentation were delayed more than three months from November 1, 2007, then the PM pilot program would continue for calendar year 2008 in place of the fully enforceable program for that year.

Completing the PM test program on schedule required that the initial work be conducted in parallel with the ongoing gaseous emission test program using the same contractors and personnel from EPA, CARB, and the engine manufacturers. Due to unexpected issues in the gaseous emission test program and the lack of other resources, all work on the PM test plan and subsequent test program had to be postponed. The end result of this postponement is that the final accuracy margin for PM will be delayed by approximately one year. Accordingly, the MOA and in-use test program regulations require that the first year of the previously adopted enforceable program (calendar year 2008) be placed into abeyance and the PM pilot program continued for that year. Hence, the enforceable PM program will now begin in 2009 calendar year.

In isolation, delaying the start of the enforceable PM program by one year and continuing the PM pilot program for that year would result in a three-year pilot, i.e., 2006 through 2008, as described above. However, as explained in the next section, we also believe it is appropriate to eliminate the first year of the original two-year pilot program. As a result, a two-year PM pilot will still occur as originally envisioned beginning with the 2007 calendar year.

D. Suspending the 2006 PM Pilot Program

The in-use testing program, as originally adopted in June 2005, included a two-year pilot (i.e., demonstration) program for PM emissions in calendar years 2006 and 2007. In establishing this requirement, EPA noted that the onboard measurement of PM emissions was significantly more challenging than for gaseous emissions, and that further development of the requisite portable measurement systems would be needed. We also stated that our technical assessment indicated that these systems would be available in time to start the in-use testing program. More specifically with regard to the PM pilot program, we noted our expectation that engine manufacturers would use ''best available'' prototype systems that were capable of measuring these emissions as required. Nonetheless, in recognition of the then remaining technical uncertainties, we added a provision to the regulations that would suspend the in-use test program as it applied to PM measurement if we discovered fundamental technical problems with portable in-use PM measurement systems that could not be resolvable in a reasonable time.

In a letter dated January 4, 2007, EMA requested that the first year of the two-year PM pilot program be held in abeyance.[13] The principle reasons were summarized as follows: (1) Suitable portable measurement systems are not commercially available; (2) fundamental technical issues remain to be resolved; (3) the joint program to develop a data-driven PM accuracy margin for these devices has been delayed at least one year; and (4) the final in-use testing regulation and the MOA require the one-year delay. The third issue relates to the delay of the first year of the fully enforceable PM test program from 2008 until 2009 as discussed in the previous section. The last issue relates to regulatory requirement to delay the PM measurement program if fundamental technical problems were discovered as described in the preceding paragraph.

Focusing on the first two points, we reminded EMA at the time that although some parties may interpret the term ''commercially available'' differently, the original rulemaking clearly stated the expectation that prototype portable measurement systems would be used in the PM pilot program if they could accurately and reliably measure PM emissions. This was acceptable because the pilot is designed for the engine manufacturers and EPA to gain experience in implementing the in-use testing program and using the portable measurement systems. Also, we noted that both EPA and some engine manufacturers had already purchased prototype portable PM measurement systems meeting these requirements. Finally, we described how we had successfully used the same prototype system to measure PM emissions over NTE events while traveling cross-country in a particulate trap-equipped truck using ultra-low sulfur diesel fuel.[14] Therefore, we concluded that acceptable measurement systems were available and no fundamental, irresolvable issues had been identified that would justify a delay in the pilot program. Nonetheless, we invited EMA to further elaborate on their technical concerns with the currently available measurement systems.

In a subsequent letter dated April 11, 2007, EMA more specifically detailed its technical concerns with currently available portable PM measurement systems.[15] Specifically, EMA listed fourteen technical considerations. These generally can be summarized as follows: (1) The devices had not been demonstrated as meeting the technical requirements of EPA's 40 CFR 1065; (2) the engine manufacturers' have no current experience with the measurement device because the current version is relatively new, the instrument manufacturer does not offer all the accessories needed to install and operate the system; (3) mounting the units on some trucks presents installation issues; (4) the sampling technology will not work properly with dirtier pre-2007 engines; (5) no training from the instrument manufacturer was available; and (6) a number of issues with accuracy and repeatability remain to be resolved. They also argued that it would be better to take the time now to focus on developing better portable PM measurement devices and, thereby, helping to ensure a successful launch of the fully enforceable program in 2009, especially since we would still have a full two years of the PM pilot program as originally called for by the regulations.

After carefully considering EMA's more explicit concerns, we concluded that: (1) A number of the issues were only relevant to the future fully enforceable program, not the pilot demonstration program; (2) EPA and EMA could work to resolve some issues such as only testing existing or prototype lower emitting buses or trucks; and (3) the remaining items simply did not by themselves reach a level that would justify delaying the pilot program. At the same time, we agreed with EMA that it is more important to continue to work cooperatively for a successful launch of the enforceable PM in-use testing program, especially since we will still have a two-year pilot. Therefore, at that point in time, we decided it was in the best interests of all parties to eliminate the 2006 calendar year pilot program and focus our collective efforts to improve the current portable PM measurement systems and conduct the cooperative research and development program for this pollutant.

[13] See letter from Timothy A. French, Engine Manufacturers Association, to Khesha Jennings, U.S. Environmental Protection Agency, dated January 4, 2007. A copy of the letter is available in the public docket for this rule.

[14] ''Road Test of an On-board Particulate Matter Mass Measurement System,'' D. R. Booker, Sensors, Inc., R. A. Giannelli and J. Hu, U.S. Environmental Protection Agency, March 2007, SAE paper number 2007–01–1116.

[15] See letter from Timothy A. French, Engine Manufacturers Association, to Khesha Jennings, U.S. Environmental Protection Agency, dated April 11, 2007. A copy of the letter is available in the public docket for this rule.

E. Revised Schedules and Testing Flexibilities for the 2005 Through 2009 In-Use Test Programs

The June 2005 final rule that established the heavy-duty in-use test program stated that EPA would typically select engine families for testing in June of each calendar year. Further, the regulations allowed 18 months from the time engine families were designated for engine manufacturers to complete all testing and report the results to EPA. Subsequent to the final rule, we found that certain adjustments to the test schedules were necessary in the early years of the program for the reasons given below. The adjustments for engine family designation and reporting dates are summarized in Table 3.

TABLE 3.—REVISED ENGINE FAMILY DESIGNATION AND REPORTING SCHEDULES

Program	Designate families		Report due	
	Original	Revised	Original	Revised
2005 Gaseous Pilot*	06/2005	Unchanged	11/2006	11/2007.
2006 Gaseous Pilot	06/2006	12/2006	11/2007	11/2008.
2007 Gaseous Enforceable	06/2007	12/2007	11/2008	11/2009.
2007 PM Pilot	06/2007	12/2007	11/2008	05/2010.
2008 Gaseous Enforceable	06/2008	09/2008	11/2009	03/2010.
2008 PM Pilot	06/2008	09/2008	11/2009	09/2010.
2009 Gaseous Enforceable	06/2009	Unchanged	11/2010	04/2011.
2009 PM Enforceable	06/2009	Unchanged	11/2010	04/2011.
2010 Gaseous Enforceable**	06/2010	Unchanged	11/2011	Unchanged.
2010 PM Enforceable**	06/2010	Unchanged	11/2011	Unchanged.

*The 2005 Gaseous Pilot Program has been completed.
**For illustration only. The 2010 program dates are as originally promulgated.

When the final rule was promulgated, EPA was working with ARB and the engine manufacturers to create a standardized, electronic reporting format which precisely specified each of the numerous reporting data elements and enabled the test results from the portable emission measurement systems to be reported into EPA's computerized database. We had envisioned that this work would be completed in a timely manner so that the 2005 gaseous emissions pilot program could be conducted as scheduled. However, despite the diligent work of all parties, creating the electronic reporting guidance for this all new test program proved more complex and time consuming than expected. By September 2005 it became obvious that the lack of the reporting guidance document had become an impediment to efficiently conducting the in-use test program. As a result, EPA agreed with the engine manufacturers, and ARB concurred, that the start of the 18-month reporting period should be delayed until a reporting guidance document was issued.[16]

In late May 2006 the reporting guidance was released and the 18-month reporting period began in June of that year and ended in November 2007.[17] To accommodate this delay without unduly compressing or overlapping the testing in subsequent years, we are delaying engine family designations, and sometimes extending the reporting period, for the 2006 through 2008 gaseous emissions testing programs. Specifically as shown in Table 3, we are delaying engine family designations for 2006 until December of that year and extending the reporting period to 24 months. For 2007, we are similarly delaying engine family designations and extending the reporting period. Further, we are shortening the delay in selecting engine families for the 2008 gaseous emissions enforceable program to four months, i.e., September of that year, and subsequently returning to the normal 18-month reporting period. Finally, we are aligning the engine family designation dates for the 2007 and 2008 PM pilot programs with the revised gaseous emissions program dates to keep the program start dates the same.

We have more recently reevaluated the schedules for the in-use PM test program. Our reassessment was based on the progress that is being made to develop ''data driven'' emission measurement allowances as part of the comprehensive research, development, and demonstration program outlined in the MOA,[18] as previously described in section IV. The reassessment was also made in the context that successfully measuring PM emissions onboard a vehicle and deploying this technology in revenue service represents the fundamental next step in emission measurement technology and environmental protection. On balance, we have concluded that additional time and added flexibility in the early years of the in-use PM test program is required now to help ensure that this important programmatic advancement is successful.

More specifically, last summer EPA and the other contributors to the PM accuracy margin development program decided to do some pre-testing of a PM PEMS prior to initiating the full test program in order to further demonstrate and refine the test protocol and instrumentation. This led to some technical changes to the PM PEMS themselves. It also caused the full accuracy margin development program to be delayed. At nearly the same time, some engine manufacturers stated that they would like to use the initial results from the full test program on the various PM PEMS devices in order to make more refined purchasing decisions and to include any resulting upgrades to the instruments. Given the importance of the program and expense involved, we believe it is reasonable to accommodate the delay in initiating the full PM accuracy margin development program and to allow manufacturers to use the initial test results for purchasing decisions. Therefore, as shown in Table 3, we are adding a total of six months to the testing period to the 2007 PM pilot program. As with the gaseous emissions program described above, we are also extending the PM reporting

[16] See letter from Merrylin Zaw-Mon, U.S. Environmental Protection Agency, to John Duerr, Detroit Diesel Corporation, dated November 15, 2005. A copy of the letter is available in the public docket for this rule.

[17] All manufacturers successfully reported the 2005 gaseous emission test results according to that modified schedule.

[18] See ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,'' dated May 2005. A copy of the memorandum is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

periods for the 2008 pilot and the 2009 enforceable PM programs to avoid compression effects. Further, we are extending the reporting period for the 2009 enforceable gaseous emissions program to match the revised period for the 2009 enforceable PM program to couple and realign the programs as originally intended. Finally, we want to make it clear that any month-to-month delay (up to three months) in initiating the 2009 enforceable PM program, as outlined in the accuracy margin development MOA [19] and described in section IV, will have no effect on the reporting dates described above, i.e., no additional time.

Most recently engine manufacturers have expressed concerns that procuring and instrumenting test vehicles with PM PEMS could, in some instances, be more complex and time consuming than for gaseous emissions testing. For example, they claim that mounting the instruments and running sampling lines with current generation PM PEMS might require drilling holes in a truck's cab or creating special mounting hardware. In such cases, the manufacturers argue that it might be difficult to obtain vehicles from independent owners as required by the current regulations. Engine manufacturers have requested that they be given the flexibility to recruit and test vehicles from their captive fleets for the 2007 PM pilot program based on these concerns. In considering the engine manufacturers appeal, we note that the gaseous emissions enforceable and PM pilot programs for that year would have to be ''decoupled'' so that the gaseous emissions program would continue to be conducted according to the applicable testing protocols, e.g., obtaining vehicles from independent owners and testing them in normal revenue service.

While we are not convinced that current PM PEMS will cause these unique challenges, we also can not conclusively rule out some instrumentation and recruiting issues in the early part of the PM program. Again, given the importance of successfully launching this program, EPA is granting the engine manufacturers' request to modify the PM pilot program test protocols. Therefore, we are allowing manufacturers to recruit vehicles from their captive fleet and to test them while being driven by a company employee. However, manufacturers must ensure that the vehicles are screened, prepared, operated, and tested in accordance with all other applicable requirements. Furthermore, the vehicle must be tested by being driven on a route that reasonably replicates normal, in-use revenue service for that type of vehicle. The requirements for the enforceable gaseous emissions test program for 2007 and 2008 are unchanged.

F. Removing the Gaseous Accuracy Test Program From the Regulations

We are taking this opportunity to delete the references in § 86.1935 that pertain to the final report for gaseous emission accuracy margins and the consequences that would ensue if the report was delayed beyond certain dates. These provisions are no longer needed because accuracy margins for gaseous pollutants are being promulgated in this Direct Final Rule. The revised section, therefore, appropriately focuses on the ongoing development of accuracy margins for PM emissions.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This Direct Final Rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the in-use testing implementation dates for the fully enforceable PM test program as either envisioned or allowed for in the original final rule. This rule also grants a request from the affected engine manufacturers for a one year delay in the start of the pilot testing program for PM. Further, there are no costs associated with this rule beyond those envisioned in the original rule.

B. Paperwork Reduction Act

This direct final rule does not include any new collection requirements, as it acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Therefore, there are no new paperwork requirements associated with this rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This direct final rule acts to replace interim gaseous emission measurement

[19] See ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,'' dated May 2005. A copy of the memorandum is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. We have, therefore, concluded that today's final rule will relieve regulatory burden for all small entities and will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This direct final rule acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. The requirements of UMRA, therefore, do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

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

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children From Environmental Health

Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule is effective on May 12, 2008.

L. Statutory Authority

The statutory authority for this action comes from 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 28, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 86.1905 is amended by revising paragraph (c)(2) to read as follows:

§ 86.1905 How does this program work?

* * * * *

(c) * * *

(2) 2009 for PM testing.

* * * * *

■ 3. Section 86.1912 is amended by adding new paragraphs (a)(3)(v) and (a)(5) and revising paragraph (a)(4) to read as follows:

§ 86.1912 How do I determine whether an engine meets the vehicle-pass criteria?

* * * * *

(a) * * *

(3) * * *

(v) NO_X + NMHC: 0.67 grams per brake horsepower-hour.

(4) Accuracy margins for portable in-use equipment when testing is not performed under the special provisions of § 86.1930 for 2007 through 2009 model year engine families that are selected for testing in any calendar year as follows:

(i) NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.02 grams per brake horsepower-hour.

(ii) NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.01 grams per brake horsepower-hour.

(iii) NMHC using an alternative emission calculation method as

approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.01 grams per brake horsepower-hour.

(iv) CO using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.5 grams per brake horsepower-hour.

(v) CO using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.25 grams per brake horsepower-hour.

(vi) CO using an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.25 grams per brake horsepower-hour.

(vii) NO_X using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.45 grams per brake horsepower-hour.

(viii) NO_X using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.15 grams per brake horsepower-hour.

(ix) NO_X using an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.15 grams per brake horsepower-hour.

(x) NO_X + NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.47 grams per brake horsepower-hour.

(xi) NO_X + NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.16 grams per brake horsepower-hour.

(xii) NO_X + NMHC using an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.16 grams per brake horsepower-hour.

(xiii) PM: To be determined by rulemaking as indicated in § 86.1935.

(5) Accuracy margins for portable in-use equipment when testing is not performed under the special provisions of § 86.1930 for 2010 or later model year engines families that are selected for testing in any calendar year as follows:

(i) NMHC using any emission calculation method specified in 40 CFR 1065.650(a) or an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.01 grams per brake horsepower-hour.

(ii) CO using any emission calculation method specified in 40 CFR 1065.650(a) or an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.25 grams per brake horsepower-hour.

(iii) NO_X using any emission calculation method specified in 40 CFR 1065.650(a) or an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.15 grams per brake horsepower-hour.

(iv) PM: To be determined by rulemaking as indicated in § 86.1935.

* * * * *

■ 4. Section 86.1930 is amended as follows:

■ a. By revising the section heading.

■ b. By redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6).

■ c. By redesignating the introductory text as paragraph (a) introductory text.

■ d. By revising newly designated paragraph (a) introductory text.

■ e. By redesignating newly designated paragraphs (a)(4)(1) and (2) as paragraphs (a)(4)(i) and (ii).

■ f. By adding new paragraphs (a)(7) and (b).

§ 86.1930 What special provisions apply from 2005 through 2009?

(a) We may direct you to test engines under this subpart for emissions other than PM in 2005 and 2006, and for PM emissions in 2007 and 2008. In those interim periods, all the provisions of this subpart apply, with the following exceptions:

* * * * *

(7) You must complete all the required testing and reporting under this subpart by the following dates:

(i) November 30, 2007 for engine families that we designate for non-PM testing in 2005.

(ii) November 30, 2008 for engine families that we designate for non-PM testing in 2006.

(iii) May 31, 2010 for engine families that we designate for PM testing in 2007.

(iv) September 30, 2010 for engine families we designate for PM testing in 2008.

(b) For 2007 through 2009 all the provisions of this subpart and paragraph (a) of this section apply, with the following additional exceptions:

(1) You must complete all the required testing and reporting under this subpart by the following dates:

(i) November 30, 2009 for engine families that we designate for non-PM testing in 2007.

(ii) March 31, 2010 for engine families that we designate for non-PM testing in 2008.

(iii) April 30, 2011 for engine families that we designate for non-PM and PM testing in 2009.

(2) You may conduct non-PM and PM testing on different vehicles for engine families that we designate in 2007 and 2008.

(3) You may conduct PM testing as follows for 2007:

(i) Test vehicles may be selected from a vehicle fleet that you own or otherwise directly control.

(ii) Test vehicles may be operated by a driver that you employ.

(iii) Each test vehicle must be operated on a route and under operating conditions that reasonably replicate the use of the selected vehicle type when operated in typical revenue service, unless otherwise approved by us.

■ 5. Section 86.1935 is revised to read as follows:

§ 86.1935 What special provisions may apply as a consequence of a delay in the particulate matter accuracy margin report for portable emission measurement systems?

(a) A memorandum entitled, ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing'' describes a test program for establishing measurement accuracy margins related to testing under § 86.1912(a)(4) which will be used for testing under this subpart. This document is available at *http://www.epa.gov/otaq/hd-hwy.htm* or at the mailing address specified in § 86.1905(g).

(b) If there is a delay in receiving the written final report for PM emissions described in the agreement referenced in paragraph (a) of this section, and that delay is not attributable to engine manufacturers failing to meet their commitments under that agreement, the following provisions apply:

(1) If the delay is 3 months or less, we will delay the designation of engine families for testing in the applicable calendar year, as described in § 86.1905(d), by the same number of additional whole months (rounded up) needed to complete the report.

(2) If the delay is more than 3 months but less than 12 months, we may continue to designate engine families for testing under the special provisions described in § 86.1930 for an additional year.

(3) If the delay is longer than 12 months, the following approach is established for the applicable calendar year:

(i) If the delay is longer than 12 months but less than 15 months, we will follow the steps described in paragraph (b)(1) of this section.

(ii) If the delay is longer than 15 months, but, less than 24 months, we will follow the steps described in paragraph (b)(2) of this section, for the applicable calendar year.

(iii) If the delay is longer than 24 months, the emission testing program will go into abeyance.

(c) If one or more engine manufacturers fail to meet commitments under the agreement described in paragraph (a) of this section and such a failure results in a delay in the final written report for PM emissions described in the agreement, the following provisions apply:

(1) If the delay is 3 months or less, we will delay the designation of engine families for testing in the applicable calendar year, as described in § 86.1905(d), by the same number of additional whole months (rounded up) needed to complete the report.

(2) If the delay is more than 3 months but less than 12 months, the provisions of this subpart will not apply for the otherwise applicable calendar year, subject to the following provisions:

(i) We may identify the number of engine families that would otherwise have been designated for testing in that calendar year for the delayed pollutant type and direct manufacturers to test that number of engine families under the special provisions described in § 86.1930 and additionally in any later calendar year once the provisions of this subpart begin for that pollutant type, without counting those accumulated engine families toward the allowable annual cap on the number of engine families specified in § 86.1905.

(ii) The normal 18-month period for testing and reporting results specified in § 86.1905(d) is extended to 24 months for any accumulated engine-family designation described in paragraph (c)(2)(i) of this section. The additional time extensions for testing and reporting results as specified in § 86.1905(d) also apply.

(3) If the delay is longer than 12 months, the following approach is established for the applicable calendar year.

(i) If the delay is longer than 12 months but less than 15 months, we will follow the steps described in paragraph (c)(1) of this section.

(ii) If the delay is longer than 15 months, but less than 24 months, we will follow the steps described in paragraph (c)(2) of this section for the applicable calendar year.

(iii) If the delay is longer than 24 months, we will continue to follow the steps described in paragraphs (c)(1) and (c)(2) of this section, including the accumulation of engine families for testing until the report is received and the fully implemented program commences.

(d) We may determine that any individual manufacturer's failure under paragraph (c) of this section constitutes a failure by all engine manufacturers.

(e) Nothing in this section affects our ability to select engines from any model year beginning with model year 2007, or for gaseous emission testing.

(f) If we determine that fundamental technical problems with portable in-use PM measurement systems are not resolvable in a reasonable time, the provisions of this subpart, as they apply to PM, will go into abeyance until we determine that suitable emission-measurement devices are available for in-use testing.

(g) Engine manufacturers contributing to the test programs described in the agreement referenced in paragraph (a) of this section may limit their testing under the special provisions described in § 86.1930 to five engines in each selected engine family.

[FR Doc. E8–4388 Filed 3–12–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 00–168, 00–44; FCC 07–205]

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a standardized form for the quarterly reporting of programming aired in response to issues facing a television station's community and a requirement that portions of each television station's public inspection file be placed on the Internet. The Commission solicited and reviewed comments regarding whether the current requirements pertaining to television stations' public inspection files were sufficient to ensure that the public has adequate access to information on how the stations are serving their communities.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). After OMB approval is received, the Commission will publish a document in the **Federal Register** announcing the effective date of the rules.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 07–205, adopted on November 27, 2007, and released on January 24, 2008. 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).

Paperwork Reduction Act of 1995 Analysis

Initial Paperwork Reduction Act of 1995 Analysis

This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish separate documents in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the Report and Order

I. Introduction

1. We commenced this proceeding to determine whether our current requirements pertaining to television

stations' public inspection files are sufficient to ensure that the public has adequate access to information on how the stations are serving their communities. We tentatively concluded in that *Notice of Proposed Rulemaking* (NPRM), 65 FR 62683, October 19, 2000 that our current requirements were not sufficient and that a standardized form to provide information on how stations serve the public interest would be desirable. Additionally, we proposed to enhance the public's ability to access information by requiring television licensees to make the contents of the public inspection files, including the standardized form, available on their stations' Internet Web sites or, alternatively, on the Web site of their state broadcasters association. In this *Report and Order* we adopt a standardized form for the quarterly reporting of programming aired in response to issues facing a station's community and a requirement that portions of each station's public inspection file be placed on the Internet.

2. In adopting these new disclosure requirements, we are not altering in any way broadcasters' substantive public interest obligations. Those obligations are being considered and will be addressed in other proceedings. We simply are making information about broadcasters' efforts more understandable and more easily accessible by members of the public.

II. Background

3. The Commission first adopted a public inspection file rule more than 40 years ago. The public file requirement grew out of Congress' 1960 amendment of sections 309 and 311 of the Communications Act of 1934 (Act). Finding that Congress, in enacting these provisions, was guarding ''the right of the general public to be informed, not merely the rights of those who have special interests,'' the Commission adopted the public inspection file requirement to ''make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees.'' Although we are separated from that decision by more than four decades, during which period the public file rule has been changed many times, our goal remains the same. The action we are taking, which is based in part on the changes in technology that have occurred since 1965, will make the information in the public inspection file more useful and more accessible to the public, improving communications between broadcasters and the public they serve.

4. Over the past four decades, the Commission's public inspection file requirements were modified on several occasions. For instance, in 1984, the Commission required that television stations place in their public inspection file ''every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.'' This issues/programs list also must include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment together with the time, date, duration, and title of each program in which the issue was treated. In adopting the issues/programs list requirement for television stations, the Commission expected it to be ''[t]he most significant source of issue-responsive information under the new regulatory scheme.'' Moreover, the list was intended to be a significant source of information for any initial investigation by the public, competitors, or the Commission when renewal of the station's license is at issue.

5. In 1998, the Committee on Public Interest Obligations of Digital Television Broadcasters issued its Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (Advisory Committee Report). The Advisory Committee Report considered, *inter alia*, the public inspection file and recommended that the currently required reports on issue-responsive programming and children's programming be augmented. The Advisory Committee found that such public information could be distributed to the public more effectively if it was placed on television stations' Internet Web sites and it designed a sample standardized form which could be used to that end. Subsequently, People for Better TV submitted proposals to the Commission in a Petition for Rulemaking and Petition for Notice of Inquiry asking the Commission to initiate a rulemaking proceeding to determine public interest standards and obligations of digital broadcasters.

6. After the issuance of the Advisory Committee Report, the Commission adopted a *Notice of Inquiry* (NOI), 65 FR 4211, January 26, 2000 seeking comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television. Some of the issues raised in that *NOI* related exclusively to television broadcasters' use of their digital spectrum. Other issues, however, related to how broadcasters could meet their public interest obligations on both their analog and digital spectrum. Among these were how to enhance the public's ability to access information on a station's performance of its public interest obligations with regard to both issue-responsive and children's programming, both during and after the analog-digital transition. As a result of comments on these latter issues received in response to the *NOI*, we issued the *NPRM* in this proceeding. The Commission proposed to replace the current issues/programs list for TV stations with a standardized form and to require TV broadcasters to make their public inspection files available on the Internet. For the reasons discussed below, we now adopt, with some modifications, these proposals.

III. Report and Order

A. Placing the Public File on the Internet

7. In the *NPRM*, we tentatively concluded that television licensees should be obligated to place the contents of their public inspection file on their Web sites or the Web sites of their state broadcasters association. Commenters supporting this tentative conclusion argued that this would not be unduly burdensome given that the majority of broadcasters already have their own Web sites. United Church of Christ (UCC) cites a study by Ball State University and the Radio-Television News Directors Association that found that 88 percent of the 773 stations polled said they operated Web sites. The National Association of Broadcasters (NAB), which opposes our adoption of such a requirement, conducted a survey that found that 83.9 percent of television stations responding currently have their own Web sites. Thus, it appears that most TV stations are currently using the Internet to provide information and promotional material to the public. By their own actions broadcasters have confirmed that the Internet is an effective and cost-efficient method of maintaining contact with, and distributing information to, their viewership.

8. Most commenters opposing a requirement to place the public inspection file on the Internet cited the cost of converting and maintaining the public file electronically. According to Benedeck, to convert a public inspection file to electronic format and index the documents would cost an estimated $10,000. State Broadcasters Associations estimate that it would take a professional listserver approximately fifteen minutes to one and a half hours, at a cost of $65 per hour, to post each page of a broadcast station's public file.

This cost burden would, State Broadcasters Association continues, come at the very time when the industry's resources are being directed to ''implementation of the enormously expensive and risky new DTV service.'' Others echo these claims.

9. We believe that many of the estimates of the costs of complying with our requirement are grossly inflated. As an initial matter, our own cost estimates are considerably lower than those of a number of commenters. Even if a station's public inspection file, excluding those materials we have said could be excluded, contained as many as 10,000 pages, Commission staff estimates that the cost of placing that volume on a broadcaster's existing Web site would involve a one-time cost less than $15,000 and the cost of maintaining that volume on a server should be less than $20 a month. We expect that much of that material would already exist in electronic form, but even if it had to be converted into electronic form the staff estimates that this would cost from as little as $0.03 to as much as $1.50 per page. As discussed in the text, however, given our exclusion of certain material from the requirement, we expect the volume of material required to be posted to be dramatically less than 10,000 pages. Therefore, as a result of the fact that conversion into electronic form is likely to be towards the middle to lower end of our range, and the volume of material required to be posted is expected to be dramatically less than 10,000 pages, we think the upper bound of total one-time cost estimates are highly unlikely to be reached. First, we are not requiring stations that do not already have a Web site to create one. As proposed in the *NPRM*, we are only requiring a station to post its public inspection files on its Web site if it already has one. This will eliminate all costs of starting up a Web site that were included in the estimates supplied by commenters. Also, the volume of material will be less than estimated by some commenters as a result of our decision, discussed below, not to require posting of letters from the public and allowing licensees to link to material available on the Commission's Web site in lieu of posting it on their own Web sites.

10. Moreover, we believe that the benefits of licensees placing their public inspection files on the Internet outweigh the cost, especially since the requirement will only apply to stations already using the Internet for other purposes. Many of these stations are already equipped to place material on the Internet. For example, stations must already place EEO reports on their Web sites, to the extent that they have one. The ongoing additional costs of putting their public files on the Internet should be relatively modest once the initial conversion of the existing paper file is complete. While the cost of this initial conversion may be appreciable, it is a one-time expense and, in nearly all cases, should not be overly burdensome. Moreover, these costs are outweighed by the benefits to the public of Internet accessibility to the information. It is beneficial for the community to have Internet access to information it may not otherwise be able to obtain. Links to information available on the Commission's Web site, including a copy of ownership reports, and children's television programming reports, educate consumers on issues that they might not otherwise know about, absent an ability to visit a station to inspect the public file. Further information available in the public file, including information regarding Commission investigations and complaints, issues/programs lists, and citizen's agreements assist consumers in educating themselves as to the licensee and its programming. As discussed in previous Orders, the Commission has found that each of the items required to be placed in the public file are important, and need to be accessible to the public. Internet access to such information only improves public access. As such, we believe these interests justify potential increased costs. If a particular broadcaster finds the requirement beyond its means, we will entertain specific, documented waiver requests for relief to lessen the financial burden on the licensee.

11. Other commenters objecting to placing public file material on station Web sites argued either: (1) That few people actually have visited the stations' studios to view their public files, or (2) that placing public file material on the station's Web site would only enhance availability of that material to persons outside the station's service area and that such persons have a less compelling interest in accessing that information. NBC, for example, notes that it receives relatively few requests to examine its stations' public inspection files. Viacom characterizes visits to its stations' public inspection files as ''exceedingly rare * * * less than one annually, virtually all of whom are college students on assignment.'' The Walt Disney Company provides a similar estimate of public file usage at its stations. Educational Information Corporation, licensee of WCPE asserts that in twenty years it has had only a single member of the public ask to review its public file.

12. Before the Commission adopted the public file requirement in 1965, commenters argued that the rules were unnecessary because there would be little or no demand for the information contained therein. The Commission responded: ''we do not base our decision in this proceeding on a widespread articulate demand by the public for the information we propose to make locally available. Our primary purpose in the present proceeding is to make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in a dialogue with broadcast licensees.'' Similarly, here we are merely making material more accessible to the public. By doing so we, like our predecessors in 1965, hope to encourage the public to play a more active role in a dialogue with broadcasters. The fact that our current rules may not have resulted in widespread review of the public files by members of the public only serves to underscore the desirability of improving the accessibility of these files. It may well be that the requirement of physically going to the station and viewing the file during normal business hours has discouraged public interest in viewing the public files. By making the file more available through the Internet, we hope to facilitate access to the file information and foster increased public participation in the licensing process.

13. We find it entirely consistent with Congressional intent in adopting section 309 of the Act to embrace a public file requirement that enhances the ability of both those within and those beyond a station's service area to participate in the licensing process. Additionally, we disagree with those arguing that stations placing their public inspection files on the Internet will only benefit those outside a station's service area; it will also benefit those within the service area who will be able to access the file without visiting the station during normal business hours.

14. Opponents also assert that the Commission lacks authority to impose such a requirement. For example, Viacom argues that ''[m]aintaining a Web site—let alone posting the voluminous contents of a public inspection file—is simply too far afield from the core activities of broadcasting for the Commission to regulate.'' Similarly, Sinclair argues that ''[t]he Commission does not have jurisdiction over Web sites and therefore simply lacks the authority to enforce these requirements.'' The Media Institute argues that a requirement to post the

public inspection file on a station's Internet Web site would pose problems of a constitutional dimension. It argues that ''[t]he proposal demands careful scrutiny on First Amendment grounds—particularly because the constitutional concerns here might easily be overlooked on the assumption that a Web site was merely an electronic filing cabinet * * *. The Commission is overreaching to suggest that it can compel broadcasters to post certain types of speech on their Web sites.''

15. We disagree. The manner in which broadcasters communicate with their communities is a core function of their role as licensees. Thus, for example, we require applicants to publish notice of their filing of certain applications in local newspapers. A requirement for broadcast stations to place their public inspection files on the Internet Web site does not constitute an assertion of jurisdiction over the medium on which it must be maintained or take us beyond those areas of a broadcaster's activity within the Commission's jurisdiction. Moreover, we see no constitutional infirmity in this requirement. As an initial matter, our public inspection file rules have, for more than 40 years, required broadcasters to make certain categories of information available to the public.

16. Even assuming that ''intermediate scrutiny'' is the appropriate standard, a content neutral regulation such as this will be sustained against claims that it violates the First Amendment if: (1) It advances important governmental interests unrelated to the suppression of free speech; and (2) does not burden substantially more speech than necessary to further those interests. The instant regulation meets both tests. First, it has been established that the public file requirement advances the important governmental interest that Congress found in public participation in the licensing process when it adopted the pre-hearing procedures contained in sections 309 and 311 of the Act. Second, the requirement does not burden speech more than necessary to further that interest. It is limited to only those items that members of the public would reasonably need to be aware of in order to have a dialogue with their local broadcaster and, if necessary, to participate in pre-hearing procedures with respect to the licensing process. Indeed, we are not requiring the posting of some public file material because doing so would impose excessive burdens and we are allowing broadcasters merely to link to material also found on our Web site. Thus, to the extent that our new regulation can be said to burden speech at all, we have assured that it ''does not burden substantially more speech than necessary'' to further the interest served by the public file rules.

17. Accordingly, we will require those television stations that have an Internet Web site to place their public inspection file on their station's Web site and to make this file available to the public without charge. These stations have already recognized the value of this tool to inform viewers about station programs and activities. In order to provide sufficient time for affected television broadcasters to come into compliance, we will require that stations currently having a Web site place their public inspection files on that Web site 60 days after the Commission publishes a notice in the **Federal Register** announcing Office of Management and Budget approval. Stations not having their own Web site as of the date that this *Report and Order* is adopted will have to place their files on any Web site they may later create by the date above or within 30 days of the date it makes the Web site available to the public, whichever is later.

18. As an alternative, stations having a Web site may place their public inspection files on their state broadcasters association's (SBA) Web site, where permitted by the SBA to do so. If a station places its public file on the Web site of its SBA, however, the station must provide a link from its own Web site to that of the SBA on which its public files are located. We are not persuaded by the comments filed in this proceeding that this alternative is unwarranted and unworkable. Although, as UCC points out, ''[m]ost viewers probably do not know what an SBA is, let alone the address of the local broadcaster's SBA Web site,'' they do not have to know this information in order to follow a link to that site from the station's Web site. State Broadcasters Associations argue that this would place an ''enormous strain on the personnel and resources of those associations.'' In addition, as Media Institute points out, we have no jurisdiction to require such organizations, which are not themselves under Commission regulatory control, to make their Web sites available for such a purpose. For these reasons, we will not require SBAs to permit stations to place their public inspection files on their Web sites. Instead, we will simply permit television stations, over which we do have jurisdiction, to comply with our requirements by placing their public files on their SBAs' Web sites, as long as their SBA permits, and the stations provide a link to their public inspection files from their own Web sites.

19. *Political File*. Sections 73.3526(e)(6), 73.3527(e)(5), and 73.1943 of the Commission's rules require that stations keep as part of their public inspection files a ''political file.'' The political file chiefly consists of ''a complete and orderly record * * * of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted.'' These records must be placed in the political file as soon as possible. In amending our public inspection file rule to, *inter alia*, require that stations that maintain their main studios and public files outside their community of license must make available pursuant to telephone request photocopies of public file material, we exempted the political file from the requirement. We did this for two reasons. First, we recognized that candidates and their representatives make the heaviest use of the public inspection files, making daily or even more frequent requests for political file information during a campaign, because the information is in flux throughout each day of the campaign. We determined that, were they able to make requests for political file material by telephone, such a heavy volume of telephone calls could unduly disrupt a station's operations. Second, we found that candidates or their representatives, when seeking political file information in their professional capacities, are more likely to have greater resources and be more able to access the main studio and public file in person than would an average citizen.

20. This reasoning also applies to Internet access to the political file. Daily and even more frequent requests for access by political candidates and their campaign personnel, combined with a need for the station to update the file frequently, may make requiring the station to place this material on the Internet inappropriate. Resources available to political candidates likely provide them with greater access to the station and distinguish them from members of the general public who will benefit from ready access to Internet posting of other parts of the public file. Political candidates and campaigns make heavy use of the file and require quick access to material, and if the volume of material is too great, the station may not be able to update the Internet file quickly enough. Our rules currently require that records be placed in the political file as soon as possible, which the rule defines as meaning

''immediately absent unusual circumstances.'' This may mean multiple updates each day during peak periods of the election season. Some commenters argue that an Internet posting requirement for the political file would be unduly burdensome for licensees due to the need for frequent updating of the file and the volume of material it contains. While Internet access would obviate the need for physical access to each station and free station personnel from having to assist candidates and their political committees, we conclude that the burden of placing this material on the Internet outweighs the benefits.

21. *Children's Television Programming Reports (Form 398).* In MM Docket No. 00–44, the Commission, among other things, extended indefinitely the requirement that commercial broadcast television licensees electronically file their quarterly Children's Television Programming Reports (Form 398) with the Commission and required broadcasters in the future to place the reports in their public files at the time they are prepared. At that time we also issued a *Further Notice of Proposed Rulemaking* (FNPRM), 65 FR 67331, November 9, 2000 seeking comment on whether broadcasters should be required to provide their completed quarterly reports at their own Web sites. Because of the similarity of the issues presented in that proceeding to those present here, we will resolve them in this *Report and Order.*

22. Only two commenters filed in response to the *FNPRM.* Both the Center for Media Education (CME) and NAB supported requiring stations to create a link to station reports on the Commission's Children's Educational Television Web site. Unlike NAB, however, CME also supported requiring stations to post Reports on their Web sites and to maintain them until final action on their next renewal application.

23. Like the other non-exempted contents of licensees' public files, the Children's Television Programming Reports must now also be made available on the Internet. We find, however, that it is sufficient to allow television station licensees having a Web site to provide a link from the public inspection file portion of that Web site to the Commission's Children's Educational Television webpage. We agree with NAB that to replicate the reports on the licensee's Web site would be redundant and cause needless expense to licensees. Accordingly, we agree with NAB that a link to the Commission's Children's Educational Television webpage is sufficient and that the report forms need not be placed on any station's Web site that contains such a link.

24. *Other Material Available on the Commission's or Other Web sites.* We will not require stations to post on their Web sites any other material that is also available on the Commission's Web site, as long as they provide a link directly to the information on the Commission's Web site. For example, stations need not post a copy of ''The Public and Broadcasting'' on their own Web sites as long as they provide a link to the manual on the Commission's Web site. It is not necessary for more than 1,600 television stations to each have this Commission publication on their Web site. It is sufficient that they each have a hard copy in their public files at the main studio, and a link to it on the Commission's Web site from their own Web site. This measure will also serve to reduce the amount of material that must be placed on a station's Web site, thereby reducing the cost of the requirement. Similarly, licensees can provide links to other Web sites containing relevant information rather than also placing the information on the station's own Web site as long as that other site is freely available to the public and no registration is required.

25. *Letters from the Public.* We will not require stations to keep items covered by § 73.3526(e)(9) of the rules, ''Letters and e-mail from the public,'' on their Web site. One commenter contends that these letters are one of the more voluminous components of the public file. Tribune estimates that one of its stations, WGN–TV, has a file of letters from the public that consumes nearly 32 linear feet of file space consisting of more than 72,000 pages. Comments filed in this proceeding raised the specter of having to reproduce on a station's Web site as much as six-plus feet of material. To alleviate stations' burden and cost, we will allow them to refrain from posting these letters on their Web sites as long as they retain them in their stations' ''hard copy'' public inspection files located at their main studios and make them available to the public at that location. Comments made by the public by e-mail will have to be placed on the station's Web site—because stations will incur no cost other than the cost of electronic storage—and also either printed out and placed in a station's public file at its main studio, or made available on a publicly accessible computer database, per § 73.3526(c). This will ensure that there is one location where all of the letters from the public will be maintained (*i.e.*, at the main studio). The Web site must also provide notice that a complete set of letters from the public is available at the main studio.

26. *Accessibility of Web sites to Persons with Disabilities.* In the *NPRM* we solicited comment on whether we should require or encourage television broadcasters to make Web sites, including those on which they will place their public inspection files, accessible to persons with disabilities using the World Wide Web Consortium's Web Content Accessibility (W3C/WAI) guidelines. Commenters were split on this issue. Several were in favor of making broadcaster webpages, including those containing their public files, accessible to persons with disabilities. People for Better TV (PBTV) asserts that ''it would make little sense for the Commission to establish reporting requirements without clarifying the goal of making the reports fully accessible to the community of license.'' Others argue that that it will take substantially longer to make a Web site disability friendly, as much as two-and-a-half to three times longer, and would increase costs.

27. We conclude that in designing the public inspection file portion of their Web sites, television licensees must make them accessible to the disabled through a minimal level of compliance with the most recent W3C/WAI guidelines. As noted by one commenter, ''[i]t is urgent that the Commission ensure that the technological capabilities offered by new technologies, such as making web content accessible to persons with disabilities, are used to maximize the potential of persons with disabilities to benefit from technological innovation to the same extent as any other person.'' These guidelines discuss accessibility issues and provide accessible design solutions for them. Furthermore, they provide checkpoints against which Web site designers can measure the accessibility of their site. Each of these checkpoints has a priority level assigned by the W3C/WAI Working Group based on the checkpoint's impact on accessibility. For example, a ''Priority 1'' checkpoint means that the web content developer must satisfy the checkpoint or one or more groups will find it impossible to access information in the document. Satisfying this checkpoint is a basic requirement for some groups to be able to use Web documents. Other priorities either ''should'' or ''may'' be addressed in order to remove barriers to access. Additionally, the guidelines define three different levels of conformance to the guidelines—Levels A, Double-A and

Triple-A. Level A means that all Priority 1 checkpoints have been satisfied in the design of the Web site. Level Double-A means that all Priority 1 and 2 checkpoints have been satisfied, and so on.

28. We will require television station licensees who maintain their public inspection file on their Internet Web site to adhere to the most recent Conformance Level A with regard to the public inspection file portion of their Web site. By satisfying the minimal requirement of satisfying Priority 1 checkpoints, no group should find it impossible to access the contents of the public files.

29. Commenters suggested additional ways to make the public file more accessible over the Internet to persons with disabilities. WGBH urged that we require licensees to post public file information on a toll-free telephone line. TDI suggested that ''broadcasters can make chat rooms or listservs available for on-line discussions and to disseminate information to individuals with disabilities.'' We believe that requiring such measures would impose excessive costs on licensees. A disabled-accessible electronic public inspection file is, we continue to believe, the best way to make the information accessible to those with disabilities while imposing the least additional costs on licensees.

30. *Other Means of Communicating with the Public.* In the *NPRM* we also asked whether there were other methods by which we could foster licensee interaction with the public through Internet Web sites. We did not propose to mandate any such method. Instead, we encouraged broadcasters to use their Web sites to conduct discussions with members of the public and sought comment on this approach. We agree with the sole comment filed in this regard. Capitol Broadcasting Company, while supporting the notion that broadcasters should interact with their community by means of broadcaster-sponsored online forums, asserts that any mandatory requirement on licensee interaction with the public through the Internet would be premature. Although broadcaster/public interaction is desirable, we do not see a need in this case to mandate any specific measures beyond those being adopted herein.

31. We also solicited comment on other methods for distributing public interest information to the public. Our tentative conclusion was that we should not require on-air notifications of the contents and location of the issues/programs list or mandatory publication of public interest information in local newspapers. A few commenters supported adoption of such methods. Upon further consideration, we believe that viewers should be notified of the existence, location and accessibility of the station's public file. This will increase viewer awareness and help promote the ongoing dialogue between a station and the viewers they are licensed to serve. We believe that the most appropriate time for licensees to provide such notice is during the regular station identification announcements required under our rules. The notice must state that the station's public file is available for inspection and where consumers can view it—*e.g.*, at the station's main studio and on its Web site. In order to minimize the burden on stations, we will only require such notice twice daily. At least one of the announcements must occur between the hours of 6 p.m. and midnight.

B. Standardized Form

32. In addition to proposing that public file information be accessible through Internet connections, we also proposed to adopt a standardized form for inclusion in the file that would replace the existing quarterly issues/programs disclosure. In 1984, the Commission eliminated many of its specific programming obligations and substituted a general requirement that commercial television broadcast station licensees must provide coverage of issues facing their communities and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station's public inspection files on a quarterly basis. In this proceeding we proposed to adopt a standard programming disclosure format to be used in place of the issues/programs list. In making this proposal, we noted the difficulties that members of the public had encountered in accessing programming information in the existing format. We felt that the use of a standardized disclosure form would facilitate access to this information and would make broadcasters more accountable to the public. In addition, a standardized form would benefit the public by reducing the time needed to locate information and by providing the public with a better mechanism for reviewing broadcaster public interest programming and activities.

33. We also tentatively concluded that the standardized form should ask questions about categories of programming and should include information on broadcasters' provision of closed captioning and video description. Furthermore, we solicited comment on whether licensees should provide a narrative description of the actions taken, in the normal course of business, to assess a community's programming needs and interests. We specifically stated, however, that we did not intend this obligation to constitute a detailed and formal ascertainment requirement but, instead, only intended it to provide the public with information on how, in the normal course of business, licensees assess community needs and interests. We did not propose to include on the form non-broadcast community service activities by broadcasters. We sought comment on whether licensees should forward an electronic copy of the disclosure form to the Commission for inclusion in the license file.

34. In this *Report and Order,* we adopt a standardized programming report form to replace the current issues/programs list. We intend this form to provide the public with easily accessible information in a standardized format on each television station's efforts to serve its community. The form includes information about efforts that have been made to ascertain the programming needs of various segments of the community, and information regarding closed captioning and video described content. Adoption of this revised disclosure requirement is, we believe, amply supported by the record and will not be unduly burdensome for licensees.

35. Commenters urging the adoption of such a form have noted the difficulties that they have encountered in obtaining information on public interest programming from broadcasters, as well as the benefits of standardized disclosure. They report that broadcasters are confused about what they should put in their public files and describe instances in which documents were missing and files outdated. UCC reviewed the issues/programs lists of several broadcast stations in preparing its comments in this proceeding. It found that some broadcasters listed everything and anything they considered to qualify while others listed only a few programs. It found that ''[t]he lack of uniformity and consistency of the issues/program lists make it difficult to discern both how much and what types of public interest programming a broadcaster provided,'' which makes any ''overall assessment or comparison between broadcasters virtually impossible.'' One commenter noted that its most consistent finding was the lack of consistency in station public inspection files. Such commenters have pointed to the benefits that a standardized form can bring, including enhanced access to information on the

extent to which broadcasters are meeting their public interest obligations, ease of use by the public and broadcasters alike, and the promotion of a dialog between stations and the public they serve.

36. Broadcast interests uniformly oppose use of a standardized form. Several contend that the proposals made by the Commission in the instant *NPRM* would be unconstitutional because the proposed form would constitute programming ''quotas'' in violation of the First Amendment. This fear is misplaced. Our decision here does not adopt quantitative programming requirements or guidelines. This *Report and Order* does not require broadcasters to air any particular category of programming or mix of programming types. Accordingly, we reject the claim that our decision mandates programming quotas or guidelines, or otherwise improperly intervenes in licensee discretion.

37. Some opponents of the form assert that, if there are problems with the level of issue-responsive programming being offered by a specific station, the Commission's concern should be directed to the particular station(s) involved rather than imposing a standardized form on all television broadcasters. In addition, they assert that the issues/programs list has worked well for two decades and that any shortcomings of the current issues/programs list can more appropriately be addressed through modest changes to that process rather than adoption of a new form. Our action is not premised on the existence of rule violations by licensees or the failings of a particular station. Rather, the problem addressed here is the lack of accessibility and uniformity in the issues/programs list information. These defects in the current requirements are not susceptible to cure through the issuance of forfeitures. The problem is systemic. According to those who have used the current list, it has not worked well; the changes we are making are narrowly tailored and an effective response.

38. Others argue that a lack of uniformity in issues/programs lists is desirable and simply reflects the diversity of issues identified by broadcasters and the programming aired in response to those issues in different markets. We disagree that a lack of uniformity in reporting is desirable or that diversity of issues identified by broadcasters is the problem. For those attempting to make use of the list and to compare the efforts of various stations, uniformity of reporting is desirable and, indeed, may be essential. As noted above, users of the issues/programs list have chronicled the difficulties they face when reviewing issues/programs lists compiled by different stations. Moreover, diversity of issues is not a problem, and our adoption of a standardized form should not limit broadcasters' flexibility to address various issues. We are not trying to impose uniformity in issue or program selection by adopting a standardized form; we are simply attempting to obtain uniformity in reporting.

39. Further, the record in the Commission's ongoing Localism Proceeding—especially that portion amassed during a series of public hearings conducted across the country—suggests that there may be a communications breakdown between licensees and their communities concerning the breadth of their local licensees' efforts to air programming that serves communities' local needs and interests. Written comments submitted in the Localism Docket and testimony received during several localism field hearings indicate that many members of the public are not fully aware of the community-responsive programming that their local stations have aired. This lack of knowledge extends in many cases to the existing issues/programs lists, which broadcasters have long been required to compile and make available through their public files. Because the lists are designed to help the public evaluate the performance of broadcasters in their communities, the Commission takes the mandate seriously and has sanctioned licensees that have failed to properly maintain them. Evidence in the Localism Docket, however, indicates that the decades-old public file concept is not serving today's public well. At a minimum, the current public file regulatory regime imposes unnecessary inconvenience on the public because it essentially requires that interested individuals travel to the station during business hours to review the material. Although such inconvenience was unavoidable generations ago, we find that it is not so today, given the development of the Internet over the past decade. According to the record in the Localism Docket and other proceedings, broadcasters themselves are well aware of the communicative potential of the Internet and most maintain station-specific Web sites to stay in close touch with their audiences. Evidence in the Localism Docket indicates that many members of the public are web-savvy as well.

40. We believe that affording the public readier access to a station's public file through online posting requirements and use of the Standardized Television Disclosure Form will foster a better understanding of stations' localism efforts within their communities. That development, in turn, may produce notable benefits for the public. First, online posting of the completed standardized form could prompt more active dialogue between licensees and their audiences concerning issues of public importance to local communities and how broadcasters might go about addressing those issues on the air—which may quickly lead to the airing of more responsive programming. Second, by enhancing that dialogue, online posting of the standardized reporting form should help licensees develop, air, and document in an understandable way the kind of responsive programming directly relevant to license renewals and assist the Commission in determining whether the licensees are serving the public interest. Third, the disclosure form provides information that will be useful to the Commission and the public in assessing the effectiveness of current policies (*e.g.*, closed captioning).

1. Programming Information

41. The first section of the Standardized Television Disclosure Form we are adopting asks for general information on the station: The station's call sign, channel number, community of license, ownership information, name of the licensee and other basic facts that identify the station. The next section calls for the summary reporting of overall programming in various categories during the preceding three month period. The following sections ask for more specific information concerning the programming provided in several categories. Following this is a section that asks whether the licensee undertook any efforts to determine the programming needs of its community, designed any programming to address the needs identified and, if so, a description of the steps the licensee took.. Next, there is a section on the provision of service for persons with disabilities. It asks for information on closed captioning, voluntary video description efforts, and access to emergency information provided to the disabled.

42. In the *NPRM,* we tentatively concluded that the standardized form should ask questions about categories of programs and noted the categories of programs proposed by the Presidential Advisory Committee on the Public Interest Obligations of Digital Broadcasters. The Committee proposed to include the following categories: Local and national news programming,

local and national public affairs programming, programming that meets the needs of underserved communities, programming that contributes to political discourse, other local programming that is not otherwise addressed in the form, and PSAs. In response to the NPRM, the Public Interest, Public Airwaves Coalition (PIC) submitted a proposed standardized form suggesting use of the following categories: Local civic programming, local electoral affairs programming, public service announcements, paid public service announcements, and independent programming. Definitions were included with each of these categories, providing, for example, that local civic programming ''includes broadcasts of interviews with or statements by elected or appointed officials and relevant policy experts on issues of importance to the community, government meetings, legislative sessions, conferences featuring elected officials, and substantive discussion of civic issues of interest to local communities or groups.'' In addition, PIC proposed that we collect information regarding independently produced programming, which they defined as ''programming produced by an entity not owned or controlled by an owner of a national television network, including ABC, CBS, NBC, FOX, UPN, and WB. If an owner of a national television network owns or controls more than a one-third financial interest in the program, acts as the distributor of such program in syndication, or owns the copyright in such program, the owner of a national television network will be considered to be the producer of that program for the purposes of this processing guideline.''

43. Based on the record, we conclude that in order to ensure the maximum benefit from standardizing broadcasters' disclosure obligations, it is appropriate to list specific programming categories on the form. The Commission has developed a list of categories drawn from the comments filed in this proceeding. We have reviewed the categories and definitions proposed by PIC and consider most of them appropriate. For instance, in response to PIC's proposal that we include a question on the form regarding independently produced programming, we agree that the public would benefit from broadcasters providing information about the amount of programming they air that is not produced by a national television network. As the Supreme Court has recognized, ''[s]afeguarding the public's right to receive a diversity of views and information over the airwaves is * * * an integral component of the FCC's mission.'' Allowing broadcasters complete discretion to decide what kinds of programming to list in their quarterly forms may result in a broadcaster's failure to give a complete picture of how they are trying to fulfill their public interest obligations. This can lead to a significant gap between what broadcasters say they are doing and what the public perceives the broadcasters are doing to serve local audiences. For example, the broadcaster could simply ignore electoral programming (even if it aired some), leaving members of the public reviewing the report in the dark concerning this aspect of the broadcaster's service. We emphasize, however, that neither the form nor this *Report and Order* establishes any new programming obligations. Editorial control will remain in the hands of the licensee. All that we require is that broadcasters report the quantities of different types of programming that they choose to air. Accordingly, we reject the claims of some commenters that having to list program types on the standardized form will create program quotas, or result in the Commission selecting licensees' programming for them. Moreover, in determining whether a program falls within these categories, the Commission will, as it does in other contexts, generally rely on the good faith judgment of the broadcaster. We believe that this approach appropriately balances the interests of the public in having adequate access to information about how stations are serving their communities with broadcasters' ability to make programming choices.

44. We do not share the concerns of some commenters that the standardized form will discourage broadcaster creativity or result in homogenization of television nonentertainment programming. Each licensee will remain free to determine how best to address the issues facing its community. We see no reason the standardized form would result in uniform responses by stations. Indeed, the dialog that will result from the enhanced disclosure and standardized reporting form requirements may provide broadcasters with input that stimulates creative responses to community issues rather than homogenizing programming responses. We recognize that the standardized form's requirement that each relevant program or program segment be listed is a change from the current rule that requires only listing of programs that have provided the ''most significant treatment'' of community issues during the preceding three-month period. We agree with commenters that the current issues/programs lists have not provided an effective means for the public to assess licensees' performance. The requirement to present a comprehensive list of programming in each category, rather than merely samples of programming in each category, will provide the public with a better basis on which to evaluate whether a broadcaster has substantially fulfilled its public interest obligation to provide programming responsive to the needs and interests of its community. The more comprehensive disclosure will also allow the public to participate more effectively in license renewal proceedings. We also note that commenters have discussed a lack of uniformity and consistency in the way that broadcasters maintain their lists, and commented that these practices make any overall assessment extremely difficult. As such, we believe that the benefits of a standardized form that requires broadcasters to list all relevant programming outweighs the burdens placed upon broadcasters.

2. Identifying Community Issues

45. The standardized form we are adopting asks two fundamental questions with regard to the identification of community issues. First, it asks whether the licensee has undertaken efforts to assess the programming needs of its community. Second, it asks whether the licensee has designed its programming to address those needs. These questions may be answered simply ''Yes'' or ''No.'' Second, the form will provide space to describe efforts taken in this regard. Critics of the proposals assert that by requiring licensees to report how they determined what issues are facing their communities, we would essentially be re-imposing substantive ascertainment obligations. The requirement we are adopting does not remotely approach re-imposition of the detailed ascertainment obligations the Commission previously eliminated. Unlike prior ascertainment requirements, our standardized form does not mandate the nature, frequency, or methodology to be used by licensees in determining how to assess and meet their communities' needs; identify the community members that must be consulted; require that only certain levels of station employees conduct ascertainment; or even identify the programming needs of particular segments of the community. It is only asking the licensee whether and how it assessed and addressed the community's programming needs.

3. Closed Captioning and Video Description

46. In the *NPRM* we tentatively concluded that the standardized disclosure form should include information on broadcasters' provision of video description and closed captioning. The standardized form we are adopting today will ask broadcasters whether or not they have met the closed captioning requirements contained in § 79.1 of the rules. Additionally, it will require licensees to provide the number of hours and percentage of various categories of nonexempt video programming that included captioning, and to list programs that were not captioned due to an exemption and the basis for that exemption. Similarly, it will provide space for information on licensees' provision of video description services which make television programming more accessible to members of the audience who are blind or visually impaired.

47. Some commenters assert that this requirement would be of little benefit to individuals with disabilities since it is a retrospective look at what programming was captioned rather than a guide to what upcoming programming would be accessible. We adopt this requirement not to turn the standard reporting form into a programming guide for persons with disabilities, but in order to allow the public, including the disability community, to meaningfully participate in the licensing process. It will provide a basis upon which both individuals with disabilities and those interested in disability access issues will be able to provide meaningful input on licensee compliance with § 79.1 of the rules. Moreover, the form will allow licensees voluntarily providing video description to disclose this means of addressing the needs of their community.

48. Because of the importance the Commission places on the accessibility of emergency information, particularly considering our nation's priority of homeland security, we are including in the Standardized Television Disclosure Form space in which we will require television stations to report on their efforts to make emergency information available to further the protection of life, health, safety, and property as defined in § 79.2 of the rules. We are also asking stations to provide information on whether they made the information accessible to persons with disabilities. Our rules currently require stations to make emergency information available to individuals with disabilities through a variety of methods. We conclude that reporting in the Standardized Television Disclosure Form on the provision of emergency programming to persons with disabilities, the provision of which is already required by our rules, would provide the station's community with valuable public interest information.

4. Mechanics of Making the Standardized Form Available

49. The *NPRM* tentatively concluded that each licensee must make the form available on a quarterly basis. We also proposed that television broadcasters retain the standardized form in their public inspection files and on their Web sites until final action has been taken on the stations' next renewals. We received little comment on this issue. The comments that did address this issue were uniformly in favor of requiring the form to be updated quarterly. We will require that the standardized form be updated on a quarterly basis in the same manner as the issues/programs list which it replaces. Also, the standardized public interest forms must be retained by licensees until their next renewal has become final.

50. Although we stated in the *NPRM* that we were not inclined to require the electronic filing of the standardized form with the Commission, some commenters urged us to do so. UCC contends that by requiring broadcasters to electronically file the form with the Commission, public interest groups and academics would have easier access to the information of hundreds of broadcasters in one place. Additionally, UCC contends that such filing would enable the Commission to use the aggregate information to monitor trends and determine whether the public interest is being served. PBTV similarly urges the form be filed with the Commission so that it can be reviewed by the Commission at renewal time.

51. Our goal in standardizing the form is to help foster communications between the broadcaster and the public it serves. We agree with UCC that requiring licensees file the form with the Commission will also enable us to use aggregate information to monitor trends in the industry. We also agree that mandatory filing will make the forms more easily accessible by public interest groups and academics. Aggregating this information on the Commission's Web site substantially decreases the burden on those interested in this information. Instead of searching the Web sites of all stations, those interested in compiling and comparing the information will find one database much easier to use. We believe this outweighs the burden of submitting a form that is already required to be compiled. Submission of the form does not place a substantial burden on licensees. We will therefore require stations to file electronically with the Commission on a quarterly basis on the 30th day of the succeeding calendar quarter (*i.e.*, April 30 for the first quarter report; July 30 for the second quarter report; October 30 for the third quarter report; and January 30 of the succeeding year for the last quarter report).

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

52. Pursuant to the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. 604, the Commission's Final Regulatory Flexibility Analysis in this *Report and Order* is below.

53. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. Prior to issuing that *NPRM* we had developed a record in our television public interest obligation proceeding *NOI*, that indicated that members of the public had encountered difficulties in trying to access information that our current rules require be maintained in stations' public inspection files. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Adopted Rules

54. The purpose of this proceeding is to determine whether our current requirements pertaining to television stations' public inspection files are sufficient to ensure that the public has adequate access to information on how the stations are serving their communities. We tentatively concluded in the *NPRM* that our current requirements were not sufficient and that a standardized form to provide information on how stations serve the public interest would be desirable. Additionally, we proposed to enhance the public's ability to access public interest information by requiring television licensees to make the contents of the public inspection files, including the standardized form, available on their stations' Internet Web sites or, alternatively, on that of their state broadcasters association. In this *Report and Order* we adopt a standardized form for the quarterly reporting of programming aired in response to issues facing a station's community and a requirement that portions of each station's public inspection file be placed on the Internet.

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

55. As noted, prior to our *NPRM* the record in our television public interest obligation proceeding (*NOI*) indicated that members of the public had encountered difficulties in trying to access information that our current rules require be maintained in stations' public inspection files. Although not submitted in direct response to the IRFA, comments also asserted that the new requirements would be costly. In the *NPRM*, which contained an IRFA, we tentatively concluded that our current requirements were not sufficient and that a standardized form to provide information on how stations serve the public interest would be desirable. Additionally, we proposed to enhance the public's ability to access information by requiring television licensees to make the contents of the public inspection files, including the standardized form, available on their stations' Internet Web sites or, alternatively, on the Web site of their state broadcasters association. We received no comments directly in response to the IRFA.

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

56. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

57. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

58. Television Broadcasting. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 (twelve) million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

59. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

60. There are also 2,117 low power television stations (''LPTV''). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

61. Television broadcasters that currently maintain a Web site would be required to place the major portion of their public inspection files on that Web site or, if permitted, on their state broadcasters association's Web site. (A station that places public inspection files on its state broadcasters association's Web site must link to that site from its own Web site.) Broadcast stations would also continue to maintain a hard copy of the public inspection files at their main studios, as is currently required by the Commission's rules.

62. In addition, a standardized public interest reporting form would replace the current issues/programs list for television station licensees. This form would ask for information on the broadcast of a number of types of nonentertainment programming including the date, time, and duration of the programming, the program stream it was broadcast on (in the case of digital television multicasting), whether the program was captioned, and the steps taken by the licensee to acquaint itself with the issues facing its community. (This form will not establish programming guidelines or an ascertainment methodology.)

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

63. Several steps were taken, in part, to minimize any possible significant impact on small entities. For instance, we determined that only the television broadcasters that currently maintain a Web site would be required to place the major portion of their public inspection files on that Web site or, if permitted, on their state broadcasters association's Web site. Thus, if television broadcasters do not already maintain a Web site, they will not be required to create one. It is probable that the smaller the television station entity is, the less likely it is to have a Web site. In addition, television stations would not be required to place letters from the public on their Web sites, given the volume of material involved. Stations would also be permitted to link to the Commission's Web site rather than place the Commission publication ''The Public and Broadcasting'' and their quarterly Children's Television Programming Report (Form 398) on their own Web site.

Report to Congress

64. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

B. Congressional Review Act

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

C. Paperwork Reduction Act Analysis

66. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. It will be submitted to the Office of Management and Budget (''OMB'') for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

67. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the effects of requiring all television broadcasters to utilize a Standardized Television Disclosure Form for reporting on their public interest programming in lieu of the currently-required issues/programs list. We find that television stations with fewer than 25 employees will have to use the new form but that the economic impact on such businesses, and, indeed, on stations with any number of employees, will be attenuated by reason of the fact that much of the information required for the new standardized form is already required for the issues/programs list it replaces.

D. Additional Information

68. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via e-mail at *bmillin@fcc.gov*. For additional information on this proceeding, contact Holly Saurer of the Media Bureau, Policy Division, (202) 418–7283, or via e-mail at *holly.saurer@fcc.gov*.

V. Ordering Clauses

69. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 303, and 307 of the Communications Act, 47 U.S.C. 151, 152, 154(i), 303, and 307, this *Report and Order* is *adopted* and §§ 73.1201, 73.3526 and 73.3527 of the Commission's rules, 47 CFR 73.1201, 73.3526 and 73.3527, *are amended* as set forth below. Rule §§ 73.3526(e)(11)(i) and 73.3527(e)(8) contain a collection requirement under the PRA and are not effective until after approval by OMB, as discussed below.

70. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. *It is further ordered* that the requirement that stations place their public inspection files on their Web sites *shall be effective* 60 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval.

72. *It is further ordered* that the requirement that stations use the Television Standardized Disclosure Form, which is subject to approval by the Office of Management and Budget (OMB), *shall be effective* 60 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval of the form, or upon the next quarterly reporting date, whichever is later.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 307, and 554.

■ 2. Section 73.1201 is amended by adding paragraph (b)(3) to read as follows:

§ 73.1201 Station identification.

* * * * *

(b) * * *

(3) Twice daily, the station identification for television stations must include a notice of the existence, location and accessibility of the station's public file. The notice must state that the station's public file is available for inspection and that consumers can view it at the station's main studio and on its Web site. At least one of the announcements must occur between the hours of 6 p.m. and midnight.

* * * * *

■ 3. Section 73.3526 is amended by revising paragraph (b), adding paragraph (e)(9)(iii) and revising paragraph (e)(11)(i) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) *Location of the file*. The public inspection file shall be located as follows:

(1) A hard copy of the public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A television station licensee or applicant that had a Web site for its station[s] as of January 24, 2008 shall also place the contents of its public inspection file on its Web site or, if permitted, the Web site of its state broadcasters association as of 60 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval. A station not having their own Web site as of November 27, 2007, must place their files on any Web site they may later create or, if permitted, on the Web site of its state broadcasters association, by 60 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval or within 30 days of the date it makes the Web site available to the public, whichever is later. A station that places public inspection files on its state broadcasters association's Web site must link to that site from its own Web site. A television licensee or applicant does not have to place on its Web site any material that is available on another freely accessible Web site for which no registration is required as long as it provides a link to that Web site. This applies, for example, to material that is posted on the FCC's Web site, such as

material required by paragraph (e)(8) of this section (''The Public and Broadcasting'') and paragraph (e)(11)(iii) of this section (''Children's Television Programming Reports''). A licensee does not have to post letters from the public on the electronic version of its public inspection files but must post on its Web site e-mails from the public.

* * * * *

(e) * * *

(9) * * *

(iii) Written communication does not need to be posted to the public file placed on a station's Web site, but e-mail messages must be placed on the station's Web site, in addition to being placed in a station's public file at its main studio. The Web site must also provide notice that a complete set of letters from the public is available at the main studio.

* * * * *

(11)(i) *TV Standardized Public Interest Reporting Form*. For commercial TV and Class A TV broadcast stations, every three months a completed Standardized Television Disclosure Form with regard to the station's efforts to determine the issues facing its community and the programming aired during the preceding three month period in response to those issues. The form for each calendar quarter is to be filed by the thirtieth day of the succeeding calendar quarter (*e.g.*, January 30 for the quarter October–December, April 30 for the quarter January–March, etc.). The forms described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

■ 4. Section 73.3527 is amended by revising paragraphs (b) and (e)(8) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) *Location of the file*. The public inspection file shall be located as follows:

(1) A hard copy of the public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A television station licensee or applicant that had a Web site for its station[s] as of January 24, 2008, shall also place the contents of its public inspection file on its Web site or, if permitted, the Web site of its state broadcasters association as of 60 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval. A station not having their own Web site as of November 27, 2007, must place their files on any Web site they may later create or, if permitted, on the Web site of its state broadcasters association, by 60 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval or within 30 days of the date it makes the Web site available to the public, whichever is later. A station placing its public inspection files on its state broadcasters association's Web site must link to that site from its own Web site. A television licensee or applicant does not have to place on its Web site any material that is available on another freely accessible Web site for which no registration is required as long as it provides a link to that Web site. This applies, for example, to material that is posted on the FCC's Web site, such as material required by paragraph (e)(7) of this section (''The Public and Broadcasting'').

* * * * *

(e) * * *

(8) *TV Standardized Public Interest Reporting Form*. For noncommercial educational TV and Class A TV broadcast stations, every three months a completed Standardized Public Interest Reporting Form with regard to the station's efforts to determine the issues facing its community and the programming aired during the preceding three month period in response to those issues. The form for each calendar quarter is to be filed by the thirtieth day of the succeeding calendar quarter (*e.g.*, January 30 for the quarter October–December, April 30 for the quarter January–March, etc.). The forms described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

[FR Doc. E8–5052 Filed 3–12–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625–7696–02]

RIN 0648–XG20

Fisheries of the Northeastern United States; Scup Fishery; Reduction of Winter I Commercial Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces the reduction of the scup coastwide commercial possession limit from Maine through North Carolina for the Winter I period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that 80 percent of the commercial quota allocated to the Winter I period is projected to be harvested and to announce that the possession limit for a Federal vessel permit holder is reduced to 1,000 lb (454 kg) of scup per trip. This possession limit will remain in effect until the end of the Winter I period (through April 30, 2008) or until the Winter I quota allocation has been fully harvested, which ever occurs first.

DATES: Effective 0001 hours, March 16, 2008, through April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.120(c) require the Northeast Regional Administrator to publish annual scup quota allocations and the percentage of landings attained during the Winter I period at which the possession limits would be reduced. On December 31, 2007, NMFS published the final rule for the summer flounder, scup, and black sea bass specifications in the **Federal Register** (72 FR 74197). This final rule requires NMFS to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that the commercial scup possession limit will be reduced once 80 percent of the Winter I Period quota is projected to be harvested. Based upon recent projections, the Regional Administrator anticipates that the 80

percent of the Federal commercial quota of 2,388,611 lb (1,083 mt) for the 2008 Winter I period will be harvested by March 15, 2008. Therefore, to maintain the integrity of the 2009 Winter I period quota by avoiding quota overages, the commercial scup possession limit will be reduced from 30,000 lb (13,608 kg) to 1,000 lb (454 kg) of scup per trip. This possession limit will remain in effect until the end of the Winter I period (through April 30, 2008) or until the Winter I quota allocation has been fully harvested, which ever occurs first.

Classification

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

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

Dated: March 10, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–5047 Filed 3–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XG28

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2008, through 1200 hrs, A.l.t., April 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The first seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 450 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., January 20, 2008, through 1200 hrs, A.l.t., April 1, 2008.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the first seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.'' This inseason adjustment does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason adjustment does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 7, 2008.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: March 7, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1018 Filed 3–10–08; 1:50 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 50
Thursday, March 13, 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

10 CFR Part 430

[Docket No. EERE–2007–BT–TP–0013]

RIN 1904–AB72

Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing amendments to its test procedures for fluorescent and incandescent lamps, which lamp manufacturers are required to use to certify compliance with energy conservation standards mandated under the Energy Policy and Conservation Act (EPCA). Specifically, these amendments update the citations and references to the most recent version of the industry standards currently referenced in DOE's test procedures, as well as make a small number of technical modifications. DOE notes that this notice of proposed rulemaking (NOPR) is being issued concurrently with an energy conservation standards advance notice of proposed rulemaking (ANOPR) on general service fluorescent lamps (GSFL) and incandescent reflector lamps (IRL). The energy conservation standards ANOPR starts the process for evaluating the existing standards for certain GSFL and IRL to determine whether higher standard levels would be technologically feasible and economically justified, and would result in significant conservation of energy. The ANOPR also discusses whether the scope of standards should be expanded to cover additional GSFL. In addition, the Energy Independence and Security Act of 2007 (EISA 2007) extended energy conservation standards coverage to general service incandescent lamps (GSIL). Accordingly, this notice also proposes other amendments to DOE's test procedures for fluorescent and incandescent lamps in order to provide appropriate methods to test these additional lamps. DOE intends to use these amendments to the fluorescent lamp test procedure (with modifications possible based upon agency review of public comments), if it adopts standards for the additional lamps.

DATES: DOE held a public meeting in Washington, DC that began on March 10, 2008. The agenda for the public meeting covered both this test procedure rulemaking and the concurrent energy conservation standards rulemaking for these lighting products.

DOE began accepting comments, data, and information regarding the NOPR at the public meeting, and will continue to accept comments until no later than May 27, 2008. See Section IV, ''Public Participation,'' of this NOPR for details.

ADDRESSES: The public meeting was held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Any comments submitted must identify the Notice of Proposed Rulemaking on Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps and General Service Incandescent Lamps, and provide the docket number EERE–2007–BT–TP–0013 and/or Regulation Identifier Number (RIN) 1904–AB72. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: Lamps_Test_Procedure@ee.doe.gov*. Include the docket number EERE–2007–BT–TP–0013 and/or RIN 1904–AB72 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section IV, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–1851. E-mail: *Linda.Graves@ee.doe.gov*.

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov*.

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I. Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' The consumer and commercial products currently subject to this program (hereinafter referred to as ''covered products'') include GSFL, IRL, and GSIL. Manufacturers of covered products are required to use the relevant DOE test procedures to certify compliance with the energy conservation standards adopted under EPCA. The statutory provisions of particular relevance to the present rulemaking are discussed immediately below.

Under section 323(b) of EPCA, DOE is authorized to amend or establish new test procedures as appropriate for each of the covered products. (42 U.S.C. 6293(b)) EPCA states that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, EPCA states that ''* * * the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1))

Of particular relevance to the present rulemaking, section 323(b)(6) of EPCA directs the Secretary of Energy (the Secretary) to prescribe test procedures for fluorescent lamps and IRL to which energy conservation standards are applicable, taking into consideration the applicable standards of the Illuminating Engineering Society of North America (IESNA) or American National Standards Institute (ANSI). (42 U.S.C. 6293(b)(6)) The applicable test procedures appear at Title 10 of the Code of Federal Regulations (CFR) 430, Subpart B, Appendix R (''Uniform Test Method for Measuring Average Lamp Efficiency (LE) and Color Rendering Index (CRI) of Electric Lamps'').

Furthermore, section 325(i)(5) of EPCA directs the Secretary to consider whether the standards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional GSFL, and, if so, to adopt standards for such lamps. (42 U.S.C. 6295(i)(5)) DOE is addressing these requirements concurrently in a separate energy conservation standard rulemaking for which an ANOPR is published in today's **Federal Register**.[1] For those lamps being considered for coverage and for which DOE currently does not have test procedures, DOE is proposing test procedures for these products in this NOPR.

To address the EPCA requirements for lamps discussed above, DOE undertook a number of rulemaking actions pertaining to test procedures. On September 28, 1994, DOE issued an Interim Final Rule on Test Procedures for Fluorescent and Incandescent Lamps (hereinafter referred to as the September 1994 Interim Final Rule), that established test procedures for GSFL, medium-based compact fluorescent lamps, and GSIL. 59 FR 49468 (September 28, 1994) (establishing 10 CFR part 430, Subpart B, Appendix R). The test procedures incorporated by reference in the September 1994 Interim Final Rule are as follows:

ANSI Standards[2]

- C78.1–1991, ''Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics'';
- C78.2–1991, ''Fluorescent Lamps—Preheat-Start Types—Dimensional and Electrical Characteristics'';
- C78.3–1991, ''Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics'';
- C78.375–1991, ''Fluorescent Lamps—Guide for Electrical Measurements''; and
- C82.3–1983, ''Reference Ballasts for Fluorescent Lamps''

International Commission on Illumination[3]

- Publication 13.2–1974, corrected reprint 1993, ''Method of Measuring and Specifying Color Rendering Properties of Light Sources''

IESNA Standards[4]

- LM–9–1988, ''Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps'';
- LM–16–1984, ''Practical Guide to Colorimetry of Light Sources'';
- LM–20–1982, ''Approved Method for Photometric Measuring and Reporting Tests on Reflector Type Lamps'';

[1] Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps; Docket No. EE–2006–STD–0131; RIN 1904–AA92.

[2] The ANSI standards listed may be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036. Telephone: (212) 642–4900.

[3] The CIE standard listed in this paragraph may be obtained from the International Commission on Illumination, CIE Bureau Central, Kegelgasse 27, A–1030, Vienna, Austria. Telephone: +43 1–714 31 87 0. E-mail: *ciecb@cie.co.at*; Web site: *http://www.cie.co.at/cie/*.

[4] The IESNA standards listed may be obtained from the Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001. Telephone: (212) 248–5000.

• LM–45–1991, ''Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps'';
• LM–58–1983, ''Guide to Spectroradiometric Measurements''; and
• LM–66–1991, ''Approved Method for the Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps''

In addition, the September 1994 Interim Final Rule included the energy conservation standards for GSFL and IRL prescribed in EPCA section 325(i)(1)(A), (42 U.S.C. 6295(i)(1)(A)), as well as definitions of terms related to standards and test procedures for lamps, and procedures for manufacturer compliance and certification with the standards.

After considering public comments, on May 29, 1997, DOE published a final rule on Test Procedures for Fluorescent and Incandescent Lamps (hereinafter referred to as the May 1997 Final Rule) that revised some of the definitions and calculation methods in the September 1994 Interim Final Rule. 62 FR 29221 (May 29, 1997). In addition to (or in some cases in substitution for) those standards referenced above, the May 1997 Final Rule incorporated by reference the following standards:

ANSI Standards

• C78.21–1989, ''Incandescent Lamps—PAR and R Shapes''; and
• C79.1–1994, ''Nomenclature for Glass Bulbs—Intended for Use with Electric Lamps''

IESNA Standards and Publications

• LM–16–1993, ''Practical Guide to Colorimetry of Light Sources'';
• LM–20–1994, ''Approved Method for Photometric Testing of Reflector-Type Lamps'';
• LM–58–1994, ''Guide to Spectroradiometric Measurements''; and
• Chapter 6 (Light Sources) of *Illuminating Engineering Society of North America Lighting Handbook, Reference and Application*, 8th Edition, 1993.

The May 1997 Final Rule incorporated the IESNA Standard LM–66–1991 in its entirety, but removed the standard's test requirement to use a reference ballast so that an integrally ballasted compact fluorescent lamp can be tested. 62 FR 29221, 29234 (May 29, 1997).

To implement recent amendments to EPCA contained in the Energy Policy Act of 2005 (Pub. L. 109–58) (EPACT 2005), DOE published a final rule in the **Federal Register** (hereinafter referred to as the December 2006 Final Rule), which prescribed test procedures for eleven types of products for which EPACT 2005 identified specific test procedures (including medium screw-based compact fluorescent lamps) on which the Federally-mandated test procedures are to be based. 71 FR 71340 (December 8, 2006). Specifically, the December 2006 Final Rule incorporated test procedures for medium-based compact fluorescent lamps (CFL) by adopting the August 9, 2001 version of the ENERGY STAR program requirements for CFL (version 2.0).

On December 19, 2007, the President signed the Energy Independence and Security Act of 2007 (Pub. L. 110–140), which makes numerous amendments to EPCA and directs DOE to undertake several new rulemakings for appliance energy efficiency standards. EISA 2007 amends energy conservation standards for IRL and provides new energy conservation standards for GSIL. In addition, EISA 2007 provides several definitions related to products covered by this rulemaking. Furthermore, for all covered products, EISA 2007 directs DOE to amend its test procedure to incorporate a measure of standby mode and off mode energy consumption, if feasible. (42 U.S.C. 6295(gg)(2))

II. Summary of the Proposal

This NOPR proposes to modify DOE's current test procedures for electric lamps in order to achieve three objectives: (1) To update a number of lighting industry standards incorporated by reference; (2) to adopt certain technical changes and clarifications; (3) to expand the test procedures to accommodate new classes of lamps being considered for coverage under an amended energy conservation standard or additional lamps for which EISA 2007 established energy conservation standards; and (4) to address the statutory requirement to expand test procedures to incorporate a measure of standby mode and off mode energy consumption. These proposed changes are summarized below.

A. Updates to Standards Incorporated by Reference

In seeking to implement recent amendments to EPCA, DOE determined that several of the lighting industry standards referenced in 10 CFR part 430 have been superseded by new editions, have been withdrawn, and, in many cases, are no longer commercially available. Today's NOPR discusses the proposed updates to standards applicable to the test procedures for GSFL, IRL, GSIL, and CFL, and it also describes DOE's basis for proposing to update the CFR with the most recent versions of certain industry testing references in its regulations to the most recent versions. DOE requests comments on these proposed revisions, including any impacts associated with migration to the most recent version of standard currently incorporated by reference.

Specifically, today's notice proposes the incorporation by reference of the ANSI C78.375–1997, ''American National Standard for Fluorescent Lamps—Guide for Electrical Measurements''; ANSI C78.81–2005, ''American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics'' and ANSI C78.901–2005, ''American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics''; and ANSI C82.3–2002, ''American National Standard for Reference Ballasts for Fluorescent Lamps.'' These revisions of ANSI standards replace the older standards, C78.375–1991, C78.1–1991, C78.2–1991, C78.3–1991, and C82.3–1983, incorporated by reference in the September 1994 Interim Final Rule.

This notice also proposes the incorporation by reference of the IESNA LM–9–1999 and IESNA LM–45–2000 for measuring the electrical and photometric attributes of fluorescent lamps and general service incandescent filament lamps, respectively. These versions of the IESNA standards would replace the older standards, IESNA LM–9–1988 and IESNA LM–45–1991, that were incorporated by reference in the September 1994 Interim Final Rule.

Additionally, this notice proposes to remove the reference to IESNA LM–16–1993, which is a guide to the colorimetry of light sources, and IESNA LM–66–1991, which concerns the testing of medium-based compact fluorescent lamps. Both of these standards were incorporated by reference in the May 1997 Final Rule. DOE considers IESNA LM–66 testing standard superseded by the compact fluorescent lamp test method adopted in 10 CFR 430, Subpart B, Appendix W (''Uniform Test Method for Measuring the Energy Consumption of Medium Base Compact Fluorescent Lamps'') as part of the December 2006 Final Rule.

This notice also proposes to incorporate by reference the method for measuring and specifying color rendering properties of light sources, found in the International Commission on Illumination (CIE) Publication 13.3–1995, which replaces the older publication, CIE Publication No. 13.2–1974 (corrected reprint 1993), incorporated by reference in the September 1994 Interim Final Rule.

B. Technical Amendments

In addition to incorporation by reference updates, this notice proposes to continue to require that testing of GSFL be based on low-frequency reference ballasts, except for those lamps which can only be tested on high-frequency ballasts. That is to say, where the newly-referenced ANSI standards allow for both low- and high-frequency measurement, DOE proposes to require that manufacturers continue to report on the lamp performance using the low-frequency reference ballast. By maintaining fluorescent lamp testing on low-frequency ballasts when possible, DOE believes that the proposed updates to more current ANSI standards would not alter the measured efficacy of fluorescent lamps.

DOE is also proposing to amend certain provisions in its regulations for calculating and reporting lamp efficacy. Specifically, DOE proposes that lamp efficacy for GSFL be rounded to the nearest tenth of a lumen per watt rather than the nearest whole number, as it is now. DOE notes that the fluorescent lamp standards established by EPACT 1992 set efficacy requirements that are to the tenths decimal place (*e.g.*, 75.0 lumens per watt for 4-foot medium bipin lamps). DOE proposes changing the rounding practice for GSFL efficacy measurements to round to the nearest tenth of a lumen per watt for two reasons. First, the measured efficacy for the sample of lamps tested would be reported to the same degree of accuracy as the standard prescribed in EPACT 1992. Second, in conducting analyses for the energy conservation standards ANOPR, DOE found that in order to have standard levels for GSFL that are best able to maximize energy savings, it must utilize the tenths decimal place for the ANOPR analysis. Furthermore, DOE's proposed approach would promote consistency with other lamp types already tested (*e.g.*, lamp efficacy for IRL is rounded to the nearest tenth of a lumen per watt).

Additionally, DOE is proposing in this NOPR to adopt a test method for the measurement and calculation of correlated color temperature (CCT) for fluorescent lamps and incandescent lamps. CCT is used as a metric to define ''colored fluorescent lamp'' in 10 CFR 430.2 and to define ''colored incandescent lamp'' in 42 U.S.C. 6291(30)(EE). This proposed amendment supports the energy conservation standards rulemaking ANOPR published in today's **Federal Register**, in which DOE considers establishing separate product classes for fluorescent lamps based on their CCT. Also, in support of this consideration of separate product classes based on CCT, DOE is proposing in this NOPR to revise the definition of ''basic model'' such that all GSFL that are considered to be the same basic model have similar CCTs.

C. Amendments Related to Testing of Potentially Added Coverage

DOE is aware that the introduction of new 4-foot medium bipin and 2-foot U-shaped fluorescent lamps into the lighting market has effectively increased the number and types of lamps subject to DOE regulation under the existing definition of ''fluorescent lamp.'' In addition, DOE is aware that certain 8-foot slimline and 8-foot high output lamps, as well as 8-foot very high output lamps and T5 fluorescent lamps, are not presently part of DOE's scope of coverage. In the energy conservation standards ANOPR published in today's **Federal Register**, DOE discusses its consideration of whether to adopt energy conservation standards for some of these additional fluorescent lamps. In order not to delay the rulemaking process, in this test procedures rulemaking, DOE is proposing to adopt test procedures for all of these additional fluorescent lamps that are under consideration.

DOE is also proposing to insert language in the CFR regarding the test procedure for GSIL. As stated earlier, EISA 2007 establishes energy conservation standards for GSIL. Consequently, the several necessary portions of the GSIL test procedure (*e.g.*, specification of units to be tested and efficacy calculation methods) are not incorporated into DOE's existing test procedure, as these lamp types were not previously regulated. Therefore, in this NOPR, DOE is proposing to include these GSIL test procedure provisions in a manner consistent with the existing IRL test procedure.

D. Off Mode and Standby Mode Energy Consumption

As stated earlier, EISA 2007 directs DOE to amend its test procedure to incorporate a measure of off mode and standby mode energy consumption, if feasible. (42 U.S.C. 6295(gg)(2)) As discussed in further detail below, DOE believes that off mode and standby mode energy consumption of GSFL, IRL, and GSIL are inapplicable at the current state of the technologies. Because lamp operation in these two modes is not feasible, DOE proposes to not expand the test procedure to incorporate measurement methods for off mode or standby mode energy consumption of GSFL, IRL, and GSIL.

III. Discussion

A. Updates to Test Procedure References

As part of the DOE's rulemaking regarding energy conservation standards for lamps, DOE held a public meeting on June 15, 2006, to present and discuss the *Rulemaking Framework Document for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps*[5] (hereinafter Framework Document). 71 FR 30834 (May 31, 2006) (announcing public meeting and availability of Framework Document). Participants at the public meeting included energy and environmental groups, lamp manufacturers, State energy offices, electric utilities, and lighting consultants and designers.

In the Framework Document, DOE stated that it did not intend to update its test procedures in the lamps rulemaking. (Framework Document, No. 1.2 at pp. 8–9) At that time, DOE did not believe an update to the test procedures for lamps was necessary, as no stakeholder or manufacturer had raised this as an issue either directly with DOE or in the context of the certification reports submitted periodically for covered lamps. In Appendix D of the Framework Document, however, DOE did provide a list of the industry standards incorporated by reference in its regulations, as codified in the CFR.

In response to the Framework Document, the National Electrical Manufacturers Association (NEMA) commented that several of the methods and standards for test procedures listed in Appendix D of the Framework Document had been withdrawn and were no longer commercially available, while others had been superseded with new editions or updated in accordance with ANSI policy. NEMA urged DOE to update its regulations to use the current editions of the referenced test procedures, arguing that such action is important to minimize the administrative burden on those who conduct the testing. (NEMA, No. 8 at p. 2)[6] GE Consumer and Industrial (GE)

[5] A copy of the Framework Document, ''*Rulemaking Framework Document for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps*'' can be found on DOE's Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/lamps_framework.pdf.*

[6] A notation in the form ''NEMA, No. 8 at p. 2'' identifies a written comment that DOE has received and has included in the docket of its energy conservation standards rulemaking for GSFL and IRL (Docket No. EE–2006–STD–0131; RIN number 1904–AA92). This particular notation refers to a comment: (1) by the National Electrical Manufacturers Association; (2) in document

also commented that DOE should update the testing standards incorporated by reference. GE stated that of the eleven standards incorporated by reference, three have been consolidated and superseded; one has been withdrawn; five have been superseded, and only two are still current. (Public Meeting Transcript, No. 4.5 at p. 30) GE asserted that having DOE regulations reference industry standards that are obsolete, withdrawn, revised, and consolidated makes compliance more problematic for regulated entities. (Public Meeting Transcript, No. 4.5 at p. 29)

As part of its comments, NEMA prepared a table which listed each of the ANSI Lamp and Ballast Standards, IESNA Test Methods,[7] and CIE Technical Reports and Guides that DOE included in Appendix D of the Framework Document. NEMA then listed the current relevant standard, method, or guide being used by industry today. (NEMA, No. 12 at pp. 3–4) This comment very clearly presented the changes NEMA was requesting to the lighting test procedures incorporated by reference in the CFR. Specifically, NEMA identified the following references as needing revision or deletion: (1) ANSI C78.1–1991 (''For Fluorescent Lamps—Rapid Start Types—Dimensional and Electrical Characteristics''); (2) ANSI C78.2–1991 (''For Fluorescent Lamps—Preheat Start Types—Dimensional and Electrical Characteristics''); (3) ANSI C78.3–1991 (''For Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics''); (4) ANSI C78.375–1991 (''For Fluorescent Lamps—Guide for Electrical Measurements''); (5) ANSI C82.3–1983 (''Reference Ballasts for Fluorescent Lamps''); (6) IESNA LM–9–88 (''IES Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps''); (7) IESNA LM–16–1993 (''IESNA Practical Guide to the Colorimetry of Light Sources''); (8) IESNA LM–45–1991 (''IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps''); and (9) the CIE Publication No. 13.2 1974, corrected reprint 1993 (''Method of Measuring and Specifying Color Rendering Properties of Light Sources, ISBN 3 900 734 39 9''). (NEMA, No. 12 at p. 2 and pp. 3–4) Finally, NEMA also identified a referenced standard for compact fluorescent lamps, IESNA LM–66–1991 (''Electrical and Photometric Measurements of Single Ended Compact Fluorescent Lamps'') which requires updating. NEMA noted that EPACT 2005 established minimum standards for single ended CFL, and the IESNA LM–66 reference needs to be updated as part of this process. (NEMA, No. 12 at p. 4)

In response, DOE has tentatively decided to update several industry standards incorporated by reference in DOE's lighting regulations in order to ensure their availability and to facilitate testing. DOE notes that various industry lighting standards are referenced in its regulations, as codified in 10 CFR 430.2 and 430.22 and 10 CFR part 430, Subpart B, Appendix R. Although references to incorporated industry standards are generally found in the test procedures contained in DOE's regulations, this rulemaking document also addresses other provisions of DOE's lighting regulations where references to the identical standards require updating. Initiating such changes at one time in the context of this test procedure rulemaking is more efficient and promotes consistency across DOE's lighting regulations. However, where it was determined that updating to a more recent version of an incorporated industry standard would effect a significant change in the scope of coverage of the regulation or other compliance requirements (*e.g.*, changing the definition of ''rated wattage'' in 10 CFR 430.2), DOE reserved consideration of such updates for the standard-setting ANOPR because it believes that rulemaking to be the appropriate context for making substantive changes to energy conservation standard levels and their scope of coverage.

When considering an updated standard, DOE examines each one to ensure that a revision to DOE's regulations would not result in a test procedure that is unduly burdensome to conduct. DOE also examines an updated standard to determine whether the amended test procedure would significantly change the measured lamp efficacy (thereby necessitating amendments to the energy conservation standard itself). Unless otherwise stated, DOE has determined that none of the referenced test procedures is burdensome to conduct, nor would they result in a change in measured energy efficiency. Thus, DOE proposes to update the standards incorporated by reference to the more recent versions recommended by stakeholders. The updated references are discussed in detail below.

1. General Service Fluorescent Lamps

NEMA commented that the ANSI C78.1–1991, C78.2–1991, and C78.3–1991 have been collectively superseded by the 2005 edition of ANSI C78.81. These 1991 standards are referenced in DOE's definitions of ''cold-temperature fluorescent lamp,'' ''fluorescent lamp,'' and ''rated wattage.'' (See 10 CFR 430.2) In addition, the test methods and measurements for GSFL incorporate elements of each of these standards. (See 10 CFR 430, Subpart B, Appendix R, paragraph 4.1.1)

Since the time of their incorporation, these industry standards have undergone several rounds of revision. The 1991 standards were consolidated in 2001 as ANSI C78.81 and ANSI C78.901. ANSI C78.81 was later revised in 2003. Both ANSI C78.81 and ANSI C78.901 were then revised in 2005. ANSI C78.81–2005, addressing dimensional and electrical characteristics for double-capped fluorescent lamps, combines and is an updated version of ANSI C78.2–1991 (which addresses dimensional and electrical characteristics for preheat start fluorescent lamps), ANSI C78.3–1991 (which addresses dimensional and electrical characteristics for instant start and cold-cathode type fluorescent lamps), and portions of ANSI C78.1–1991 (which addresses dimensional and electrical characteristics for rapid start fluorescent lamps). ANSI C78.901–2005 provides dimensional and electrical characteristics for single-based fluorescent lamps and incorporates specifications for the U-shaped lamps that were previously covered by ANSI C78.1–1991.

In a review and comparison of the 1991 and 2005 ANSI standards, DOE found that both ANSI C78.81–2005 and ANSI C78.901–2005 add a requirement that the average wattage not exceed the rated wattage by 5 percent plus 0.5 watts. In the 1991 ANSI standards, the relationship between the average and rated wattage was not defined. The new ANSI standards, with this tolerance on average wattage, would allow a lamp listed in a catalogue as being nominally 32 watts (rated at 32.5 watts in ANSI C78.81) to actually have a power as high as 34.6 watts and still be listed as nominally 32 watts. However, DOE notes that manufacturers do not use the rated wattage when calculating efficacy. Instead, they use the measured (or ''average'') wattage, following the steps in DOE's test procedure. Therefore, this new requirement that the average wattage shall not exceed the rated

number 8 in the docket of energy conservation standards rulemaking; and (3) appearing on page 2.

[7] In its table, NEMA also included an IESNA testing standard for medium-based compact fluorescent lamps, which, though not included by DOE in Appendix D of the Framework Document, is incorporated by reference in DOE's test procedures for Electric Lamps. (10 CFR 430, Subpart B, Appendix R, paragraph 4.4)

wattage by 5 percent plus 0.5 watts would not change the represented efficacy of lamps tested. In other words, the efficacy represented by a lamp tested under the 1991 ANSI standards and under the 2005 ANSI standards would not differ due to this new tolerance requirement on rated wattage.

A noteworthy difference between ANSI C78.1 and ANSI C78.81 is each document's content under Annex A.2, which is referenced in DOE's definition of ''rated wattage'' [8] (See 10 CFR 430.2). As mentioned earlier, in the context of ''rated wattage,'' this difference could result in a change in coverage under the energy conservation standards. Specifically, Annex A.2 of ANSI C78.1 indicates that the lamp abbreviation may include either the rated wattage or nominal wattage for a particular lamp. However, Annex A.2 of ANSI C78.81 no longer refers to the rated wattage, specifying that the lamp abbreviation incorporates only the nominal wattage. Although Annex A.2 of ANSI C78.81 does not provide a definition of rated wattage, Clause 11.1 of the standard does identify rated wattage by referring to the rated values in the specific lamp data sheets contained in ANSI C78.81. Because the rated wattage values referred to in Annex A.2 of the outdated ANSI C78.1–1991 are different from those values identified by either Annex A.2 or Clause 11.1 of ANSI 78.81–2005, implementing this reference update in the definition of ''rated wattage'' (i.e., substituting ANSI C78.1 with ANSI C78.81) would substantively change that definition. Due to the fact that rated wattage is used in the definition of ''fluorescent lamps,'' updating ANSI C78.1 to ANSI C78.81 would alter the scope of coverage for fluorescent lamps under the applicable DOE regulations (scope may increase or decrease, depending on the nominal and rated wattage of the fluorescent lamp). For this reason, DOE is not proposing to update the relevant incorporation by reference in the definition of ''rated wattage'' in the context of this test procedure NOPR. Instead, DOE discusses potential revisions to the ''rated wattage'' definition in the energy conservation standards rulemaking, for which an ANOPR is published in today's **Federal Register**. In the ANOPR, DOE has a section where it discusses scope of coverage, including the updating of the reference from ANSI C78.1 to C78.81 in the definition of ''rated wattage.''

It is important to note that while DOE is not proposing to update the ANSI C78.1–1991 reference in the definition of ''rated wattage'' in 10 CFR 430.2, the term ''rated wattage'' is not used in DOE's fluorescent and incandescent lamp test procedure. Therefore, the updated fluorescent and incandescent lamp test procedure, as proposed in this NOPR, would incorporate all the most up-to-date industry standards and practices.

For several covered lamps listed in ANSI C78.1–1991, the updated ANSI C78.81–2005 adds high-frequency reference ballast settings for lamps without cathode heating. Because DOE references ANSI standard C78.1 in the test methods and measurements of GSFL, this additional option for testing may introduce a significant change in the test procedure and change in the measured efficacy. (See 10 CFR 430, Subpart B, Appendix R, paragraph 4.1.1) Fluorescent lamp operation without cathode heating generally results in a higher measured efficacy than operation with cathode heating. In addition, DOE recognizes that lamp operation on a high-frequency ballast results in significantly different lamp efficacy than lamp operation on a low-frequency ballast. Due to the fact that these lamps can be operated on both low- and high-frequency ballasts, DOE is proposing to require all lamps have their efficacy tested using the low-frequency reference ballasts. This proposal is consistent with the existing test procedure and referenced 1991 ANSI standard and will ensure that all testing will result in consistent lamp efficacy measurements. For those lamps which can only be tested on a high-frequency reference ballast (*e.g.*, 86-Watt 8-foot T8 high output or T5 fluorescent lamps, though neither are currently covered products), DOE is proposing that manufacturers would test and report their performance using the high-frequency reference ballast settings contained in the updated 2005 ANSI standard. This issue of lamp testing on high-frequency ballasts is discussed in detail in Section III.B of this NOPR.

Finally, in 10 CFR 430.2, paragraphs (3) and (4) of the definition of ''fluorescent lamp'' define the scope of coverage for such lamps that are subject to energy efficiency standards by referencing the lamps contained in ANSI C78.1 and ANSI C78.3. In paragraph (3) of the definition, the scope of ''8-foot high output lamps'' is limited to those lamps identified in ANSI C78.1–1991. Substituting ANSI C78.1–1991 with ANSI C78.81–2005 in paragraph (3) would not alter the scope of coverage of 8-foot high output lamps, as no additional lamps of this type are listed in ANSI C78.81. Therefore, DOE proposes in this NOPR to replace the reference to ANSI C78.1–1991 with a reference to ANSI C78.81–2005 in paragraph (3) of DOE's definition of a ''fluorescent lamp.''

Similarly, paragraph (4) of the definition of ''fluorescent lamp'' defines ''8-foot slimline lamps'' by referencing ANSI C78.3–1991. The updated ANSI C78.81–2005 provides lamp specification data for one additional fluorescent lamp if the reference to ANSI C78.3 was substituted with the 2005 ANSI standard in paragraph (4) of the definition. Specifically, ANSI C78.81–2005 provides lamp specification data for a 59-watt, 8-foot, T8, single pin, instant start fluorescent lamp that would fall under the definition of ''8-foot slimline lamps.'' Thus, if DOE were to update this reference to ANSI C78.3–1991 by substituting it with ANSI C78.81–2005, DOE would be expanding its scope of coverage to additional 8-foot slimline lamps. Therefore, DOE is not proposing in this proposed rule to update the referencing of ANSI C78.3–1991 in paragraph (4) of the definition of ''fluorescent lamp'' in this rulemaking proceeding. However, in this test procedure NOPR, DOE is proposing to update all references to ANSI C78.3–1991 appearing in 10 CFR 430, Subpart B, Appendix R.[9] Today's proposal, if adopted, would ensure that DOE has a test procedure for fluorescent lamps incorporating all the most up-to-date industry standards. DOE is considering the issue of the reference to the outdated ANSI C78.3–1991 in the definition of ''fluorescent lamp'' (and the associated expansion of coverage) in the energy conservation standard ANOPR for GSFL, IRL, and GSIL published in today's **Federal Register**.

For all the reasons set forth in the preceding paragraphs, DOE is proposing to incorporate by reference ANSI C78.81–2005 and ANSI C78.901–2005 and to delete the references to ANSI C78.1–1991 in the definition of ''cold-temperature fluorescent lamp'' and in

[8] 10 CFR 430.2 defines ''rated wattage'' as: ''Rated wattage, with respect to 4-foot medium bipin T8, T10 or T12 lamps, means: (1) If the lamp is listed in ANSI C78.1–1991, the nominal wattage of a lamp determined by the lamp designation in Annex A.2 of ANSI C78.1–1991; or (2) If the lamp is a residential straight-shaped lamp, the wattage a lamp consumes when operated on a reference ballast for which the lamp is designed; or (3) If the lamp is neither listed in ANSI C78.1–1991 nor a residential straight-shaped lamp, the wattage a lamp consumes when using reference ballast characteristics of 236 volts, 0.43 amps and 439 ohms for T10 or T12 lamps or reference ballast characteristics of 300 volts, 0.265 amps and 910 ohms for T8 lamps.''

[9] By referencing ANSI C78.81 and ANSI C78.901 in 10 CFR 430, Subpart B, Appendix R, DOE recognizes that the GSFL test procedure provides testing methods for all GSFL currently regulated by DOE as well as other lamps not included in the scope of coverage of DOE's regulations.

paragraph (3) of the definition of ''fluorescent lamp'' in 10 CFR 430.2. In addition, DOE proposes to incorporate by reference ANSI C78.81–2005 and ANSI C78.901–2005. DOE also proposes to delete the references to ANSI C78.1, ANSI C78.2, and ANSI C78.3 in the test methods and measurements of GSFL. (10 CFR 430, Subpart B, Appendix R, paragraph 4.1.1) DOE believes that by continuing to require that all lamps be tested on low-frequency ballasts (except those that cannot be), the revisions proposed above would not result in any additional testing burden or significant change in measured lamp efficacy.

NEMA commented that ANSI C78.375–1991 has been updated to ANSI C78.375–1997. (NEMA, No. 12 at p. 3) ANSI C78.375–1991, which is incorporated by reference, describes procedures for obtaining electrical measurements for these lamps. (See 10 CFR 430, Subpart B, Appendix R) DOE reviewed the test procedure and the ANSI updates, and it was found that the 1997 revision provides less restrictive requirements for supply voltage than the 1991 version, and it removes specifications for instrumentation usage and correction determination. These updates are based on changes in technology, and DOE believes that these revisions would not change the measured lamp efficacy. The revised 1997 ANSI standard requires that lamp testing be performed in a draft-free environment and that the test instruments are of true root mean square type.[10] DOE has tentatively concluded that both of these updates would help to reduce errors and produce more consistent, accurate representations of lamp performance, without resulting in any additional testing burden or change in measured lamp efficacies. Therefore, DOE is proposing to amend the reference to ANSI C78.375–1991 by replacing it with ANSI C78.375–1997 in 10 CFR 430.22 and 10 CFR part 430, Subpart B, Appendix R.

Next, NEMA suggested that DOE amend references to ANSI C82.3–1983, which provides design features and operating characteristics for fluorescent lamp reference ballasts, by replacing it with the latest version of that standard, ANSI C82.3–2002. (NEMA, No. 12 at p. 3) ANSI C82.3–1983 is currently referenced in the test methods and measurements section of the GSFL test procedure (see 10 CFR part 430, Subpart B, Appendix R, paragraph 4.1.1). ANSI C82.3–2002 updates instrument/calibration requirements reflective of the changes over time in the instrumentation used to test lamps. Instrumentation used today no longer requires many of the calibrations and adjustments dictated in the 1983 standard. DOE believes that the revised ANSI standard (ANSI C82.3–2002), though simplifying calibration and adjustment techniques, does not alter the measured efficacies of lamps tested vis-à-vis those reported in ANSI C82.3–1983. In addition, ANSI C82.3–2002 introduces high-frequency (*i.e.*, 25 kHz) specifications for reference test ballasts. However, as stated above, DOE is proposing to require all lamps to be tested using low-frequency ballasts (except those which can only be tested with high-frequency ballasts). Because all currently covered lamps have corresponding low-frequency ballast specifications provided, DOE concludes that this revision to the ANSI standard does not affect the efficacy measurement for the relevant lamps or introduce any additional testing burden. Therefore, DOE is proposing to replace the reference to ANSI C82.3–1983 with ANSI C82.3–2002 in 10 CFR 430.22 and 10 CFR part 430, Subpart B, Appendix R.

Furthermore, NEMA commented that IESNA LM–9–99 is the current version of IESNA LM–9–88, and that the references to LM–9–88 in 10 CFR part 430, Subpart B, Appendix R should be updated to the more recent version of the IESNA standard. (NEMA, No. 12 at p. 3) These two standards describe the procedures for assessing electrical and photometric characteristics of fluorescent lamps. The 1999 version of IESNA LM–9 adds specifications for self-absorption correction when taking light output measurements. Although this addition could raise efficacy by as much as 5 or 10 percent, the degree of this change depends on the integrating-sphere configuration and the laboratory conducting the testing. However, because some laboratories already account for self-absorption in their light output measurements, these added specifications would only affect those laboratories not presently performing this practice. If DOE adopts this revision and concludes that the update does significantly affect measured lamp efficacy, then in accordance with 42 U.S.C. 6293(e), DOE would be required to ''amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure.'' In this case, DOE will revise and develop new or amended efficacy standards for fluorescent lamps in its energy conservation standards rulemaking, taking into consideration the updated standard, IESNA LM–9–1999. DOE invites comment on this issue.

Another difference between IESNA LM–9–1999 and the earlier version of that standard concerns the electrical settings used during lamp measurements. The updated IESNA standard allows measurements to be taken with the lamp operating and stabilized under one of three conditions: (1) At the specified input voltage to the reference circuit; (2) at the rated lamp power; or (3) at a specified current. In contrast, the 1988 version of the IESNA standard requires that measurements be taken at the input voltage specified by the reference circuit. Though all three measurement techniques are valid methods to test fluorescent lamps, DOE believes that testing under each of the three measurement techniques could result in significantly different efficacies. Therefore, in order to ensure consistent lamp efficacy measurements, DOE proposes to limit the testing of lamps by using one particular method, with the lamp operating and stabilized at the specified input voltage to the reference circuit. By retaining this single method of testing lamps, DOE makes certain that updating to IESNA LM–9–1999 will not change the measured lamp efficacy or cause additional testing burden. Other changes to the revised version standardize methods of testing by providing clearer guidelines. DOE believes that these updates will result in more consistent and accurate efficacy measuring and reporting. Therefore, DOE proposes to update the references to IESNA LM–9 in 10 CFR 430.22 and 10 CFR part 430, Subpart B, Appendix R, by substituting the test method in IESNA LM–9–1999, with a limitation that the testing conditions are to be that the lamp must be operating and stabilized at the specified input voltage to the reference circuit.

2. Incandescent Reflector Lamps and General Service Incandescent Lamps

NEMA commented that IESNA LM–45–1991 is out of date and has been updated to IESNA LM–45–2000. (NEMA, No. 12 at pp. 3–4) IESNA LM–45–1991, which is incorporated by reference in 10 CFR part 430, Subpart B, Appendix R, describes the procedures to be followed for measurement of the electrical and photometric characteristics of general service incandescent filament lamps. In addition, IESNA LM–20 (the referenced standard regarding the photometric testing of reflector-type lamps) incorporates IESNA LM–45–1991 by reference. DOE's review of these testing

[10] These instruments directly calculate the root mean square from the measured waveform, rather than basing the calculation on the assumption that the waveform is sinusoidal.

standards indicates that revising the test procedure to incorporate IESNA LM–45–2000 by reference would update testing instrumentation specifications, test procedure information, and mechanisms for determining measurement errors.

DOE believes that substituting IESNA LM–45–2000 for the version currently incorporated would provide clarification in the test procedure, which would reduce variability without significantly affecting measured lamp efficacy. Specifically, the revised IESNA standard provides a detailed procedure for establishing lamp stabilization. The revised IESNA standard also explains the origin of measurement errors caused by the deviation in system response from the photopic luminous efficacy function (V(λ)) when determining illuminance and total luminous flux. Furthermore, the revised IESNA standard requires a tighter bound of uncertainty measurements for voltage and current. It is DOE's understanding that these modifications could reduce uncertainty and variability in efficacy measurements. DOE believes that the changes are necessary because the previous methodology incorporates measurement techniques that could result in different efficacy values for the same lamp. In addition, DOE believes that testing under an amended test procedure that incorporates the 2000 version of the IESNA standard would not be unduly burdensome to conduct. Therefore, DOE is proposing to incorporate by reference IESNA LM–45–2000 under 10 CFR 430.22 and 10 CFR part 430, Subpart B, Appendix R.

3. Medium-Based Compact Fluorescent Lamps

DOE is proposing to delete references to test procedures for medium-based compact fluorescent lamps from 10 CFR part 430, Subpart B, Appendix R, because test procedures conforming with EPACT 2005 were added by the December 2006 Final Rule. Section 323(b)(12)(A) of EPCA, as amended, requires test procedures for medium-based CFL to be based on the August 9, 2001, version of the ENERGY STAR program requirements for CFL (version 2.0). Accordingly, the December 2006 Final Rule incorporated the version 2.0 as DOE's test procedure for CFL. (10 CFR part 430, Subpart B, Appendix W) This statutory directive supersedes the testing procedures adopted by the September 1994 Interim Final Rule. Therefore, DOE proposes to delete references to testing medium-based compact fluorescent lamps from 10 CFR 430.22 and 10 CFR part 430, Subpart B, Appendix R. In addition, DOE proposes to reference Appendix W of Subpart B instead of Appendix R of Subpart B in 10 CFR part 430 when indicating the appropriate test procedure for medium base compact fluorescent lamps.

4. General Information Standards

NEMA commented that IESNA LM–16–1993, a guide to colorimetry of light sources, has been withdrawn and is commercially unavailable. Accordingly, NEMA requested that this reference be eliminated from DOE's regulations. (NEMA, No. 12 at pp. 3–4) IESNA LM–16–1993, which is referenced in 10 CFR part 430, Subpart B, Appendix R, is not a specific test method and does not provide any detail associated with the test procedures contained in Appendix R. IESNA LM–16 provides only educational information and refers to testing standards already referenced by other incorporated ANSI, IESNA, and CIE references. Therefore, DOE is proposing to delete the reference to IESNA LM–16–1993 from Appendix R because it has been withdrawn by industry and is superfluous to DOE's test procedure. Correspondingly, DOE is proposing to delete the reference to IESNA LM–16–1993 from 10 CFR 430.22(b)(2). DOE believes that these amendments would not result in any change in the testing method or measured efficacies of fluorescent or incandescent lamps.

In its comments, NEMA urged DOE to incorporate by reference CIE Publication 13.3–1995, which is the updated version of CIE Publication 13.2–1974 (corrected reprint 1993). CIE Publication 13.2 is cited in 10 CFR 430.2, 10 CFR 430.22(b)(3), and 10 CFR part 430, Subpart B, Appendix R. CIE Publication 13.2 is referenced in the definition of ''colored fluorescent lamp'' (10 CFR 430.2) and in the test methods and measurements of GSFL (10 CFR 430, Subpart B, Appendix R, paragraph 4.5.1).[11] CIE Publication 13.2 presents the procedure for measuring and specifying color rendering properties of light sources. Relative to CIE Publication 13.2, data tables have been modified in CIE Publication 13.3 to be representative of current spectroradiometric practices. A smaller interval for the color rendering index (CRI) is required due to changes in current practices. However, the technical method for determining CRI has not changed from the 1974 edition of the CIE publication. DOE believes the proposed amendments to this document would not significantly impact the measurement of lamp efficacy or add additional testing burden because these changes have already been widely adopted in practice and are now standardized across laboratories. Therefore, DOE is proposing to update the relevant CFR provisions to incorporate by reference CIE Publication 13.3–1995, in place of CIE Publication 13.2–1974 (corrected reprint 1993).

In addition, DOE is also proposing in this notice to delete the reference to TLA Lighting Consultants from 10 CFR 430.22(b)(3), and instead is inserting both an e-mail address and Web site for CIE. DOE is proposing this amendment for the following reasons: (1) DOE no longer believes it is necessary to list a private company as the source of CIE documents when CIE documents can be purchased online directly from CIE; and (2) as discussed in 10 CFR 430.22(a)(2), the CIE document and all referenced standards are made publicly available through both the National Archives and Records Administration and the U.S. Department of Energy headquarters in Washington, DC.

B. High-Frequency Fluorescent Ballast Testing

As discussed in Section III.A above, DOE is proposing to incorporate by reference ANSI C78.81 and ANSI C78.901 (which replaced ANSI C78.1, ANSI C78.2, and ANSI C78.3) in 10 CFR part 430, Subpart B, Appendix R, paragraph 4.1.1. ANSI C78.81 allows several lamps to be tested on high-frequency ballasts. Philips commented that the same lamp tested on different reference ballasts may have different reported efficacies. (Philips, No. 11 at p. 3) The Philips comment raises a significant point. DOE believes that having a fluorescent lamp efficacy standard which allows manufacturers to determine compliance by using either of two different methods would introduce inconsistencies in the measured efficacies for those products. At this time, while high-frequency testing specifications are available for some lamps, they are not yet available for all of DOE's covered fluorescent lamp types. ANSI C78.81 does provide low-frequency reference ballast specifications for all of DOE's covered fluorescent lamps. Therefore, consistent with the current test procedure, DOE is proposing in this NOPR to require testing of GSFL using low-frequency reference ballasts when possible. If, as discussed in the energy conservation standards ANOPR, DOE were to extend its coverage to certain additional

[11] CIE Publication 13.2 is also referenced in the DOE definition of ''colored incandescent lamp'' as developed and codified in the May 1997 Final Rule. 62 FR 29221,29228 (May 29, 1997) However, section 321(a)(1) of EISA 2007 establishes a new definition (superseding DOE's previous definition) that references the updated CIE Publication 13.3.

fluorescent lamps for which only high-frequency reference ballast specifications are available, then DOE proposes to require that testing of those lamps would be conducted using the specified high-frequency reference ballast. By continuing to test fluorescent lamps on low-frequency ballasts when possible, DOE ensures consistent and repeatable efficacy measurements. In addition, as this proposal does not represent a divergence from the current testing practices, DOE believes that the proposed test procedure would neither increase testing burden nor alter the measured efficacy of fluorescent lamps.

DOE is aware that the fluorescent ballast market is shifting toward high-frequency (*i.e.*, electronic) ballasts. Therefore, if industry standards are amended in the future so as to provide high-frequency testing specifications for a more comprehensive list of covered lamps, DOE will consider reevaluating its test procedures. In such a case, DOE may propose allowing manufacturers the option of choosing either low-frequency reference balance testing or high-frequency reference ballast testing. DOE notes that if it allows manufacturers to test and represent the efficacy of their lamps using a high-frequency reference ballast, DOE would need to adjust the table of fluorescent lamp efficacy requirements (which currently includes low-frequency ballasts efficacy levels) so as to also include high-frequency ballast efficacy levels, in accordance with 42 U.S.C. 6293(e). In other words, DOE would scale its efficacy requirements to reflect the performance of a lamp on a low-frequency ballast to that same lamp's performance on a high-frequency ballast. DOE invites stakeholders to comment on this issue.

C. Calculation of Fluorescent Lamp Efficacy

DOE's current test procedures for fluorescent and incandescent lamps contain an inconsistency between the definition of ''lamp efficacy'' and the minimum efficacy standards established by the Energy Policy Act of 1992 (Pub. L. 102–486) (EPACT 1992). Under 10 CFR part 430, Subpart B, Appendix R, paragraph 2.6, lamp efficacy for all lamps is defined as: ''the ratio of measured lamp lumen output in to the measured lamp electrical power input in watts, rounded to the nearest whole number, in units of lumens per watt.'' Similarly, the GSFL test procedure states that lamp efficacy measurements should be rounded to the nearest lumen per watt (10 CFR 430.23(r)(2)). However, in 10 CFR 430.23(r)(3), lamp efficacy for IRL is defined as the ratio of lumens emitted over watts consumed, rounded to the nearest tenth of a lumen per watt. DOE believes that accuracy of efficacy measurements is crucial in order to maximize energy savings under DOE regulations. DOE further notes that average lamp efficacy requirements for GSFL, as listed in EPCA, are specified to the nearest tenth of a lumen per watt. (42 U.S.C. 6295(i)(1)(A)) Therefore, DOE is proposing to revise the GSFL test procedure (10 CFR 430.23(r)(2)) and the test procedure definition of ''lamp efficacy'' (10 CFR part 430, Subpart B, Appendix R, paragraph 2.6), such that all efficacy measurements for lamps are rounded to the nearest tenth of a lumen per watt. This proposal is consistent with DOE's approach in the May 1997 Final Rule regarding the rounding practice required for the calculation of IRL efficacy. In the May 1997 Final Rule, DOE stated that IRL lamp efficacy should be rounded to the nearest tenth of a lumen per watt in order to retain the significant figures in the EPCA standard for IRL. (42 U.S.C. 6295(i)(1)(A)) 62 FR 29221, 29234 (May 29, 1997) This proposed revision to the efficacy rounding practice for GSFL does not alter the method of taking test measurements, but only the calculation of lamp efficacy. Therefore, DOE believes that requiring average lamp efficacy measurements of GSFL be rounded to the nearest tenth of a lumen per watt would not be unduly burdensome.

In sum, DOE believes that these amendments to the test procedure would neither be unduly burdensome to implement nor alter the measured efficacy of covered fluorescent lamps. DOE invites stakeholders to comment on this issue.

D. Measurement and Calculation of Correlated Color Temperature

DOE uses CCT as a metric to define ''colored fluorescent lamp'' and ''colored incandescent lamp.'' [12] In both cases, CCT is used to determine whether a lamp that operates with a particular CCT should be classified as a colored lamp, and therefore not be subject to regulation as a covered product. The existing test procedures for fluorescent and incandescent lamps in the CFR do not provide guidance or methodologies for determining or calculating CCT. In today's **Federal Register**, DOE is publishing an ANOPR for the energy conservation standards rulemaking on GSFL and IRL that takes into consideration CCT. In the energy conservation standards ANOPR, DOE is requesting comment on the development of separate product classes and efficacy standards for fluorescent lamps based on CCT. In order that manufacturers may all use the same reference document for determining their fluorescent lamp CCT values, DOE is proposing to incorporate by reference in this proceeding IESNA LM–9–1999, titled ''IESNA Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps.'' IESNA LM–9–1999 provides a clear and adequate methodology for the measurement and calculation of the CCT of a fluorescent lamp. Under IESNA LM–9–1999, CCT is determined by measuring the spectral power distribution and then calculating the chromaticity coordinates which correspond to a particular CCT. DOE does not believe the adoption of this IESNA standard imposes an additional burden on fluorescent lamp manufacturers because manufacturers already calculate chromaticity coordinates to report an industry-standardized CCT for these lamps in their product catalogs and marketing literature. Therefore, DOE is proposing to include IESNA LM–9–1999 in the definition of ''colored fluorescent lamp'' under 10 CFR 430.2 and in 10 CFR part 430, Subpart B, Appendix R as a test method for the measurement and calculation of CCT for fluorescent lamps.

Section 321(a)(1)(B) of EISA 2007 introduces a new statutory definition for ''colored incandescent lamp,'' stating that a colored incandescent lamp is, in part, an incandescent lamp with ''a correlated color temperature less than 2,500K, or greater than 4,600K, where correlated temperature is computed according to the Journal of Optical Society of America, Vol. 58, pages 1528–1595 (1986).'' [13] As this statutory definition explicitly prescribes the method for calculation of CCT for incandescent lamps, in this NOPR, DOE proposes to incorporate this same reference into the incandescent lamp test procedure. DOE does not consider this action to be unduly burdensome, as no manufacturer is required to determine the CCT of their incandescent

[12] The following is the definition of ''colored fluorescent lamp'' set forth in 10 CFR 430.2: ''*Colored fluorescent lamp* means a fluorescent lamp designated and marketed as a colored lamp, and with either of the following characteristics: a CRI less than 40, as determined according to the method given in CIE Publication 13.2 (see 10 CFR 430.22), or a lamp correlated color temperature less than 2,500K or greater than 6,600K.''

[13] This statutory definition supersedes the previous definition for ''colored incandescent lamp'' which DOE developed and incorporated into 10 CFR 430.2 in the May 1997 Final Rule. 62 FR 29221, 29228 (May 29, 1997)

lamps. However, if a manufacturer intends to seek an exclusion from the regulatory requirements because a particular lamp is less than 2500K or greater than 4600K, then the manufacturer would need to use the Journal of Optical Society of America, Vol. 58, pages 1528–1595 (1968) [14] in order to make that determination.

E. General Service Fluorescent Lamp Basic Model

As mentioned above, in today's **Federal Register**, DOE is publishing an ANOPR for the energy conservation standards rulemaking that considers separate product classes and efficacy standards for GSFL based on CCT. In order to demonstrate compliance to that potential efficacy standard, manufacturers would have to test and report on a basic model. A ''basic model'' involves defining a lamp or class of lamps which do not have any differentiating electrical, physical, or functional features that affect efficacy. In the May 1997 Final Rule, DOE stated that the definition of ''basic model'' for GSFL includes all lamps with essentially identical light output, power input, and luminous efficacy, regardless of their CCT. 62 FR 29221, 29232 (May 29, 1997). However, given DOE's consideration in the ANOPR of establishing product classes based on CCT, in this NOPR, DOE proposes to amend the definition of ''basic model'' for GSFL in 10 CFR 430.2 so as to require that the lamps have similar CCTs. DOE invites comment from stakeholders on this revision to the definition of ''basic model.''

F. Reference Ballast Settings for Added Fluorescent Lamp Coverage

DOE is aware that the recent introduction of new 4-foot medium bipin and 2-foot U-Shaped fluorescent lamps into the lighting market has effectively expanded DOE's scope of regulation under the existing definition of ''fluorescent lamp.'' In addition, in the energy conservation standards ANOPR published in today's **Federal Register**, DOE is considering expanding coverage of the fluorescent lamp standard to include additional 4-foot medium bipin, 2-foot U-shaped, 8-foot single pin slimline, and 8-foot recessed double contact high output lamps. Some of the recently introduced fluorescent lamps or the additional fluorescent lamps require additional test procedure specifications (*i.e.*, reference ballast settings) because the current test procedure is not adequate for this purpose. Specifically, DOE is proposing to adopt a process for determining ballast settings for those lamps which are covered but do not yet have ANSI-approved reference ballast settings. Accordingly, in this document, DOE is proposing test procedures for these additional lamps not contained in the industry test procedures incorporated by reference in DOE's test procedure. The proposed test procedure amendments are as follows:

1. 4-Foot Medium Bipin Lamps

The current test procedure for 4-foot medium bipin fluorescent lamps does not specify reference ballast settings for lamps that are not included in ANSI C78.1–1991. DOE is aware of several 4-foot medium bipin lamps that have been introduced since 1991 and, therefore, are not covered in ANSI C78.1–1991. Therefore, DOE proposes to add reference ballast settings for these lamps. For any 4-foot medium bipin lamp not listed in ANSI C78.81–2005 (i.e., the updated version DOE is proposing to adopt in this notice), the lamp should be tested using the following reference ballast settings:

T10 and T12 lamps: 236 volts, 0.430 amps, and 439 ohms.

T8 lamps: 300 volts, 0.265 amps, and 910 ohms.

DOE invites comment on these proposed reference ballast settings for 4-foot medium bipin lamps.

2. 2-Foot U-Shaped Lamps

Similarly, for 2-foot U-shaped lamps, DOE is aware of several products that have been introduced since 1991 and are not covered in ANSI 78.1–1991. Therefore, DOE is proposing to also add reference ballast settings for these lamps. For T12 and T8 lamps, DOE determines the appropriate lamp replacement that exists in the C78.901–2005 (*i.e.*, the updated version that contains U-shaped lamps and that DOE is proposing to adopt in this NOPR), and then uses the corresponding reference ballast settings for all lamps that fall into that category. For lamps not listed in ANSI C78.901–2005, these lamps should be tested using the following reference ballast settings:

T12 lamps: 236 volts, 0.430 amps, and 439 ohms.

T8 lamps: 300 volts, 0.265 amps, and 910 ohms.

DOE invites comment on these proposed reference ballast settings for 2-foot U-shaped lamps.

3. 8-Foot Slimline Lamps

In the energy conservation standards ANOPR published in today's **Federal Register**, DOE is considering expansion of coverage of GSFL to include ''8-foot, single pin, instant start, slimline lamps, with a rated wattage ≥ 52, not defined in ANSI Standard C78.3–1991.'' If DOE decides to adopt standards for these lamps, amendments to the existing test procedures will be required for them as well. However, since these lamps are not contained in ANSI C78.3–1991, there are no reference ballast settings available with which to test them. Therefore, DOE is proposing to develop reference ballast settings for these lamps, which may be used in the event they become ''covered products'' (*i.e.*, covered by standards). For any 8-foot slimline lamp not listed in the updated ANSI C78.81–2005, DOE is proposing the following reference ballast settings:

T12 lamps: 625 volts, 0.425 amps, and 1280 ohms.

T8 lamps: 625 volts, 0.260 amps, and 1960 ohms.

DOE invites comment on these proposed reference ballast settings for 8-foot slimline lamps.

4. 8-Foot High Output Lamps

Similarly, for 8-foot high output lamps, in the energy conservation standards ANOPR, DOE is considering expansion of coverage of GSFL to include ''8-foot, recessed double-contact, rapid start, HO lamps, not defined in ANSI Standard C78.1–1991.'' If DOE decides to adopt standards for these lamps, amendments to the existing test procedures will be required for them as well. However, since these lamps are not contained in ANSI C78.1–1991, there are no reference ballast settings available with which to test them. Therefore, DOE is proposing to develop reference ballast settings for these lamps, which may be used in the event they become covered products. For any 8-foot HO lamp not listed in the updated ANSI C78.81–2005, DOE is proposing testing the lamp using the following reference ballast settings:

T12 lamps: 400 volts, 0.800 amps, and 415 ohms.

T8 lamps: 450 volts, 0.395 amps, and 595 ohms.

DOE invites comment on these proposed reference ballast settings for 8-foot HO lamps.

5. 8-Foot Very High Output Lamps

For the reasons explained in today's energy conservation standards ANOPR, DOE is not considering expansion of coverage of the energy conservation standards to 8-foot recessed double

[14] DOE notes that the publication year of the referenced article in the definition of ''colored incandescent lamp,'' as printed in section 321(a)(1)(B) of EISA, contains a typographical error. When incorporating this reference into the CFR, DOE makes the technical correction of replacing ''1986'' with ''1968.''

contact very high output (VHO) fluorescent lamps. However, if DOE decides to cover these lamps during a future energy conservation standards rulemaking, a test procedure to accommodate them would be required. Therefore, DOE reviewed the existing DOE test procedure and updated industry test procedures to determine if the current test procedures for GSFL are adequate for 8-foot VHO lamps. With regard to the specifications of the physical and electrical characteristics of these lamps, DOE notes that ANSI C78.81–2005, which DOE proposes to incorporate by reference through this document, already includes the ballast setting specifications for some VHO lamps. For other VHO lamps that are not listed in ANSI C78.81–2005, DOE is proposing reference ballast settings which could be used if these lamps become covered products. Thus, for any VHO lamp not listed in ANSI C78.81–2005, DOE proposes testing the lamp using the following reference ballast settings:

T12 lamps: 400 volts, 1.500 amps, and 215 ohms.

DOE invites comment on these proposed reference ballast settings for VHO lamps.

6. T5 Fluorescent Lamps

For the reasons explained in today's energy conservation standards ANOPR, DOE is not considering expansion of coverage of the energy conservation standards to T5 fluorescent lamps. However, if DOE decides to cover these lamps during a future energy conservation standards rulemaking, a test procedure to accommodate them would be required. Therefore, DOE reviewed the existing DOE test procedure and updated industry test procedures and determined that the current test procedures for GSFL are adequate for some T5 lamps. In addition, with regard to the specifications of the physical and electrical characteristics of T5 lamps, DOE notes that ANSI C78.81–2005, which DOE is already proposing to incorporate by reference, includes the ballast setting specifications for some T5 lamps. However, for other T5 lamps not listed in ANSI C78.81–2005, DOE is proposing reference ballast settings which could be used if these lamps become covered products. Thus, for any normal or high output T5 lamp with a nominal length of four feet that is not listed in ANSI C78.81–2005, DOE proposes testing the lamp using the following reference ballast settings:

Normal Ouptut T5: 329 volts, 0.170 amps, and 950 ohms.

High Output T5: 235 volts, 0.460 amps, and 255 ohms.

Should DOE decide to extend coverage to and evaluate energy conservation standards for other T5 lamps that may subsequently be developed, DOE would establish reference ballast settings in the same manner as normal output and high output T5 lamps addressed above, namely, deriving the reference ballast settings from International Electrotechnical Commission (IEC) 60081.[15] DOE would determine the appropriate lamp replacement that exists in the industry standard and use the corresponding reference ballast settings for all lamps that fall into that category. DOE invites comment on this issue and the proposed reference ballast settings for T5 lamps.

G. Test Procedures for Added General Service Incandescent Lamp Coverage

As stated earlier, EISA 2007 established energy conservation standards for GSIL. Currently, for the purpose of Federal Trade Commission (FTC) labeling requirements, a limited test procedure for GSIL is provided in the CFR. In this NOPR, DOE proposes to amend the existing test procedure in order to: (1) Specify the units to be tested in 10 CFR 430.24(r)(1); (2) define the ''basic model'' for GSIL in 10 CFR 430.2; and (3) provide a method for calculating GSIL annual energy consumption and efficacy in 10 CFR 430.23(r). Because of the similarity in technology of GSIL and IRL, DOE is proposing that the above additions to the GSIL test procedure be implemented in the same manner as the corresponding IRL test procedure. DOE invites comment on the proposed amendments to the GSIL test procedure.

H. Off Mode and Standby Mode Energy Consumption

Section 310(3) of EISA 2007 directs DOE to amend its test procedures for all covered products to incorporate a measure of off mode and standby mode energy consumption, if feasible. (42 U.S.C. 6295(gg)(2)) After careful review, DOE has preliminarily concluded that for the GSFL, IRL, and GSIL which are the subject of this rulemaking, current technologies for these products do not employ a standby mode or off mode. Therefore, DOE believes establishing a test procedure for such features, is infeasible. Given EISA 2007's definitions of ''active mode,'' ''off mode,'' and ''standby mode,''[16] the lamp must be entirely disconnected from the main power source (*i.e.*, the lamp is switched off) in order to not provide any active mode function (*i.e.*, emit light), thereby meeting the second provision in the definition of ''off mode.'' However, if the lamp is disconnected from the main power source, the lamp clearly does not satisfy the requirements of operating in off mode. In addition, DOE believes that all covered products that meet the definitions of ''GSFL,'' ''IRL,'' and ''GSIL'' are single-function products and do not offer any secondary user-oriented or protective functions. Therefore, DOE believes that it is not feasible to incorporate off mode or standby mode energy use into its test procedures for GSFL, IRL, and GSIL. DOE invites stakeholder comment on the issue of off mode and standby mode energy consumption for the products addressed in this rulemaking.

IV. Public Participation

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the transcribing reporter.

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice, the proceeding of the public meeting, or any aspect of the rulemaking, until no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be

[15] IEC 60081 is a publication of the International Electrotechnical Commission in Switzerland. This technical publication is cross-referenced by ANSI C78.81–2005 as the source for reference ballast settings of T5 lamps that are not listed in ANSI C78.81–2005. The title of IEC 60081 is *Double-capped fluorescent lamps—Performance specifications.* Available for purchase from *http://webstore.iec.ch.*

[16] In amending 42 U.S.C. 6295(gg)(1)(a)(i), (ii), and (iii), EISA 2007 defines ''active mode,'' ''off mode,'' and ''standby mode'' as follows: '' The term 'active mode' means the condition in which an energy-using product—(I) is connected to a main power source; (II) has been activated; and (III) provides 1 or more main functions.'' '' The term 'off mode' means the condition in which an energy-using product—(I) is connected to a main power source; and (II) is not providing any stand-by or active mode function.'' ''The term 'standby mode' means the condition in which an energy-using product—(I) is connected to a main power source; and (II) offers 1 or more of the following user-oriented or protective functions: (aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer. (bb) Continuous functions including information or status displays (including clocks) or sensor-based functions.''

provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

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 as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

After the public meeting and the expiration of the period for submission of written statements, DOE will begin conducting the analyses as discussed at the public meeting and reviewing the comments received.

B. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Test Procedure Reference Updates

DOE seeks comment on the proposed test procedure reference updates, specifically, whether these updates to ANSI, IESNA, and CIE standards would introduce an additional testing burden or change the measurement of lamp efficacy. (*See* Section 0 for further detail.)

2. High-Frequency Fluorescent Ballast Testing

DOE seeks comment on whether it should limit fluorescent lamp testing to low-frequency ballasts when both low- and high-frequency reference ballast settings are available in ANSI C78.81–2005 or ANSI C78.901. (*See* Section 0 for further detail.)

3. Calculation of Fluorescent Lamp Efficacy

DOE seeks comment on whether fluorescent lamp efficacy should be calculated to the nearest tenth of a lumen per watt. (*See* Section 0 for further detail.)

4. Measurement and Calculation of Correlated Color Temperature

DOE seeks comment on the proposed incorporation by reference of the industry standard LM–9–1999 for measuring and determining CCT for fluorescent lamps. (See Section 0 for further detail.)

5. General Service Fluorescent Lamp Basic Model

DOE seeks comment on the proposed requirement that all GSFL that are considered to be the same basic model must have similar CCTs. (*See* Section 0 for further detail.)

6. Reference Ballast Settings for Added Fluorescent Lamp Coverage

DOE seeks comment on the proposed reference ballast settings for 4-foot medium bipin lamps, 2-foot U-shaped lamps, 8-foot single pin slimline lamps, 8-foot high output lamps, 8-foot very high output lamps, and T5 fluorescent lamps. (*See* Section 0 for further detail.)

7. Additions to the General Service Incandescent Lamp Test Procedure

DOE seeks comment on the proposed additions to the GSIL test procedure: (1) Specifying the units to be tested in 10 CFR 430.24(r)(1), (2) defining the ''basic model'' for GSIL in 10 CFR 430.2, and (3) providing a method for calculating GSIL annual energy consumption and efficacy in 10 CFR 430.23(r). (*See* Section 0 for further detail.)

8. Off Mode and Standby Mode Energy Consumption

DOE seeks comment on its proposal to not include test procedures off mode and standby mode energy consumption of GSFL, IRL, and GSIL. (*See* Section 0 for further detail.)

V. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to not be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion A6 found in DOE's National Environmental Policy Act regulation at Appendix A to Subpart D, 10 CFR part 1021, which applies because this rule is establishing revisions to existing test procedures that will not affect the quality or distribution of energy and will not result in any environmental impacts.[17] Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*.

EPACT 2005 amended EPCA to incorporate into DOE's energy conservation program certain consumer products and commercial and industrial equipment, including the products for which DOE is proposing test procedures in this notice. On October 18, 2005,

[17] Categorical Exclusion A6 provides, ''Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.''

DOE published in the **Federal Register** a technical amendment to place in the CFR the energy conservation standards, and related definitions, that Congress prescribed in EPACT 2005. 70 FR 60407. Today, DOE is publishing further technical amendments to certain energy conservation standards for lamps previously published in the **Federal Register** on May 29, 1997.

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. As part of this rulemaking, DOE examined the existing compliance costs already borne by manufacturers and compared them to the revised compliance costs, based on the proposed revisions to the test procedure. DOE does not find that the costs imposed by the revisions proposed in this document would result in any significant increase in testing or compliance costs. On the basis of the foregoing, DOE tentatively concludes and certifies that this proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. This NOPR would not impose any new information or recordkeeping requirements, since it does not change the existing manufacturer certification and reporting requirements adopted in DOE's May 29, 1997, final rule. Accordingly, no OMB clearance is required under the PRA.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A

''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore, not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

L. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70) 15 U.S.C. 788. Section 32 provides, in essence that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the FTC concerning the impact of the commercial or industry standards on competition.

The amendments and revisions proposed in this notice incorporate updates to certain commercial standards already codified in the CFR. The Department has evaluated these revised standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC on February 21, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend 10 CFR part 430 as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by:

a. Revising paragraph (15), redesignating paragraphs (16) through (26) as paragraphs (17) through (27) and by adding a new paragraph (16), in the definition for ''Basic Model,''

b. Revising the definition for ''Cold temperature fluorescent lamp,''

c. Revising the definition for ''Colored fluorescent lamp,''

d. Revising paragraph (3) in the definition for ''Fluorescent lamp.''

The revisions and additions read as follows:

§ 430.2 Definitions.

* * * * *

Basic Model * * *

(15) With respect to general service fluorescent lamps, means lamps that have essentially identical light output and electrical characteristics—including lumens per watt, color rendering index (CRI), and correlated color temperature (CCT)—and that do not have any differing physical or functional characteristics that affect energy consumption or efficacy.

(16) With respect to general service incandescent lamps, means lamps that have essentially identical light output and electrical characteristics—including lumens per watt—and that do not have any differing physical or functional characteristics that affect energy consumption or efficacy. * * *

* * * * *

Cold temperature fluorescent lamp means a fluorescent lamp specifically designed to start at −20 °F when used with a ballast conforming to the requirements of ANSI Standard C78.81–2005 and C78.901–2005 (see 10 CFR 430.22), and is expressly designated as a cold temperature lamp both in markings on the lamp and in marketing materials, including but not limited to catalogs, sales literature, and promotional material.

Colored fluorescent lamp means a fluorescent lamp designated and marketed as a colored lamp, and with either of the following characteristics: A CRI less than 40, as determined according to the method given in CIE Publication 13.3 (see 10 CFR 430.22), or a lamp correlated color temperature less than 2,500K or greater than 6,600K, as determined according to the method set forth in IESNA LM–9–99 (see 10 CFR 430.22).

* * * * *

Fluorescent lamp * * *

(3) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.81–2005 (see 10 CFR 430.22). * * *

* * * * *

3. Section 430.22 is amended by revising paragraphs (b)(1), (b)(2), and (b)(3) and adding a new paragraph (b)(12) to read as follows:

§ 430.22 Reference sources.

* * * * *

(b)(1) American National Standards Institute (ANSI). The ANSI standards listed in this paragraph may be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900.

1. ANSI C78.1–1991, ''for Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics''

2. ANSI C78.3–1991, ''for Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics''

3. ANSI C78.375–1997, ''for Fluorescent Lamps—Guide for Electrical Measurements''

4. ANSI C78.81–2005, ''for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics''

5. ANSI C78.901–2005, ''for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics''

6. ANSI C82.3–2002 ''for Reference Ballasts for Fluorescent Lamps''

7. ANSI C79.1–1994, ''Nomenclature for Glass Bulbs—Intended for Use with Electric Lamps''

8. ANSI C78.21–1989, ''Incandescent Lamps—PAR and R Shapes''

9. ANSI Standard Z21.56–1994, ''Gas-Fired Pool Heaters,'' section 2.9

(2) Illuminating Engineering Society of North America (IESNA). The IESNA standards listed in this paragraph may be obtained from the Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, (212) 248–5000.

1. Illuminating Engineering Society LM–9–99, ''IES Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps''

2. Illuminating Engineering Society of North America LM–20–1994, ''IESNA Approved Method for Photometric Testing of Reflector-Type Lamps''

3. Illuminating Engineering Society of North America LM–45–00, ''IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps''

4. Illuminating Engineering Society of North America LM–58–1994, ''IESNA Guide to Spectroradiometric Measurements''

5. *Illuminating Engineering Society of North America Lighting Handbook, Reference and Application,* 8th Edition, 1993, Chapter 6, Light Sources

(3) International Commission on Illumination (CIE). The CIE standard listed in this paragraph may be obtained from the International Commission on Illumination, CIE Bureau Central, Kegelgasse 27, A–1030, Vienna, Austria; Telephone: +43 1–714 31 87 0; e-mail: *ciecb@cie.co.at;* Web site: *http://www.cie.co.at/cie/.*

1. International Commission on Illumination (CIE) Publication No. 13.3–1995, ''Method of Measuring and Specifying Color Rendering Properties of Light Sources,'' ISBN 3 900 734 57 7

* * * * *

(12) Optical Society of America (OSA). The OSA journal article listed in this paragraph may be obtained from the Optical Society of America, 2010 Massachusetts Ave., NW., Washington, DC 20036–1012, (202) 223–8130; Web site: *http://www.osa.org/.*

1. Journal of Optical Society of America, Vol. 58, pages 1528–1595 (1968).

* * * * *

4. Section 430.23 is amended by revising paragraph (r) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(r) *General Service Fluorescent Lamps, General Service Incandescent Lamps, and Incandescent Reflector Lamps.* (1) The estimated annual energy consumption for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps, expressed in kilowatt-hours per year, shall be the product of the input power in kilowatts as determined in accordance with section 4 of Appendix R to this subpart and an average annual use specified by the manufacturer, with the resulting product rounded off to the nearest kilowatt-hour per year. Manufacturers must provide a clear and accurate description of the assumptions used for the estimated annual energy consumption.

(2) The lamp efficacy for general service fluorescent lamps shall be equal to the average lumen output divided by the average lamp wattage as determined in section 4 of Appendix R of this subpart, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(3) The lamp efficacy for general service incandescent lamps shall be equal to the average lumen output divided by the average lamp wattage as determined in section 4 of Appendix R of this subpart, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(4) The lamp efficacy for incandescent reflector lamps shall be equal to the average lumen output divided by the average lamp wattage as determined in section 4 of Appendix R of this subpart, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(5) The color rendering index and correlated color temperature of a general service fluorescent lamp shall be tested and determined in accordance with section 4.4 of Appendix R of this subpart and rounded off to the nearest unit.

* * * * *

5. Section 430.24 is amended by revising the first sentence of paragraph (r)(1) introductory text, is revised to read as follows:

§ 430.24 Units to be tested.

* * * * *

(r)(1) For each basic model of general service fluorescent lamp, general service incandescent lamp, and incandescent reflector lamp samples of production lamps shall be tested and the results for all samples shall be averaged for a 12-month period. * * *

* * * * *

5. Section 430.25 is revised to read as follows:

§ 430.25 Laboratory Accreditation Program.

The testing for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps shall be performed in accordance with Appendix R to this subpart. The testing for medium base compact fluorescent lamps shall be performed in accordance with Appendix W of this subpart. This testing shall be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or by an accrediting organization recognized by NVLAP. NVLAP is a program of the National Institute of Standards and Technology, U.S. Department of Commerce. NVLAP standards for accreditation of laboratories that test for compliance with standards for lamp efficacy and CRI are set forth in 15 CFR part 285 as supplemented by *NVLAP Handbook 150–01,* ''Energy Efficient Lighting Products, Lamps and Luminaires.'' A manufacturer's or importer's own laboratory, if accredited, may conduct the applicable testing.

6. Appendix R to Subpart B of Part 430 is amended by:

a. Revising the title of Appendix R;

b. Revising sections 1 and 2.1;

c. Removing in section 2.6 ''whole number'' and add in its place ''tenth decimal place'';

d. Removing in section 2.9, ''and in IESNA LM–66 for medium base compact fluorescent lamps.'';

e. Removing section 3.4;

f. Revising sections 4.1.1;

g. Redesignating section 4.1.2 as 4.1.3;

h. Adding new sections 4.1.2, 4.1.2.1, 4.1.2.2, 4.1.2.3, 4.1.2.4, 4.1.2.5, and 4.1.2.6;

i. Revising section 4.2.2;

j. Removing section 4.4; and

k. Redesignating section 4.5 as 4.4 and revise the title for redesignated section 4.4 and text for redesignated sections 4.4.1 and 4.4.2.

The revisions and additions read as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE), Color Rendering Index (CRI), and Correlated Color Temperature (CCT) of Electric Lamps

1. *Scope:* This appendix applies to the measurement of lamp lumens, electrical characteristics, CRI, and CCT for general

service fluorescent lamps, and to the measurement of lamp lumens, electrical characteristics for general service incandescent lamps and incandescent reflector lamps.

2. *Definitions*

2.1 To the extent that definitions in the referenced IESNA and CIE standards do not conflict with the DOE definitions, the definitions specified in § 1.2 of IESNA LM–9, § 3.0 of IESNA LM–20, § 1.2 and the Glossary of IESNA LM–45, § 2 of IESNA LM–58, and Appendix 1 of CIE Publication No. 13.3 shall be included.

* * * * *

4. *Test Methods and Measurements*

* * * * *

4.1 *General Service Fluorescent Lamps*

4.1.1 The measurement procedure shall be as described in IESNA LM–9, except that lamps shall be operated at the appropriate voltage and current conditions as described in ANSI C78.375 and in ANSI C78.81 or C78.901, and lamps shall be operated using the appropriate reference ballast at input voltage specified by the reference circuit as described in ANSI C82.3 (see 10 CFR 430.22). If, for a lamp, both low-frequency and high-frequency reference ballast settings are included in the ANSI standard, the lamp shall be operated using the low-frequency reference ballast.

4.1.2 For lamps not listed in ANSI C78.81 nor in C78.901, the lamp shall be operated using the following reference ballast settings:

4.1.2.1 4-Foot medium bi-pin lamps shall be operated using the following reference ballast settings: T10 or T12 lamps are to use 236 volts, 0.43 amps, and 439 ohms; T8 lamps are to use 300 volts, 0.265 amps, and 910 ohms.

4.1.2.2 2-Foot U-shaped lamps shall be operated using the following reference ballast settings: T12 lamps are to use 236 volts, 0.430 amps, and 439 ohms; T8 lamps are to use 300 volts, 0.265 amps, and 910 ohms.

4.1.2.3 8-Foot high output lamps shall be operated using the following reference ballast settings: T12 lamps are to use 400 volts, 0.800 amps, and 415 ohms; T8 lamps are to use 450 volts, 0.395 amps, and 595 ohms.

4.1.2.4 8-Foot slimline lamps shall be operated using the following reference ballast settings: T12 lamps are to use 625 volts, 0.425 amps, and 1280 ohms; T8 lamps are to use 625 volts, 0.260 amps, and 1960 ohms.

4.1.2.5 8-Foot very high output lamps shall be operated using the following reference ballast settings: T12 lamps are to use 400 volts, 1.500 amps, and 215 ohms.

4.1.2.6 Nominal 4-Foot T5 lamps shall be operated using the following reference ballast settings: Normal output lamps are to use 329 volts, 0.170 amps, and 950 ohms; high output lamps are to use 235 volts, 0.460 amps, and 255 ohms.

4.1.3 Lamp lumen output (lumens) and lamp electrical power input (watts), at the reference condition, shall be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition.

4.2 *General Service Incandescent Lamps*

* * * * *

4.2.2 The test procedure shall conform with sections 5 and 9 of IESNA LM–45 and the lumen output of the lamp shall be determined in accordance with section 9 of IESNA LM–45. Lamp electrical power input in watts shall be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition. The test report shall conform to § 11 of IESNA LM–45 (see 10 CFR 430.22).

* * * * *

4.4 *Determination of Color Rendering Index and Correlated Color Temperature*

4.4.1 The CRI shall be determined in accordance with the method specified in CIE Publication 13.3 for general service fluorescent lamps. The CCT shall be determined in accordance with the method specified in IESNA LM–9 for general service fluorescent lamps. The CCT shall be determined in accordance with the Journal of Optical Society of America, Vol. 58, pages 1528–1595 (1968) for incandescent lamps. The required spectroradiometric measurement and characterization shall be conducted in accordance with the methods set forth in IESNA LM–58 (see 10 CFR 430.22).

4.4.2 The test report shall include a description of the test conditions, equipment, measured lamps, spectroradiometric measurement results, and CRI and CCT determinations.

[FR Doc. E8–4035 Filed 3–12–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0273; Directorate Identifier 2007–NM–369–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 747–400, 747–400D, and 747–400F series airplanes. The existing AD currently requires reviewing airplane maintenance records, doing repetitive inspections for cracking of the yaw damper actuator portion of the upper and lower rudder power control modules (PCMs), replacing the PCMs if necessary, and reporting all airplane maintenance records review and inspection results to the manufacturer. This proposed AD would limit the applicability, reduce the initial inspection threshold and repetitive interval, remove the reporting requirement, and require installation of a secondary retention device for the yaw damper modulating piston. Installation of the secondary retention device would terminate the repetitive inspection requirements. This proposed AD results from additional reports of failure or cracking of the PCM manifold in the area of the yaw damper cavity endcap at intervals well below the initial inspection threshold of the existing AD. We are proposing this AD to prevent an uncommanded left rudder hardover in the event of cracking in the yaw damper actuator portion of the upper or lower rudder PCMs, and subsequent failure of the PCM manifold, which could result in increased pilot workload, and possible runway departure upon landing.

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0273; Directorate Identifier 2007–NM–369–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 30, 2006, we issued AD 2006–18–17, amendment 39–14756 (71 FR 52999, September 8, 2006), for all Boeing Model 747–400, 747–400D, and 747–400F series airplanes. That AD requires reviewing airplane maintenance records, doing repetitive inspections for cracking of the yaw damper actuator portion of the upper and lower rudder power control modules (PCMs), replacing the PCMs if necessary, and reporting all airplane maintenance records review and inspection results to the manufacturer. That AD resulted from manufacturer findings that the inspections required by the existing AD (AD 2003–23–01, amendment 39–13364, which AD 2006–18–17 superseded) must be performed at regular intervals. We issued AD 2006–18–17 to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing.

Actions Since Existing AD Was Issued

Since the issuance of AD 2006–18–17, there have been additional reports of cracked rudder PCMs in the yaw damper portion of the PCM manifold that failed well below the initial inspection threshold of the AD. As part of the National Transportation Safety Board (NTSB) and FAA investigation, it was determined that a permanent design modification must be made to the rudder PCM that prevents a left rudder hardover in the event of a failed rudder PCM manifold.

The preamble to AD 2006–18–17 specified that we considered the requirements ''interim action.'' That AD explained that we might consider further rulemaking since the root cause of the cracking had not been determined. Because of the additional premature failures of the rudder PCM, the manufacturer has now developed a final action, which is installation of a secondary means of retention for the modulating piston assembly in the event of a rudder PCM manifold failure. Therefore, we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

The inspection thresholds and intervals in AD 2006–18–17 correspond to those in Boeing Alert Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005, which we referred to in AD 2006–18–17 as the appropriate source of service information for doing the initial and repetitive inspections. However, since we issued that AD, we have received additional reports of failure or cracking of the PCM manifold in the area of the yaw damper cavity endcap at intervals well below the initial inspection threshold of the existing AD. These incidents happened between 20,000 and 46,000 total flight hours. The initial flight-hour threshold in AD 2006–18–17 is 56,000 total flight hours, which corresponds to the threshold in Boeing Alert Service Bulletin 747–27A2397, Revision 2. Therefore, we are proposing that operators accomplish the ultrasonic inspections required by AD 2006–18–17 at reduced inspection threshold and intervals, until the final action is accomplished. Boeing has no objection to the reduced inspection thresholds and intervals.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–27A2479, dated November 8, 2007. The service bulletin describes procedures for installing a new secondary retention device for the yaw damper piston assembly in both the upper and lower PCMs. The service bulletin specifies two options for installing the new secondary retention device:

- Replacing the existing PCM with a new improved PCM.
- Modifying, testing, and re-identifying the existing PCM while installed on the airplane.

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

Boeing Alert Service Bulletin 747–27A2479 refers to Parker Service Bulletins 332700–27–312 and 333200–27–314, both dated September 13, 2007, as additional sources of service information for modifying the PCM.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–18–17, and retain all but the reporting requirement of that AD. This proposed AD would also limit the applicability, reduce the inspection threshold and repetitive interval, and require eventual installation of a secondary retention device for the yaw damper modulating piston. Installation of a secondary retention device would terminate the repetitive inspection requirements of the existing AD.

Explanation of Reporting Requirement

AD 2006–18–17 requires that operators report crack findings to Boeing and return cracked or broken PCMs to Parker Hannifin Corporation. This proposed AD would not include those actions. Boeing has now developed a final action, so the report and parts return are no longer necessary.

Explanation of 30 Day Comment Period

Operators should note that because of the critical need to prevent an uncommanded left rudder hardover, we have determined that a comment period of 30 days, rather than 45 days, is necessary in this case.

Costs of Compliance

There are about 655 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 86 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Ultrasonic inspection (required by AD 2006–18–17)	4	None	$320, per inspection cycle.	$27,520, per inspection cycle.
Option 1—replacement (new proposed action)	Up to 22	Up to $4,496	Up to $6,256	Up to $538,016.
Option 2—modification (new proposed action)	Up to 13	Up to $722	Up to $1,762	Up to $151,532.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14756 (71 FR 52999, September 8, 2006) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0273; Directorate Identifier 2007–NM–369–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 14, 2008.

Affected ADs

(b) This AD supersedes AD 2006–18–17.

Applicability

(c) This AD applies to Boeing Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–27A2479, dated November 8, 2007.

Unsafe Condition

(d) This AD results from additional reports of failure or cracking of the power control module (PCM) manifold in the area of the yaw damper cavity endcap at intervals well below the initial inspection threshold of the existing AD. We are issuing this AD to prevent an uncommanded left rudder hardover in the event of cracking in the yaw damper actuator portion of the upper or lower rudder PCM, and subsequent failure of the PCM manifold, which could result in increased pilot workload, and possible runway departure upon landing.

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.

Verification of Rudder PCM/Main Manifold Time-in-Service

(f) For any affected airplane, if it can be positively verified that any rudder PCM or PCM main manifold installed on that airplane has accumulated a different total of flight hours or flight cycles than the totals accumulated by that airplane, the flight cycles or flight hours accumulated by the rudder PCM or PCM main manifold will be acceptable as valid starting points for meeting the compliance times required by this AD.

Ultrasonic Inspections

(g) Do an ultrasonic inspection for cracking of the yaw damper actuator portion of the upper and lower rudder PCMs at the applicable times specified in paragraph (g)(1) or (g)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005. Doing the installation required by paragraph (j) of this AD ends the inspection requirements of this paragraph for that PCM.

(1) For airplanes that have been inspected before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; Revision 1, dated March 31, 2005; or Revision 2, dated September 1, 2005: Do the ultrasonic inspection at the later of the times specified in paragraph (g)(1)(i) and (g)(1)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 7,000 flight hours or 1,125 flight cycles, whichever occurs first, until the action required by paragraph (j) of this AD is accomplished.

(i) Within 7,000 flight hours or 1,125 flight cycles after the prior inspection, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) For airplanes that have not been inspected before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; Revision 1, dated March 31, 2005; or Revision 2, dated September 1, 2005: Do the ultrasonic inspection at the later of the times specified in paragraph (g)(2)(i) and (g)(2)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 7,000 flight hours or 1,125 flight cycles, whichever occurs first, until the action required by paragraph (j) of this AD is accomplished.

(i) Prior to the accumulation of 14,000 total flight hours or 2,250 total flight cycles, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

Action if No Cracking Is Found

(h) If no cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, apply sealant and a torque stripe and install a lockwire on the rudder PCM in accordance with the Accomplishment Instructions, and Figure 1

or Figure 2, as applicable, of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005.

Action if Cracking Is Found

(i) If any cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, do the action in paragraph (i)(1) or (i)(2) of this AD.

(1) Replace the affected PCM with a new or serviceable PCM in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005.

(2) Replace the PCM with a PCM that has the new secondary retention device installed as specified in paragraph (j) of this AD.

Terminating Action

(j) Within 24 months or 8,400 flight hours after the effective date of this AD, whichever occurs earlier: Install a new secondary retention device for the yaw damper piston assembly in both the upper and lower PCMs by either replacing the existing PCM with a new improved PCM that already has the new secondary retention device, or by modifying, testing, and re-identifying the existing PCM. Do the installation in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2479, dated November 8, 2007. Doing the installation terminates the inspection requirements of this AD.

Note 1: Boeing Alert Service Bulletin 747–27A2479 refers to Parker Service Bulletins 332700–27–312 and 333200–27–314, both dated September 13, 2007, as additional sources of service information for modifying the PCM.

Prior Accomplishment of Requirements

(k) Actions accomplished before October 13, 2006 (the effective date of AD 2006–18–17), in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; or Revision 1, dated March 31, 2005; are considered acceptable for compliance with the corresponding requirements of this AD.

Parts Installation

(l) As of October 13, 2006 no person may install on any airplane a rudder PCM having a top assembly part number (P/N) 332700–1003, –1005, or –1007; or P/N 333200–1003, –1005, or –1007; unless the PCM has been ultrasonically inspected and found to be without cracks; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005, as specified by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2006–18–17 are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), and (i) of this AD.

Issued in Renton, Washington, on March 4, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5013 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0274; Directorate Identifier 2008–NM–038–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes, Model 767 Airplanes, and Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes, Model 767 airplanes, and Model 777–200 and –300 series airplanes. This proposed AD would require repetitive inspections for damage of the electrical terminal at the left and right flightdeck window # 1, and corrective actions if necessary. This proposed AD would also allow for replacing the flightdeck window # 1 with a new improved flightdeck window equipped with electrical connections, which would end the need for the repetitive inspections for that flightdeck window # 1. This proposed AD results from several reports of electrical arcs at the terminal blocks of the electrically heated flightdeck window # 1. In more than one of the incidents, the arcs resulted in open flames. We are proposing this AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

DATES: We must receive comments on this proposed AD by April 28, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Louis Natsiopolous, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0274; Directorate Identifier 2008–NM–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received nine reports of electrical arcs at the terminal blocks of the flightdeck window #1. In more than one incident, the arcs resulted in open flames. An investigation showed that the electrical arcs are caused by loose terminal connections in the left and right flightdeck window # 1 that use screw and lug electrical heat terminations. Arcing occurs due to improper torque or cross-threading of the screw. The window was redesigned in 2004 to include electrical heat terminals that use pin and socket connections rather than screws and lugs. Electrical arcs at the terminal blocks of the flightdeck window # 1, if not corrected, could result in smoke and fire in the cockpit, and consequent loss of visibility, and injuries to or incapacitation of the flightcrew.

Relevant Service Information

We have reviewed the service bulletins listed in the table below.

BOEING SERVICE BULLETINS

Boeing Special Attention Service Bulletin	Boeing model
757–30–0019, Revision 1, dated December 19, 2007	757–200, –200CB, and –200PF series airplanes.
757–30–0020, Revision 1, dated December 19, 2007	757–300 series airplanes.
767–30–0039, dated December 5, 2007	767–200, –300, and –300F series airplanes.
767–30–0041, dated December 5, 2007	767–400ER series airplanes.
777–30–0012, Revision 2, dated December 19, 2007	777–200 and –300 series airplanes.

The service bulletins describe procedures for repetitive detailed inspections for damage (including arcing, loose terminal, or heat damage) of the electrical terminal (J5 terminal) at the left and right flightdeck window # 1, and corrective actions if necessary. The corrective actions are applying correct torque to a loose electrical connection, repairing damaged wiring, or installing a new window # 1. The service bulletins specify that the replacement window can either be a new or serviceable window that uses screws and lugs for the electrical connection, or a new window that uses pins and sockets for the electrical connections. For airplanes on which a new window that uses pins and sockets is installed, the service bulletins also specify changes to the related wire bundle. The service bulletins specify that installing a new window that uses pins and sockets would eliminate the need for the repetitive inspections.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Information.''

Difference Between the Proposed AD and the Service Information

The service bulletins do not include inspection information for airplanes on which a screw is tightened as part of a corrective action. This proposed AD would specify doing the next detailed inspection within 500 flight hours after the tightening of the screw, and then repeating the inspection thereafter at intervals not to exceed 6,000 flight hours.

Costs of Compliance

We estimate that this proposed AD would affect 1,212 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Fleet cost
Inspection	1	None	$80, per inspection cycle	$96,960, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2008–0274; Directorate Identifier 2008–NM–038–AD.

Comments Due Date

(a) We must receive comments by April 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRPLANES AFFECTED BY THIS AD

Boeing model—	As identified in Boeing Special Attention Service Bulletin—
757–200, −200CB, and −200PF series airplanes	757–30–0019, Revision 1, dated December 19, 2007.
757–300 series airplanes	757–30–0020, Revision 1, dated December 19, 2007.
767–200, −300, and −300F series airplanes	767–30–0039, dated December 5, 2007.
767–400ER series airplanes	767–30–0041, dated December 5, 2007.
777–200 and −300 series airplanes	777–30–0012, Revision 2, dated December 19, 2007.

Unsafe Condition

(d) This AD results from several reports of electrical arcs at the terminal blocks of the electrically heated flightdeck window #1. In more than one of the incidents, the arcs resulted in open flames. We are issuing this AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

Inspection and Corrective Actions

(g) Within 500 flight hours after the effective date of this AD, do a detailed inspection for damage (including arcing, loose terminal, or heat damage) of the electrical terminal (J5 terminal) at the left and right flightdeck window #1, and do all applicable corrective actions, by accomplishing all the actions specified in Work Packages 1 and 2 of the applicable service bulletin. Do all applicable corrective actions before further flight. Except as provided by paragraph (h) of this AD, repeat the detailed inspection thereafter at intervals not to exceed 6,000 flight hours. Doing the replacement specified in paragraph (i) of this AD terminates the repetitive inspection requirements of this paragraph for the replaced flightdeck window #1.

(h) For airplanes on which a corrective action—either replacement with a new window #1 that uses screws and lugs for the electrical connections, or tightening a loose screw—is done in accordance with Work Package 1 or 2 of the service bulletin: Do the next detailed inspection within 500 flight hours after the corrective action, and repeat the inspection thereafter at intervals not to exceed 6,000 flight hours. Doing the replacement specified in paragraph (i) of this AD terminates the repetitive inspection requirements of this paragraph for the replaced flightdeck window #1.

Optional Terminating Action

(i) Replacing a flightdeck window #1 that uses screws and lugs for the electrical connections with a flightdeck window that uses pins and sockets for the electrical connections in accordance with Work Packages 3 or 4 of the service bulletin ends the repetitive inspection requirements of this AD for that window #1.

Actions Accomplished Previously

(j) Actions done before the effective date of this AD in accordance with the applicable service bulletin specified in Table 2 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 2.—ACCEPTABLE SERVICE BULLETINS

Boeing Special Attention Service Bulletin	Revision level	Date
757–30–0019	Original	July 19, 2006.
757–30–0020	Original	July 19, 2006.
777–30–0012	Original	April 15, 2004.
777–30–0012	1	June 2, 2006.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Louis Natsiopolous, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; 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.

Issued in Renton, Washington, on March 5, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5011 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0306; Directorate Identifier 2008–CE–014–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 525 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Model 525 airplanes. This proposed AD would require you to inspect for missing firewall sealant between the aft firewall assembly and seal assembly; and, if you find that firewall sealant is missing, seal with firewall sealant between the aft firewall assembly and seal assembly. This proposed AD results from a report that firewall sealant may not have been applied between the aft firewall assembly and seal assembly during manufacture of certain Model 525 airplanes. We are proposing this AD to detect and correct missing firewall sealant between the aft firewall assembly and seal assembly, which could result in failure of the fire extinguishing system to prevent the spread of fire through the firewall gap. This failure could lead to an uncontrolled fire.

DATES: We must receive comments on this proposed AD by May 12, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *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 proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006.

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2008–0306; Directorate Identifier 2008–CE–014–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

We have received a report that firewall sealant may not have been applied between the aft firewall assembly and seal assembly during manufacture of Model 525 airplanes, serial numbers 525–0600 through 525–0662.

A nacelle fire may pass through the gap where the firewall sealant is missing. Although the fire detection system and fire extinguishing system remain operational, the effectiveness of the fire extinguishing system has not been shown to prevent the spread of fire through the firewall gap. The fire could pass through the gap in the firewall or the effectiveness of the fire extinguishing system be defeated by the gap.

This condition, if not corrected, could result in an uncontrolled fire.

Relevant Service Information

We have reviewed Cessna Aircraft Company Citation Service Letter SL525–71–05, Revision 1, dated February 6, 2008. The service information describes procedures for:

- Inspecting for missing firewall sealant between the aft firewall assembly and seal assembly; and
- Sealing with firewall sealant between the aft firewall assembly and seal assembly.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to inspect for missing firewall sealant between the aft firewall assembly and seal assembly; and, if you find that firewall sealant is missing, seal with firewall sealant between the aft firewall assembly and seal assembly.

Differences Between This Proposed AD and the Service Information

The service information requires compliance within 600 hours time-in-service (TIS) or 1 year after the date of receipt, whichever occurs first. Due to the severity of the safety issue (uncontrolled fire), this proposed AD has a compliance of within the next 60 hours TIS after the effective date of this AD or 60 days after the effective date of this AD, whichever occurs first. The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 45 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not Applicable	$80	$3,600

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × $80 per hour = $320	$30	$350

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2008–0306; Directorate Identifier 2008–CE–014–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by May 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 525 airplanes, serial numbers 525–0600 through 525–0662, that are certificated in any category.

Unsafe Condition

(d) This AD results from a report that firewall sealant may not have been applied between the aft firewall assembly and seal assembly during manufacture of certain Model 525 airplanes. We are issuing this AD to detect and correct missing firewall sealant between the aft firewall assembly and seal assembly, which could result in failure of the fire extinguishing system to prevent the spread of fire through the firewall gap. This failure could lead to an uncontrolled fire.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect between the 6352225 aft firewall assembly and 6352226 seal assembly for missing firewall sealant.	Within the next 60 hours time-in-service (TIS) after the effective date of this AD or within 60 days after the effective date of this AD, whichever occurs first.	Follow Cessna Aircraft Company Citation Service Letter SL525–71–05, Revision 1, dated February 6, 2008.
(2) If, as a result of the inspection required by paragraph (e)(1) of this AD, you find there is missing firewall sealant between the 6352225 aft firewall assembly and 6352226 seal assembly, seal with U000117S firewall sealant in the gap between the 6352225 aft firewall assembly and 6352226 seal assembly.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Cessna Aircraft Company Citation Service Letter SL525–71–05, Revision 1, dated February 6, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), 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: James Galstad, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*.

Issued in Kansas City, Missouri, on March 7, 2008.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5005 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0294; Directorate Identifier 2007–NM–288–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000EX Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Analyses of in-service reports revealed that in case of failure of the wings anti-ice valve, indications of untimely anti-icing with the wings anti-ice selector on ''OFF'' or of insufficient anti-icing with the wings anti-ice selector on ''AUTO'' might not be properly displayed to the flight crew. It may result, on ground, in potential structural damages due to a leading edge overheat, or in-flight, in an insufficient anti-ice power.

* * * * *

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

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0294; Directorate Identifier 2007–NM–288–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0137, dated May 16, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Analyses of in-service reports revealed that in case of failure of the wings anti-ice valve, indications of untimely anti-icing with the wings anti-ice selector on ''OFF'' or of insufficient anti-icing with the wings anti-ice selector on ''AUTO'' might not be properly displayed to the flight crew. It may result, on ground, in potential structural damages due to a leading edge overheat, or in-flight, in an insufficient anti-ice power.

This Airworthiness Directive (AD) mandates an upgrade of the wings anti-ice monitoring circuitry per implementation of modifications M2814 (Service Bulletin (SB) F2000EX–116) and M2949 (SB F2000EX–140) to cover the whole monitoring logic of the wings anti-ice system.

The modifications include adding a relay between the bleed air computer and the wing anti-ice valve; modifying the aircraft wiring; and rerouting an existing wire between the right- and left-hand electrical cabinets. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletin F2000EX–116, dated May 31, 2006, and Service Bulletin F2000EX–140, dated February 28, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry. We also estimate that it would take about 46 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,344 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $65,312, or $5,024 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2008–0294; Directorate Identifier 2007–NM–288–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes; certificated in any category; having serial numbers 1 through 5 and 7 through 27 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

Analyses of in-service reports revealed that in case of failure of the wings anti-ice valve, indications of untimely anti-icing with the wings anti-ice selector on ''OFF'' or of insufficient anti-icing with the wings anti-ice selector on ''AUTO'' might not be properly displayed to the flight crew. It may result, on ground, in potential structural damages due to a leading edge overheat, or in-flight, in an insufficient anti-ice power.

This Airworthiness Directive (AD) mandates an upgrade of the wings anti-ice monitoring circuitry per implementation of modifications M2814 (Service Bulletin (SB) F2000EX–116) and M2949 (SB F2000EX–140) to cover the whole monitoring logic of the wings anti-ice system.

The modifications include adding a relay between the bleed air computer and the wing anti-ice valve; modifying the aircraft wiring; and rerouting an existing wire between the right- and left-hand electrical cabinets.

Actions and Compliance

(f) Within 6 months after the effective date of this AD, unless already done, modify the electrical wiring of the wings' anti-ice system, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000EX–116, dated May 31, 2006, and Service Bulletin F2000EX–140, dated February 28, 2007.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0137, dated May 16, 2007; Dassault Service Bulletin F2000EX–116, dated May 31, 2006; and Dassault Service Bulletin F2000EX–140, dated February 28, 2007; for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5006 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0270; Directorate Identifier 2007–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy Airplanes and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

The 3 supporting blocks [installed on hydraulic lines] were made of Teflon, which is unsuitable material for this application. Excessive wear of the blocks was discovered on numerous aircraft, as well as several cases of chafing between the loosely supported tubes. In one case, hydraulic fluid was lost due to fatigue failure of an inadequately supported tube. Loss of hydraulic fluid causes subsequent multiple failures of hydraulically operated systems.

Multiple failures of hydraulically operated systems (for the flight air brake actuators, brake system, right thrust reverser, etc.) could result in reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0270; Directorate Identifier 2007–NM–255–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 29–07–01–11, dated May 28, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The 3 supporting blocks [installed on hydraulic tubes] were made of Teflon, which is unsuitable material for this application. Excessive wear of the blocks was discovered on numerous aircraft, as well as several cases of chafing between the loosely supported tubes. In one case, hydraulic fluid was lost due to fatigue failure of an inadequately supported tube. Loss of hydraulic fluid causes subsequent multiple failures of hydraulically operated systems.

Multiple failures of hydraulically operated systems (for the flight air brake actuators, brake system, right thrust reverser, etc.) could result in reduced controllability of the airplane. The corrective actions include repetitive visual inspections of the attaching blocks for wear and of the hydraulic tubes to determine if any tube is loose or damaged; an inspection of the entire length of the tubes for chafing, damage, and cracking; replacement of chafed, damaged, or cracked tubes; and replacement of blocks made of Teflon in the right-hand aft fuselage equipment bay with new blocks made of Nylon 6/6. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gulfstream has issued Service Bulletin 200–29–316, dated June 29, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making

these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 129 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $54 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $27,606, or $214 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket No. FAA–2008–0270; Directorate Identifier 2007–NM–255–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Model Galaxy airplanes and Gulfstream 200 airplanes, serial numbers 004 through 156, certificated in any category.

Subject

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

Reason

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

The 3 supporting blocks [installed on hydraulic tubes] were made of Teflon, which is unsuitable material for this application. Excessive wear of the blocks was discovered on numerous aircraft, as well as several cases of chafing between the loosely supported tubes. In one case, hydraulic fluid was lost due to fatigue failure of an inadequately supported tube. Loss of hydraulic fluid causes subsequent multiple failures of hydraulically operated systems. Multiple failures of hydraulically operated systems (for the flight air brake actuators, brake system, right thrust reverser, etc.) could result in reduced controllability of the airplane. The corrective actions include repetitive visual inspections of the attaching blocks for wear and of the hydraulic tubes to determine if any tube is loose or damaged; an inspection of the entire length of the tubes for chafing, damage, and cracking; replacement of chafed, damaged, or cracked tubes; and replacement of blocks made of Teflon in the right-hand aft fuselage equipment bay with new blocks made of Nylon 6/6.

Actions and Compliance

(f) Do the following actions.

(1) Within 50 flight hours or one month after the effective date of this AD, whichever occurs first, unless previously accomplished within 300 flight hours or six months prior to the effective date of this AD: Perform a visual inspection of the clamping blocks for wear and of the hydraulic tubes to determine if any tube is loose or damaged. Clamping blocks are shown in detail B of Figure 2 of Gulfstream Service Bulletin 200–29–316, dated June 29, 2007, or in details B and C of Figure 10, Page 0, of the Gulfstream G200 Illustrated Parts Catalog Chapter 29–10–30.

(i) If clamping blocks are not worn, repeat the inspections specified in paragraph (f)(1) of this AD thereafter at intervals not to exceed 300 flight hours or six months, whichever comes first, until the replacement required by paragraph (f)(2) of this AD is done.

(ii) If any hydraulic tube is loose or damaged, before further flight, inspect the hydraulic tubes along their entire length for chafing, damage, and cracks.

(iii) Before further flight, repair or replace all chafed, damaged, or cracked tubes using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority of Israel (CAAI) (or its delegated agent). Chapter 20–10–12 of the Gulfstream G200 Maintenance Manual is one approved method.

(iv) Before further flight, replace all worn clamping blocks by doing the replacement specified in paragraph (f)(2) of this AD, except as provided by paragraph (f)(1)(v) of this AD.

(v) If Nylon 6/6 clamping blocks part number (P/N) 4AS3565055–511 are not available during the replacement specified in paragraph (f)(1)(iv) of this AD, before further flight, install new or serviceable Teflon clamping blocks P/N 4AS3565055–507. Within 300 flight hours or six months after doing the installation, do the actions specified in paragraph (f)(1) of this AD and repeat thereafter at intervals not to exceed 300 flight hours or six months, whichever comes first, until the replacement required by paragraph (f)(2) of this AD is done.

(2) Within 600 flight hours or one year, whichever comes first, after the effective date of this AD, unless previously accomplished: Replace the existing Teflon clamping blocks P/N 4AS3565055–507 with Nylon 6/6 clamping blocks P/N 4AS3565055–511 in accordance with Gulfstream Service Bulletin 200–29–316, dated June 29, 2007.

Accomplishment of this replacement constitutes terminating action for all inspections of the clamping blocks required by this AD. Accomplishment of this replacement also constitutes terminating action for the repetitive inspections of the hydraulic tube required by paragraphs (f)(1)(i) and (f)(1)(v) of this AD.

Note 1: Succeeding scheduled maintenance checks of this area are to be performed per the Aircraft Maintenance Manual (AMM).

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI does not specify service information if any tube replacement is done. This AD requires doing the replacement as specified in paragraph (f)(1)(ii) of this AD.

(2) The MCAI specifies doing a one-time inspection of the installed Teflon blocks but also specifies doing repetitive inspections of temporary replacement Teflon blocks until the permanent replacement with Nylon 6/6 clamping blocks is done. This AD requires repetitive inspections of all Teflon blocks until the permanent replacement is done.

(3) The MCAI specifies that doing the replacement with Nylon 6/6 clamping blocks constitutes terminating action. This AD specifies that doing the replacement with Nylon 6/6 clamping blocks constitutes terminating action for the inspections of the clamping blocks and for the repetitive inspections of the hydraulic tubes.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; 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 Israeli Airworthiness Directive 29–07–01–11, dated May 28, 2007, and Gulfstream Service Bulletin 200–29–316, dated June 29, 2007, for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5015 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0295; Directorate Identifier 2007–NM–298–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes. This proposed AD would require an inspection of the two spring arms in the spin brake assemblies in the nose wheel well to determine if the spring arms are made of aluminum or composite material, and repetitive related investigative/corrective actions if necessary. This proposed AD results from reports of cracked and broken aluminum spring arms. We are proposing this AD to detect and correct cracked or broken spring arms. A cracked or broken spring arm could separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shutdown, or damage to the airplane.

DATES: We must receive comments on this proposed AD by April 28, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0295; Directorate Identifier 2007–NM–298–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Two spin brake assemblies are installed in the nose wheel well and include the spin brake spring arms. Wear bars or brake pads installed on the spin brake spring arms bring the nose wheel to a stop after the gear is retracted. We have received reports of cracked and broken aluminum spring arms. In some cases, the aluminum spin brake spring arm separated from the airplane. Cracked or broken spring arms, if not detected and corrected, could

separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shutdown, or damage to the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007. The service bulletin describes procedures for an inspection of the two spring arms in the spin brake assemblies in the nose wheel well to determine if the spring arms are made of aluminum or composite material. The compliance time for determining the material of the spring arm is before the accumulation of 6,000 total flight cycles on the spring arm, or within 300 flight cycles, whichever occurs later.

For any aluminum spin arm, the service bulletin describes procedures for related investigative/corrective actions. The related investigative actions include repetitive detailed and high frequency eddy current inspections for cracking of the aluminum spring arm. The compliance time for doing the first detailed inspection is before the accumulation of 6,000 total flight cycles on the spin arm; or within 300 flight cycles, whichever occurs later. The repetitive interval for the detailed inspection is 300 flight cycles. The compliance time for doing the first high frequency eddy current inspection is before the accumulation of 6,000 total flight cycles on the spin arm; or within 1,500 flight cycles, whichever occurs later. The repetitive interval for the high frequency eddy current inspection is 1,500 flight cycles.

The corrective action if any crack is found on an aluminum spring arm is replacing the spring arm with a new spring arm made of either aluminum or composite material. The service bulletin states that the replacement is to be done before further flight, except that the airplane can be operated for 10 calendar days with the spin brake spring arms removed provided the airplane is operated within the restrictions given in the Boeing Model 757 Master Minimum Equipment List (MMEL).

The service bulletin also specifies that replacing an aluminum spring arm with a spring arm made of composite material ends the need for the repetitive inspections.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Interim Action

The service bulletin indicates that the design for the spring arm was changed from composite to aluminum due to reports of excessive noise related to the spring arm made of composite material. Boeing is currently developing a kit to replace the aluminum spring arm with a new part made from corrosion resistant steel (CRES). Once the CRES spring arm is developed, approved, and available, the FAA might consider additional rulemaking. However, the spring arm made of composite material is adequate to ensure continued operational safety of the airplane.

Costs of Compliance

We estimate that this proposed AD would affect 668 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $53,440, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2008–0295; Directorate Identifier 2007–NM–298–AD.

Comments Due Date

(a) We must receive comments by April 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracked and broken aluminum spring arms. We are issuing this AD to detect and correct cracked or broken spring arms. A cracked or broken spring arm could separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shut down, or damage to the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspections and Corrective Actions

(f) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–32–

0176, dated September 10, 2007, do a general visual inspection to determine the material (aluminum or composite) of the two spring arms in the spin brake assemblies in the nose wheel well. A review of airplane maintenance records is acceptable in lieu of this inspection if the material can be conclusively determined from that review. Do all applicable related investigative and corrective actions, and all repetitive inspections thereafter, at the applicable time specified in paragraph 1.E., ''Compliance,'' of the service bulletin. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Optional Terminating Action

(g) Replacing an aluminum spring arm with a spring arm made of composite material in accordance with Figure 5 of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, ends the repetitive inspections required by paragraph (f) of this AD for that spring arm.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; 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.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5014 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0292; Directorate Identifier 2007–NM–286–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ and EMB–145XR Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found that in case of fuel leakage inside the conduit used to route the clear ice detector wiring through the wing fuel tank, it is possible to have fuel accumulation inside the conduit due to application of wiring protection sealant in the conduit end. The absence of fuel leakage detectability into the clear ice detector wiring conduit, associated with an ignition source, could result in fire or explosion inside the tank.

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

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0292; Directorate Identifier 2007–NM–286–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–02–03, effective March 15, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found that in case of fuel leakage inside the conduit used to route the clear ice detector wiring through the wing fuel tank, it is possible to have fuel accumulation inside the conduit due to application of wiring protection sealant in the conduit end. The absence of fuel leakage detectability into the clear ice detector wiring conduit, associated with an ignition source, could result in fire or explosion inside the tank.

Corrective action includes removing the sealant used to protect the wiring conduits of the left- and right-hand clear ice detectors at the holes through the wing spars, and installing protective Teflon spiral around the wiring. You

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

Relevant Service Information

Embraer has issued Service Bulletins 145–30–0048 and 145LEG–30–0015, both dated March 31, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 142 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts cost would be negligible. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $34,080, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–0292; Directorate Identifier 2007–NM–286–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ and EMB–145XR airplanes, certificated in any category, as identified in Embraer Service Bulletins 145–30–0048 and 145LEG–30–0015, both dated March 31, 2006.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

It has been found that in case of fuel leakage inside the conduit used to route the clear ice detector wiring through the wing fuel tank, it is possible to have fuel accumulation inside the conduit due to application of wiring protection sealant in the conduit end. The absence of fuel leakage detectability into the clear ice detector wiring conduit, associated with an ignition source, could result in fire or explosion inside the tank.

Corrective action includes removing the sealant used to protect the wiring conduits of the left-hand (LH) and right-hand (RH) clear ice detectors at the holes through the wing spars, and installing protective Teflon spiral around the wiring.

Actions and Compliance

(f) At the applicable compliance time specified in paragraph (f)(1) or (f)(2) of this AD, unless already done, remove the sealant used to protect the LH and RH clear ice detectors wiring conduits at the holes through the wing spars and install protective Teflon spiral; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0048 or 145LEG–30–0015, both dated March 31, 2006; as applicable.

(1) For Model EMB–135BJ airplanes: Within 4,000 flight hours or 48 months after the effective date of this AD, whichever occurs first.

(2) For Model EMB–145XR airplanes: Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows. The MCAI specifies a compliance time of ''5,000 flight hours'' for all affected airplanes. This AD requires a compliance time of ''5,000 flight hours'' for Model EMB–145XR airplanes, and

''4,000 flight hours'' for Model EMB–135BJ airplanes. This difference has been coordinated with ANAC.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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 Brazilian Airworthiness Directive 2007–02–03, effective March 15, 2007; Embraer Service Bulletin 145–30–0048, dated March 31, 2006; and Embraer Service Bulletin 145LEG–30–0015, dated March 31, 2006; for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5002 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0293; Directorate Identifier 2007–NM–287–AD]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42–200, –300, –320, –500 Airplanes; and Model ATR72–101, –201, –102, –202, –211, –212, and –212A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A recent incident evidenced that some failures of the Pitot probe heating resistance may not be seen by the low current detection system on aircraft not equipped with [ATR] modification 05469 * * *. In some conditions, an out of tolerance resistance, failing to provide a proper Pitot probe de-icing could not be detected.

* * * * *

The unsafe condition is that undetected icing of the pitot probe could produce incorrect airspeed readings, which could lead to loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0293; Directorate Identifier 2007–NM–287–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0179, dated July 31, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A recent incident evidenced that some failures of the Pitot probe heating resistance may not be seen by the low current detection system on aircraft not equipped with [ATR] modification 05469 (SB (Service Bulletin) ATR42–30–0072 or ATR72–30–1042). In some conditions, an out of tolerance resistance, failing to provide a proper Pitot probe de-icing could not be detected.

To address this unsafe condition, this Airworthiness Directive (AD) requires repetitive verification of the Pitot probes'

resistance and replacement of any defective probes, and ultimate replacement of the three low current sensors for Captain, First Officer and Standby Pitot probes.

The unsafe condition is that undetected icing of the pitot probe could produce incorrect airspeed readings, which could lead to loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

ATR has issued the service information described in the following table. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

SERVICE INFORMATION

Avions de Transport Regional Service Bulletin	Revision level	Date
ATR42–30–0072	1	June 1, 2005.
ATR42–30–0074	Original	May 14, 2007.
ATR72–30–1042	1	June 1, 2005.
ATR72–30–1044	Original	May 14, 2007.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 51 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,880 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $112,200, or $2,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—Gie Avions De Transport Regional (Formerly Aerospatiale): Docket No. FAA–2008–0293; Directorate Identifier 2007–NM–287–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to ATR Model ATR42–200, –300, –320, and –500 airplanes and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category; all serial numbers; except for airplanes having ATR Modification 05469 installed in production, or installed in

service in accordance with Avions de Transport Regional Service Bulletin ATR42–30–0072 or ATR72–30–1042, both Revision l, both dated June 1, 2005; as applicable.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

A recent incident evidenced that some failures of the Pitot probe heating resistance may not be seen by the low current detection system on aircraft not equipped with [ATR] modification 05469 (SB (Service Bulletin) ATR42–30–0072 or ATR72–30–1042). In some conditions, an out of tolerance resistance, failing to provide a proper Pitot probe de-icing could not be detected.

To address this unsafe condition, this Airworthiness Directive (AD) requires repetitive verification of the Pitot probes' resistance and replacement of any defective probes, and ultimate replacement of the three low current sensors for Captain, First Officer and Standby Pitot probes.

The unsafe condition is that undetected icing of the pitot probe could produce incorrect airspeed readings, which could lead to loss of control of the airplane.

Actions and Compliance

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

(1) Within 550 flight hours after the effective date of this AD, measure the heating resistance of the three pitot probes, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–30–0074 or ATR72–30–1044, both dated May 14, 2007, as applicable. If any resistance exceeds 50 ohms, before next flight, replace the pitot probe in accordance with the Accomplishment Instructions of the applicable service bulletin. Repeat the measurement thereafter at intervals not to exceed 550 flight hours, until the current sensors have been replaced as required by paragraph (f)(2) of this AD.

(2) Within 5,000 flight hours after the effective date of this AD, replace the three pitot probe current sensors, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–30–0072 or ATR72–30–1042, both Revision 1, both dated June 1, 2005; as applicable. Doing this paragraph ends the repetitive inspections required by paragraph (f)(1) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0179, dated July 31, 2007, and the service information described in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

Avions de Transport Regional Service Bulletin	Revision level	Dated
ATR42–30–0072	1	June 1, 2005.
ATR42–30–0074	Original	May 14, 2007.
ATR72–30–1042	1	June 1, 2005.
ATR72–30–1044	Original	May 14, 2007.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5003 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0290; Directorate Identifier 2007–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Sandel Avionics Incorporated Model ST3400 Terrain Awareness Warning System/Radio Magnetic Indicator (TAWS/RMI) Units Approved Under Technical Standard Order(s) C113, C151a, or C151b; Installed on Various Small and Transport Category Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) that applies to Sandel Avionics Incorporated Model ST3400 TAWS/RMI units as described above. The existing AD currently requires installing a warning placard on the TAWS/RMI and revising the Limitations section of the airplane flight manual (AFM). The existing AD also requires installing upgraded software in the TAWS/RMI. This proposed AD would allow installing later revisions of the software described in the existing AD. This proposed AD results from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We are proposing this AD to prevent a bearing error, which

could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

DATES: We must receive comments on this proposed AD by April 28, 2008.

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

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

For service information identified in this AD, contact Sandel Avionics Incorporated (Sandel), 2401 Dogwood Way, Vista, California 92081.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ha A. Nguyen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5335; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0290; Directorate Identifier 2007–NM–250–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 3, 2006, we issued AD 2006–16–18, amendment 39–14718 (71 FR 48461, August 21, 2006), for Sandel Avionics Incorporated Model ST3400 terrain awareness warning system/radio magnetic indicator (TAWS/RMI) units approved under Technical Standard Order(s) C113, C151a, or C151b; installed on various small and transport category airplanes. That AD requires installing a warning placard on the TAWS/RMI and revising the Limitations section of the airplane flight manual (AFM). That AD also requires installing upgraded software in the TAWS/RMI. That AD resulted from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We issued that AD to prevent a bearing error, which could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

Actions Since Existing AD Was Issued

Since we issued AD 2006–16–18, we have determined that later revisions of the software described in Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004, which is specified as the appropriate source of service information for accomplishing the requirements of the existing AD, are acceptable for installation in the TAWS/RMI without needing our further approval.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would revise AD 2006–16–18 to permit installing later revisions of the software described in the existing service information, and would retain the requirements of the existing AD.

Costs of Compliance

This proposed AD describes the installation of later revisions of software than those specified in AD 2006–16–18; however, this change imposes no new costs on operators. Costs are repeated here for operator convenience only.

This proposed AD would affect about 300 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $24,000, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14718 (71 FR 48461, August 21, 2006) and adding the following new airworthiness directive (AD):

2006–16–18 R1 Sandel Avionics Incorporated: Docket No. FAA–2007–0290; Directorate Identifier 2007–NM–250–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 28, 2008.

Affected ADs

(b) This AD revises AD 2006–16–18.

Applicability

(c) This AD applies to Sandel Avionics Incorporated (Sandel) Model ST3400 terrain awareness warning system/radio magnetic indicator (TAWS/RMI) units approved under Technical Standard Order(s) C113, C151a, or C151b; as identified in Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004; as installed on various small and transport category airplanes, certificated in any category, including, but not limited, to the airplane models listed in Table 1 of this AD.

TABLE 1.—MANUFACTURERS/AIRPLANE MODELS

Manufacturer	Airplane model(s)
Airbus	A300
Avions Marcel Dassault—Breguet Aviation (AMD/BA)	Falcon 10.
Boeing	727, 737, 747.
Bombardier (LearJet)	24, 35, 36, 55.
British Aerospace (Operations) Limited	Jetstream Series 3101.
Cessna	208, 208B, 421C; 501, 525, 550, 560, 650, S550.
Embraer	EMB–120.
Dassault-Aviation	Mystere-Falcon 50, Mystere-Falcon 200.
Gulfstream	G–I, G–1159A (G–III).
Israel Aircraft Industries (IAI)	1124, 1125 Westwind Astra.
McDonnell Douglas	DC–10.
Piper	PA–31T2.
Raytheon	58; 1900D, 400; A36; BAe.125 Series 800A; HS.125 Series 600A/700A; Hawker 800–XP; 200, 300, 350; A200, B100, B200, B300, C90, C90A, C90B, E90, F90; MU–300–10.
Sabreliner	60 (NA–265–60).
Twin Commander	500–A, 695A.
Viking Air Limited	DHC–6.

Unsafe Condition

(d) This AD results from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI unit configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We are issuing this AD to prevent a bearing error, which could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

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.

Installing Placard

(f) Within 14 days after September 25, 2006 (the effective date of AD 2006–16–18): Install a placard on the TAWS/RMI which states, ''NOT FOR PRIMARY VOR NAVIGATION,'' in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

Revising Airplane Flight Manual (AFM)

(g) Within 14 days after September 25, 2006: Revise the Limitations section of the applicable AFM to include the following statement: ''Use of ST3400 TAWS/RMI for primary VOR navigation is prohibited unless the indicator has 3.07 or A3.06 software or later.'' This may be done by inserting a copy of this AD into the AFM.

Updating Software

(h) Within 90 days after September 25, 2006, in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004: Field-load the TAWS/RMI with updated software having revision 3.07 (for units having serial numbers (S/Ns) under 2000) or revision A3.06 (for units having S/Ns 2000 and subsequent). Revisions of software later than revision 3.07 or A3.06, as applicable, are considered acceptable for compliance with the requirements of this paragraph. The placard and AFM limitations revision installed as required by paragraphs (f) and (g) of this AD may be removed after the software upgrade required by paragraph (h) of this AD has been accomplished.

Parts Installation

(i) As of 90 days after September 25, 2006, no person may install, on any airplane, a Model ST3400 TAWS/RMI unit, unless it has been modified in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5001 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0271; Directorate Identifier 2007–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Embraer has issued the Service Bulletin (SB) No. 145–00–0032 to provide instructions to modify the EMB–145 ( ) aircraft and allow operation with an increased Maximum Takeoff Weight (MTOW). Reassessment of the Damage Tolerance Analysis during development of the SB resulted in changes to the Airworthiness Limitation Items (ALI) for those modified aircraft to include new tasks and to revise some existing ones and its respective intervals.

Failure to inspect some structural components, according to the new tasks and intervals for those modified aircraft, could prevent a timely detection of fatigue cracking. Undetected fatigue cracking in these components could adversely affect the structural integrity of these airplanes.

* * * * *

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

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0271; Directorate Identifier 2007–NM–267–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–07–01, effective August 21, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Embraer has issued the Service Bulletin (SB) No. 145–00–0032 to provide instructions to modify the EMB–145 ( ) aircraft and allow operation with an increased Maximum Takeoff Weight (MTOW). Reassessment of the Damage Tolerance Analysis during development of the SB resulted in changes to the Airworthiness Limitation Items (ALI) for those modified aircraft to include new tasks and to revise some existing ones and its respective intervals.

Failure to inspect some structural components, according to the new tasks and intervals for those modified aircraft, could prevent a timely detection of fatigue cracking. Undetected fatigue cracking in these components could adversely affect the structural integrity of these airplanes.

* * * * *

The corrective action is revising the Airworthiness Limitations Section Structural Inspection Requirements and Corrosion Prevention and Control Program Section of the Instructions for Continued Airworthiness to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Temporary Revision (TR) 10–5, dated May 23, 2007, to the EMBRAER EMB145 Maintenance Review Board (MRB) Report MRB–145/1150. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would

affect about 572 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $45,760, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket No. FAA–2008–0271; Directorate Identifier 2007–NM–267–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category, which have incorporated EMBRAER Service Bulletin 145–00–0032.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

Embraer has issued the Service Bulletin (SB) No. 145–00–0032 to provide instructions to modify the EMB–145 ( ) aircraft and allow operation with an increased Maximum Takeoff Weight (MTOW). Reassessment of the Damage Tolerance Analysis during development of the SB resulted in changes to the Airworthiness Limitation Items (ALI) for those modified aircraft to include new tasks and to revise some existing ones and its respective intervals.

Failure to inspect some structural components, according to the new tasks and intervals for those modified aircraft, could prevent a timely detection of fatigue cracking. Undetected fatigue cracking in these components could adversely affect the structural integrity of these airplanes.

* * * * *

The corrective action is revising the Airworthiness Limitations Section Structural Inspection Requirements and Corrosion Prevention and Control Program Section of the Instructions for Continued Airworthiness to incorporate new structural inspection requirements.

Actions and Compliance

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

(1) Within 60 days after the effective date of this AD: Revise the Airworthiness Limitations Section (ALS) Structural Inspection Requirements and Corrosion Prevention and Control Program Section of the Instructions for Continued Airworthiness to incorporate the tasks specified in Appendix 2, Airworthiness Limitation Requirements, Section 4—Structural Inspection Requirements, and Section 5—Corrosion Prevention and Control Program, identified in Temporary Revision (TR) 10–5, dated May 23, 2007, to the EMBRAER EMB 145 Maintenance Review Board (MRB) Report MRB–145/1150.

Note 2: The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of TR 10–5 into the sections. When this TR has been included in general revisions of the MRB report, the general revisions may be inserted in the MRB report, provided the relevant information in the general revision is identical to that in TR 10–5.

(2) After accomplishing the actions specified in paragraph (f)(1) of this AD, no alternative inspections or inspection intervals may be used, except as provided by paragraph (g)(1) of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Sanjay Ralhan, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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 Agência Nacional de Aviação Civil Airworthiness Directive 2007–07–01, effective August 21, 2007, and EMBRAER TR 10–5, dated May 23, 2007, to the EMBRAER EMB145 MRB Report MRB–145/1150, for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–4995 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0297; Directorate Identifier 2007–NM–330–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During maintenance water has been found in the elevator assembly. The unsafe condition is water or ice accumulating in the elevator assembly, which could result in corrosion and consequent reduced structural integrity of the flight control surface, or an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0297; Directorate Identifier 2007–NM–330–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Luftfahrt-Bundesamt (LBA), which is the aviation authority for Germany, has issued German Airworthiness Directive D–2004–004, effective January 8, 2004 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During maintenance water has been found in the elevator assembly. The unsafe condition is water or ice accumulating in the elevator assembly, which could result in corrosion and consequent reduced structural integrity of the flight control surface, or an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Avcraft Aerospace GmbH has issued Avcraft Dornier Service Bulletin SB–328–55–450, Revision 1, dated November 19, 2003. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 12 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to

comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,120, or $260 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

328 Support Services GMBH (Formerly Avcraft Aerospace GmbH): Docket No. FAA–2008–0297; Directorate Identifier 2007–NM–330–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dornier Model 328–100 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

During maintenance water has been found in the elevator assembly.

The unsafe condition is water or ice accumulating in the elevator assembly, which could result in corrosion and consequent reduced structural integrity of the flight control surface, or an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane.

Actions and Compliance

(f) Within 90 days after the effective date of this AD, unless already done, do the following actions. Install a drain hole in the lower skin of the left and right-hand elevator horns in accordance with the Accomplishment Instructions of Avcraft Dornier Service Bulletin SB–328–55–450, Revision 1, dated November 19, 2003.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information specifies a compliance time for installing the drain hole within 23 days, paragraph (f) of this AD requires that the installation be done within 90 days after the effective date of the AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 German Airworthiness Directive D–2004–004, dated January 8, 2004, and Avcraft Dornier Service Bulletin SB–328–55–450, Revision 1, dated November 19, 2003, for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–4996 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0275; Directorate Identifier 2007–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed

AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Cracks have been found in the propeller blades and propeller hubs, for which ongoing controlling actions issued by the propeller TC [type certificate] holder (McCauley Propeller Systems) have been mandated by FAA Airworthiness Directive (AD) action.
>
> Current FAA ADs related to this subject are 2003–17–10 (which superseded AD 2003–15–01), 2004–23–16, 2005–24–08 and 2006–15–13.
>
> Cracking of the blade or hub can ultimately lead to blade release with potentially catastrophic consequences. * * *

* * * * *

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

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0275; Directorate Identifier 2007–NM–335–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0268, dated October 8, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks have been found in the propeller blades and propeller hubs, for which ongoing controlling actions issued by the propeller TC [type certificate] holder (McCauley Propeller Systems) have been mandated by FAA Airworthiness Directive (AD) action.
>
> Current FAA ADs related to this subject are 2003–17–10 (which superseded AD 2003–15–01), 2004–23–16, 2005–24–08 and 2006–15–13.
>
> Cracking of the blade or hub can ultimately lead to blade release with potentially catastrophic consequences. BAE Systems has concluded that safety margins can be further improved by introducing operating limitations that will prevent damaging stresses in the propeller assembly, instructing flight crews to place the propeller condition levers in the Flight position during all ground maneuvering.
>
> EASA concurs with this conclusion and this AD therefore requires the replacement of the Propeller Limitations Placard with a new one.

Corrective actions include revising the airplane flight manual. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–11–027, dated March 29, 2007; General Amendment G12, approved January 2007, to the Jetstream 4100 Series Airplane Flight Manual (AFM); and Advance Amendment Bulletin No. 13, approved April 4, 2007, to the Jetstream 4100 Series AFM. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $25 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,295, or $185 per product.

Authority for This Rulemaking

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

section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2008–0275; Directorate Identifier 2007–NM–335–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 11: Placards and Markings.

Reason

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

Cracks have been found in the propeller blades and propeller hubs, for which ongoing controlling actions issued by the propeller TC [type certificate] holder (McCauley Propeller Systems) have been mandated by FAA Airworthiness Directive (AD) action.

Current FAA ADs related to this subject are 2003–17–10 (which superseded AD 2003–15–01), 2004–23–16, 2005–24–08 and 2006–15–13.

Cracking of the blade or hub can ultimately lead to blade release with potentially catastrophic consequences. BAE Systems has concluded that safety margins can be further improved by introducing operating limitations that will prevent damaging stresses in the propeller assembly, instructing flight crews to place the propeller condition levers in the Flight position during all ground maneuvering.

EASA concurs with this conclusion and this AD therefore requires the replacement of the Propeller Limitations Placard with a new one.

Corrective actions include revising the airplane flight manual.

Actions and Compliance

(f) Within 90 days after the effective date of this AD, unless already done, do the following actions.

(1) Replace the existing Propeller Limitations Placard in the cockpit with a new placard, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–11–027, dated March 29, 2007.

(2) Revise the BAE Jetstream Series 4100 Airplane Flight Manual (AFM) to include the information in BAE Jetstream Series 4100 General Amendment G12, approved January 2007, and BAE Jetstream Series 4100 Advance Amendment Bulletin No. 13, approved April 4, 2007. General Amendment G12 describes a rolling take-off technique and the reduced possibility of landing with ice contaminating the wings, and adds a Gross Height/Pressure Altitude Conversion Chart. Advance Amendment Bulletin No. 13 introduces procedures for placing the propeller condition levers in the Flight position during all ground maneuvering. Operate the airplane according to the procedures in General Amendment G12 and Advance Amendment Bulletin No. 13.

Note 1: This may be done by inserting copies of General Amendment G12 and Advance Amendment Bulletin No. 13 into the AFM. When General Amendment G12 and Advance Amendment Bulletin No. 13 have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in General Amendment G12 and Advance Amendment Bulletin No. 13.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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, Transport Airplane Directorate, FAA, 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 EASA Airworthiness Directive 2007–0268, dated October 8, 2007; BAE Systems (Operations) Limited Service Bulletin J41–11–027, dated March 29, 2007; BAE Jetstream Series 4100 General Amendment G12, approved January 2007, to the Jetstream 4100 Series Airplane Flight Manual; and Advance Amendment Bulletin No. 13, approved April 4, 2007, to the Jetstream 4100 Series Airplane Flight Manual; for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5000 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD]

RIN 2120–AA64

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

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

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

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all Airbus Model A318, A319, A320, and A321 airplanes. The original NPRM would have superseded an existing AD that currently requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the airplane flight manual (AFM) and the FAA-approved maintenance program. The existing AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program. The original NPRM proposed to require modifying or replacing the fuel tank boost pumps, which would terminate the AFM limitations and the maintenance program revisions. The original NPRM resulted from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. This new action revises the original NPRM by excluding certain modified airplanes from the applicability, requiring the AFM/maintenance program revisions on additional airplanes, and requiring modification or replacement of additional fuel tank boost pumps. We are proposing this supplemental NPRM to prevent electrical arcing in the fuel tank boost pump motor, which, in the presence of a combustible air-fuel mixture in the pump, could result in an explosion and loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by April 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an AD that supersedes AD 2006–12–02, amendment 39–14626 (71 FR 34814, June 16, 2006). The existing AD applies to all Airbus Model A318, A319, A320, and A321 airplanes. The original NPRM was published in the **Federal Register** on January 25, 2007 (72 FR 3371). The original NPRM proposed to retain the existing AD's requirements (identifying airplanes with certain fuel tank boost pumps and, for those airplanes, revising the airplane flight manual (AFM) and maintenance program, with optional terminating action). The original NPRM also proposed to require modifying or replacing the fuel tank boost pumps, which would terminate the AFM limitations and maintenance program revisions.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has notified us that the unsafe condition could exist on airplanes with any Type 8410 fuel pump having part number (P/N) 568–1–27202–001, –002, or –005. (The original NPRM would have applied only to airplanes with Type 8410 fuel pumps having P/N 568–1–27202–005 with serial number 6137 and subsequent.)

Relevant Service Information

Airbus has issued Service Bulletin A320–28–1159, dated January 8, 2007. The service bulletin describes procedures for determining the type and part number of the fuel pumps, and for modifying or replacing certain fuel pumps. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2007–0218, dated August 10, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

The service bulletin refers to EATON Service Bulletin 8410–28–05, dated October 2, 2006, as an additional source of service information for the actions associated with the modification.

Airbus has also issued TR 4.03.00/28, Issue 02, dated May 18, 2007, to add reference to certain AMM chapters, to clarify the note regarding inadvertent operation with less than 2,000 kg (4,500 lb) of fuel in the center tank, and to clarify the instructions for operation of the center tank fuel pumps. Paragraph (g)(2) of AD 2006–12–02 refers to Airbus Temporary Revision (TR) 4.03.00/28, dated May 4, 2006.

Comments

There were no comments on the original NPRM.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We have determined that the unsafe condition might exist on airplanes with any type 8410 fuel pumps having P/N 568–1–27202–001, –002, or –005, any serial number. It is therefore necessary to include airplanes with these fuel pumps among the group affected by the requirement to revise the AFM and maintenance program. We also find it necessary to mandate the modification/replacement of the affected fuel boost pumps specified in Airbus Service Bulletin A320–28–1159 for all affected airplanes. We have also limited the proposed applicability to exclude airplanes already modified in production.

The changes discussed above expand the scope of the original NPRM; we have therefore determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Explanation of "Concurrent" Actions

Airbus Service Bulletin A320–28–1159 states that the actions specified in Airbus Service Bulletin A320–28–1153 (previously described in the original NPRM) must be done concurrently. Because the actions specified in both service bulletins accomplish the same result for airplanes equipped with Type 8410 fuel pumps having P/N 568–1–27202–005 with serial number 6137 and subsequent, this supplemental NPRM would consider a modification done before the effective date of the AD in accordance with Service Bulletin A320–28–1153 acceptable as terminating action for the proposed actions on airplanes equipped with Type 8410 fuel pumps having P/N 568–1–27202–005 with serial number 6137 and subsequent.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Identification of boost pumps	1	$80	None	$80	670	$53,600.
Revisions to AFM and maintenance program	1	80	None	80	Up to 670	Up to $53,600.
Modifications	3	80	(*)	240	Up to 670	Up to $160,800.

* Eaton states that pumps will qualify for free repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14626 (71 FR 34814, June 16, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 7, 2008.

Affected ADs

(b) This AD supersedes AD 2006–12–02.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category, except those airplanes on which Airbus modification 36734 or 37508 has been incorporated in production.

Unsafe Condition

(d) This AD results from a report that a fuel tank boost pump failed in service, due to a

detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are issuing this AD to prevent electrical arcing in the fuel tank boost pump motor, which, in the presence of a combustible air-fuel mixture in the pump, could result in an explosion and loss of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2006–12–02

Part and Serial Number Inspection

(f) Within 10 days after July 3, 2006 (the effective date of AD 2006–12–02), inspect to determine the part number (P/N) and serial number (S/N) of each fuel tank boost pump installed in the wing and center fuel tanks. A review of maintenance records may be performed instead of the required inspection if the P/N and S/N of the fuel boost pump can be conclusively determined from that review. One approved method for conducting this inspection or records review is specified in Airbus Service Bulletin A320–28–1152, dated May 5, 2006; or Revision 01, dated July 17, 2006.

Revisions to Airplane Flight Manual (AFM)/ Maintenance Program: P/N 568–1–27202–005 With S/Ns 6137 and Subsequent

(g) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–005 with S/N 6137 and subsequent: Prior to further flight after accomplishing the inspection required by paragraph (f) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2), as applicable of this AD, until the modifications/replacements required by paragraph (j) of this AD have been done.

(1) Revise the Limitations section of the Airbus A318/A319/A320/A321 AFM and the FAA-approved maintenance program by incorporating the following. This may be accomplished by inserting copies of this AD into the AFM and the maintenance program.

Apply the following procedure at each fuel loading:

Refueling:

Before refueling, all pumps must be turned off, in order to prevent them from automatically starting during the refueling process.

Ground fuel transfer:

For all aircraft, do not start a fuel transfer from any wing tank, if it contains less than 700 kg (1,550 lb) of fuel.

For A318, A319, and A320 aircraft with a center tank, do not start a fuel transfer from the center tank, if it contains less than 2,000 kg (4,500 lb) of fuel.

If a tank has less than the required quantity, it is necessary to add fuel (via a transfer from another tank or refueling) to enable a transfer to take place.

Defueling:

For all aircraft, when defueling the wings, do not start the fuel pumps if the fuel quantity in the inner tank (wing tank for A321) is below 700 kg (1,550 lb). If the fuel on the aircraft is not sufficient to achieve the required fuel distribution, then transfer fuel or refuel the aircraft to obtain the required fuel quantity in the wing tank.

For A318, A319, and A320 aircraft with a center tank, when performing a pressure defuel of the center tank, make sure that the center tank contains at least 2,000 kg (4,500 lb) of fuel. If it has less than the required quantity, then transfer fuel to the center tank. Defuel the aircraft normally, and turn OFF the center tank pumps immediately after the FAULT light on the corresponding pushbutton-switch comes on.

(2) For all airplanes equipped with a center tank (modification 20024) excluding A321 models, revise the Limitations section of the AFM to incorporate the changes specified in Airbus Temporary Revision (TR) 4.03.00/28, dated May 4, 2006; or 4.03.00/28, Issue 02, dated May 18, 2007. This may be accomplished by inserting a copy of the TR into the AFM. When general revisions of the AFM have been issued that incorporate the revisions specified in the TR, the copy of the TR may be removed from the AFM, provided the relevant information in the general revision is identical to that in TR 4.03.00/28.

New Requirements of This AD

Part and Serial Number Inspection

(h) For all airplanes: Within 10 days after the effective date of this AD, inspect to determine the type and part number of each fuel tank boost pump installed in the wing and center fuel tanks. A review of maintenance records may be performed instead of the required inspection if the part number and serial number of the fuel boost pump can be conclusively determined from that review. One approved method for conducting this inspection or records review is specified in Airbus Service Bulletin A320–28–1159, dated January 8, 2007.

Revisions to AFM/Maintenance Program: P/Ns 568–1–27202–001 and –002; and P/N 568–1–27202–005 With S/Ns Below 6137

(i) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–001 or 568–1–27202–002; or P/N 568–1–27202–005 with any serial number below 6137: Before further flight after accomplishing the inspection required by paragraph (h) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable, until the modifications/replacements required by paragraph (j) of this AD have been done.

Terminating Action

(j) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–001, –002, or –005: Within 5,000 flight hours or 18 months, whichever occurs first after the effective date of this AD, modify or replace affected fuel boost pumps in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1159, dated January 8, 2007. Modification or replacement of all affected fuel tank boost pumps on an airplane terminates the requirements of this AD, and the limitations required by paragraph (g) of this AD may be removed from the AFM and the maintenance program for that airplane.

Note 1: For additional sources of service information for the fuel pump modification/ replacement, Airbus Service Bulletin A320–28–1159 refers to EATON Service Bulletin 8410–28–05, dated October 2, 2006.

Credit for Actions Done Using Previous Service Information

(k) Modification of a fuel pump before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1153, dated May 5, 2006, is acceptable for compliance with the corresponding requirements of paragraph (j) of this AD, for that pump only.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) AMOCs approved previously in accordance with AD 2006–12–02 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) European Aviation Safety Agency airworthiness directive 2007–0218, dated August 10, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5017 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0296; Directorate Identifier 2007–NM–307–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 20–C5, 20–D5, and 20–E5 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

This Airworthiness Directive (AD) is prompted by the discovery on an in-service Mystere-Falcon 20–C5 of a collapsed wing anti-ice flexible hose due to internal ply separation.

Consequences on the aircraft can be insufficient anti-icing not detected by the monitoring system. Ice accretion on the wing might then occur and might jeopardize the aircraft flight performance and safety.

* * * * *

The unsafe condition is undetected excessive ice build-up on the wings, which could interfere with controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0296; Directorate Identifier 2007–NM–307–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0227, dated September 17, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted by the discovery on an in-service Mystere-Falcon 20-C5 of a collapsed wing anti-ice flexible hose due to internal ply separation.

Consequences on the aircraft can be insufficient anti-icing not detected by the monitoring system. Ice accretion on the wing might then occur and might jeopardize the aircraft flight performance and safety.

The present AD mandates replacement of the wing anti-ice flexible hoses by new ones of an improved design.

The unsafe condition is undetected excessive ice build-up on the wings, which could interfere with controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletin F20–775, dated July 9, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 214 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $887 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $275,418, or $1,287 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Docket No. FAA–2008–0296; Directorate Identifier 2007–NM–307–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere-Falcon 20–C5, 20–D5, and 20–E5 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

This Airworthiness Directive (AD) is prompted by the discovery on an in-service Mystere-Falcon 20–C5 of a collapsed wing anti-ice flexible hose due to internal ply separation.

Consequences on the aircraft can be insufficient anti-icing not detected by the monitoring system. Ice accretion on the wing might then occur and might jeopardize the aircraft flight performance and safety.

The present AD mandates replacement of the wing anti-ice flexible hoses by new ones of an improved design.

The unsafe condition is undetected excessive ice build-up on the wings, which could interfere with controllability of the airplane.

Actions and Compliance

(f) Within 7 months after the effective date of this AD, unless already done, do the following actions.

(1) Inspect to determine whether any wing anti-ice flexible hose having part number (P/N) FAL1006 or P/N ARM224A is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the wing anti-ice flexible hose can be conclusively determined from that review. If any wing anti-ice flexible hose does not have P/N FAL1006 or P/N ARM224A, no further action is required by this AD for that hose, except as required by paragraph (f)(3) of this AD.

(2) Remove any wing anti-ice flexible hose having P/N FAL1006 or P/N ARM224A, and install a new hose having ESPA P/N 60503104509; in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F20–775, dated July 9, 2007.

(3) As of the effective date of this AD, no person shall install any flexible hose having P/N FAL1006 or P/N ARM224A on any Model Mystere-Falcon 20–C5, 20–D5, or 20–E5 airplane specified in the applicability of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI does not require inspecting to determine the part numbers of the wing anti-ice flexible hoses. This AD requires such an inspection.

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0227, dated September 17, 2007, and Dassault Aviation Service Bulletin F20–775, dated July 9, 2007, for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5016 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0272; Directorate Identifier 2007–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

In service events have shown that, after implementation of Dassault Aviation SB

F2000–133 and F2000–166, a risk of engine cowlings separation from the airplane still exists, and may cause potential damages to the engine itself and to the horizontal stabilizer.

It is suspected that on-ground improper latching may lead to a radial deformation of engine cowlings in flight and to their eventual escape out of their locking devices. This situation may represent a hazard to the aircraft propulsive system and/or its structural integrity.

* * * * *

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

DATES: We must receive comments on this proposed AD by April 14, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0272; Directorate Identifier 2007–NM–275–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2007–0016, dated January 12, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In service events have shown that, after implementation of Dassault Aviation SB F2000–133 and F2000–166, a risk of engine cowlings separation from the airplane still exists, and may cause potential damages to the engine itself and to the horizontal stabilizer.
>
> It is suspected that on-ground improper latching may lead to a radial deformation of engine cowlings in flight and to their eventual escape out of their locking devices. This situation may represent a hazard to the aircraft propulsive system and/or its structural integrity.
>
> The purpose of this Airworthiness Directive (AD) is to secure safe closure of engine cowlings and improve the existing locking devices.

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

Relevant Service Information

Dassault has issued Service Bulletins F2000–166, Revision 1, dated October 24, 2001, and F2000–298, Revision 3, dated September 26, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 229 products of U.S. registry. We also estimate that it would take about 90 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,648,800, or $7,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2008–0272; Directorate Identifier 2007–NM–275–AD.

Comments Due Date

(a) We must receive comments by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category, all serial numbers, except those that have incorporated Modification M2275 during production or Dassault Service Bulletin F2000–298 in service.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Reason

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

In service events have shown that, after implementation of Dassault Aviation SB F2000–133 and F2000–166, a risk of engine cowlings separation from the airplane still exists, and may cause potential damages to the engine itself and to the horizontal stabilizer.

It is suspected that on-ground improper latching may lead to a radial deformation of engine cowlings in flight and to their eventual escape out of their locking devices. This situation may represent a hazard to the aircraft propulsive system and/or its structural integrity.

The purpose of this Airworthiness Directive (AD) is to secure safe closure of engine cowlings and improve the existing locking devices.

Actions and Compliance

(f) Within 12 months after the effective date of this AD unless already done, do the following actions.

(1) Modify the existing engine cowls locking system in accordance with the instructions contained in Dassault Service Bulletin F2000–298, Revision 3, dated September 26, 2007.

(2) Before or concurrent with the modification required by paragraph (f)(1) of this AD, modify the engine cowling attachments in accordance with the instructions contained in Dassault Service Bulletin F2000–166, Revision 1, dated October 24, 2001 (Modification M1579).

(3) Actions done before the effective date of this AD in accordance with Dassault Service Bulletins F2000–298, Revision 1, dated October 31, 2006, or Revision 2, dated April 12, 2007; and F2000–166 dated June 27, 2001; are acceptable for compliance with the corresponding actions of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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 2007–0016, dated January 12, 2007; and Dassault Service Bulletins F2000–166, Revision 1, dated October 24, 2001; and F2000–298, Revision 3, dated September 26, 2007; for related information.

Issued in Renton, Washington, on March 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–4999 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0288; Directorate Identifier 2006–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B and B–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 214B and B–1 helicopters. The AD would require creating a component history card or equivalent for each pylon support spindle assembly (spindle), and inspecting certain spindles for any corrosion, or a nick, scratch, dent, or crack, and replacing any unairworthy spindle before further flight. This proposal is prompted by three in-flight failures of spindles that resulted in forced landings. The actions specified by the proposed AD are intended to detect damage in the radii or cracking of a spindle, and to prevent failure of a spindle and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;

• *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

• *Fax:* 202–493–2251.

You may get the service information identified in this proposed AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2008–0288, Directorate Identifier 2006–SW–25–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for BHTI Model 214B and B–1 helicopters. The AD would require, within 50 hours time-in-service (TIS), creating a component history card or equivalent record for each spindle, and begin recording the spindle's TIS and number of take-offs and external load lifts accomplished with the spindle installed. It would also require a one-time visual inspection of the outer radius of the spindle for any corrosion or a nick, scratch, or dent, using a 3x-power or higher magnifying glass, and a one-time magnetic particle inspection of the spindles for a crack. The inspections would be required within 100 hours TIS, or 325 hours TIS since the last overhaul of the transmission assembly, whichever occurs later, for spindles with 5,000 or more hours TIS, or spindles for which the total number of hours TIS is unknown and were installed before the last overhaul of the transmission assembly. For spindles having 5,000 or more hours TIS, or spindles for which the total number of hours TIS is unknown, that were installed after the last overhaul of the transmission assembly, or the installation history is unknown, the inspections would be required within 100 hours TIS. The proposed AD would also require, before further flight, replacing any spindle on which any corrosion or a crack is discovered, and replacing any spindle that has a nick, scratch, or dent, or repairing the spindle if the damage is within the repair limits that are stated in the applicable component repair and overhaul manual. This proposal is prompted by three in-flight failures of the spindle, part number 214–030–606–005, which resulted in forced landings and one serious injury. All three helicopters were involved in logging operations, which put more torque cycles on the main rotor and transmission systems. The failures occurred at 694, 810, and 1,928 hours TIS since the last overhaul of the transmission assembly on helicopters having a total TIS of 3,500 to 17,000 hours. Currently, the spindles do not have a retirement life on either the Model 214B or 214B–1 helicopters, and the number of hours TIS for the spindles is not required to be tracked on a component history card or equivalent record. The current inspections specified in the maintenance manuals are a magnetic particle inspection at each 2,500 hours TIS transmission overhaul, and a visual inspection for mechanical or corrosion damage, using a 3x-power magnifying glass, at each main rotor tension-torsion strap change. A magnetic particle inspection is also required following the occurrence of a sudden stoppage of the main rotor system. The actions specified by the proposed AD are intended to detect damage in the radii or cracking of a spindle, and to prevent failure of a spindle and subsequent loss of control of the helicopter. The actions of this proposed AD are intended as interim actions until a retirement life for these spindles can be developed and new replacement spindles become available.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require creating a component history card or equivalent for each spindle, inspecting certain spindles for any corrosion, or a nick, scratch, dent, or crack, and replacing any unairworthy spindle before further flight.

We estimate that this proposed AD would affect 10 helicopters of U.S. registry, and the proposed actions would take approximately:

• 15 work hours to remove and replace a set of spindles for inspecting;

• 2 work hours to conduct a magnetic particle inspection; and

• 15 work hours to replace a set of spindles at an average labor rate of $80 per work hour. Required parts would cost approximately $10,735 for a set of spindles. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $25,535, assuming the inspections are performed once for each helicopter and one set of spindles is replaced.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. Go to the government-wide rulemaking Web site at: *http://www.regulations.gov* to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, Inc.: Docket No. FAA–2008–0288; Directorate Identifier 2006–SW–25–AD.

Applicability

Model 214B and B–1 helicopters, with pylon support spindle assembly (spindle), part number 214–030–606–005, installed, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To detect damage in the radii or cracking of a spindle, and to prevent failure of a spindle and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS):

(1) Create a component history card or equivalent record for each spindle, stating the spindle's serial number. Begin recording the number of hours TIS, and the number of take-offs and external load lifts. An external load lift occurs when a load is picked up at one location and is released at another location.

(2) Review the helicopter records to determine if there has been a sudden stoppage of the main rotor system, or any hard landing, on a helicopter with any affected spindle installed and record any such events on the component history card or equivalent record.

(b) Record all conditional inspections of each spindle on the component history card or equivalent record. A sudden stoppage of the main rotor system is defined as any rapid deceleration of the drive system, whether caused by seizure within the helicopter transmission or by contact of a main rotor blade with the ground, water, snow, dense vegetation, or other object of sufficient inertia to cause rapid deceleration.

(c) For each spindle with 5,000 or more hours TIS, or any spindle for which the number of hours TIS is unknown, perform the inspections in paragraphs (c)(1) and (c)(2) of this AD within the hours TIS specified in Table 1 of this AD:

TABLE 1

For spindles, part number 214–030–606–005, that were installed on the transmission assembly:	Inspect within:
Before the last overhaul of the transmission assembly	100 hours TIS or 325 hours TIS since the last overhaul of the transmission assembly, whichever occurs later.
After the last overhaul of the transmission assembly or for which the installation history is unknown.	100 hours TIS.

(1) Visually inspect each outer radius of the spindle for any corrosion, or a nick, scratch, or dent, using a 3x-power or higher magnifying glass; and

(2) Conduct a magnetic particle inspection of the spindle for a crack.

(d) Before further flight, if a crack or any corrosion is found, replace the spindle with an airworthy spindle.

(e) Before further flight, replace any spindle that has a nick, scratch, or dent with an airworthy spindle, or repair it if it is within the repair limits.

Note 2: The repair limits are specified in the applicable component repair and overhaul manual.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Certification Office, FAA, ATTN: Michael Kohner, Aviation Safety Engineer, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on March 3, 2008.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–5060 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0287; Directorate Identifier 2006-SW–15–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369A, OH–6A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, and 369HS Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive

(AD) for MD Helicopters, Inc. (MDHI) Model 369A, OH–6A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, and 369HS helicopters. The proposed AD would require repetitive tap inspections of each tail rotor (T/R) blade abrasion strip. This proposal is prompted by an incident in which an abrasion strip separated from a T/R blade. The actions specified by the proposed AD are intended to prevent disbonding and subsequent separation of an abrasion strip from a T/R blade, which could result in vibration, loss of the T/R, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *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.

You may get the Helicopter Technology Company, LLC (HTC) service information identified in this proposed AD from, HTC, 12902 South Broadway, Los Angeles, California, 90061, telephone (310) 523–2750, fax (310) 523–2745, or on the Internet at *http://www.helicoptertech.com*. The service information referenced in Note 2 of this proposed AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone (800) 388–3378, fax (480) 346–6813, or on the Internet at *http://www.mdhelicopters.com*.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2008–0287, Directorate Identifier 2006–SW–15–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for MDHI Model 369A, OH–6A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, and 369HS helicopters, with any of the following T/R blades installed:

- HTC part number (P/N) 500P3100–101 and –103, or MDHI P/N 369D21640–501, –503, and –505.
- HTC P/N 500P3100–301 and –303, or MDHI P/N 369D21641–501, –503, and –505.
- HTC P/N 500P3300–501 and –503, or MDHI P/N 369D21643–501, –503, and –505.
- HTC P/N 500P3500–701 and –703, or MDHI P/N 369D21642–501, –503, and –505.

Note: An ''M'' or an ''I'' painted on the root of the T/R blade indicates compliance to an Alternate Method of Compliance (AMOC) to AD 2003–08–51, (Docket No. 2003-SW–17–AD, Amendment 39–13215 (68 FR 39449, July 2, 2008), corrected at 68 FR 47447, August 11, 2003, issued by the FAA, Los Angeles Aircraft Certification Office (LAACO) on June 13, 2003 to HTC. The AMOC addressed shot peening of the pitch horn of the T/R assembly.

The proposed AD would require, within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, tap inspections of the upper and lower surfaces of each T/R blade abrasion strip using a coin (United States 25-cent piece or equivalent), or a small brass, mild steel, or aluminum hammer, to detect bonding voids that exceed 0.2 square inch in size with a minimum of 1.0 inch between voids, at least 75 percent of the bonded area of the abrasion strip being free from voids, and no voids at the edge of the abrasion strip. Modifying each T/R blade in accordance with FAA-approved data by installing a titanium rivet in the tip of the outboard end of each T/R blade and painting a ''T'' in the root-end of the T/R blade would be considered terminating action for the AD. This proposal is prompted by an incident in which an abrasion strip separated from a T/R blade during flight. The actions specified by the proposed AD are intended to prevent disbonding and subsequent separation of an abrasion strip from a T/R blade, which could result in vibration, loss of the T/R, and subsequent loss of control of the helicopter.

We have reviewed the following service information:

- HTC Mandatory SB Notice No. 3100–4R4, dated May 10, 2006, which describes procedures for periodic inspection of the abrasion strip-to-skin bond integrity on each T/R blade, and modifying each T/R blade by installing a titanium rivet, P/N 500P3124–13, in the tip of the T/R blade, and painting a ''T'' in the root-end of the T/R blade in accordance with applicable engineering drawings or standard repair instructions; and
- MD Helicopters Service Bulletin SB369D–203R1, SB369E–097R1, SB369F–082R1, and SB369H–246R1, dated January 23, 2006, which describes procedures for periodic inspections of the T/R abrasion strip-to-skin bond integrity and modification of the T/R blade by HTC to install a titanium rivet in the tip of the T/R blade.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would require, within 25 hours TIS, unless accomplished previously, and thereafter at intervals

not to exceed 25 hours TIS, tap inspections of the upper and lower surfaces of each T/R blade abrasion strip using a coin (United States 25 cent piece or equivalent) or a small brass, mild steel, or aluminum hammer, to detect bonding voids in accordance with Part 1—Inspection of the HTC Mandatory Service Bulletin Notice No. 3100–4R4, dated May 10, 2006. Modifying each T/R blade by installing a titanium rivet, P/N 500P3124–13, in the tip of the T/R blade and painting a ''T'' in the root-end of the T/R blade would be a terminating action for this AD. The actions would be required to be accomplished by following the specified portions of the HTC service bulletin described previously.

We estimate that this proposed AD would affect 718 helicopters of U.S. registry.

- If operators conduct the repetitive inspections required by this AD instead of modifying their T/R blades by installing a titanium rivet, the estimated costs per year would be $229,760 per year, assuming:
- 24 inspections per year per helicopter (600 hours TIS per 25 hour TIS inspection), * Labor of 5 minutes per T/R blade (10 minutes (1/6 hour) per helicopter), and
- An average labor rate of $80 per work hour.
- If operators elect to implement the terminating action by installing a titanium rivet in each T/R blade, the estimated total cost would be $244,120, assuming:
- The cost of removing, reinstalling, and balancing the 2-T/R blade set for the entire fleet would be $114,880, assuming that it would take 2 work hours per helicopter to perform these actions at an average labor rate of $80 per work hour, and
- The cost of installing the rivet in each T/R blade in the fleet would be $129,240, which includes the cost of $10 per rivet ($20 per helicopter), 1 work hour per T/R blade (2 work hours per helicopter) to install a rivet, at an average labor rate of $80 per work hour.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD Docket to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

MD Helicopters, Inc. (MDHI): Docket No. FAA–2008–0287; Directorate Identifier 2006–SW–15–AD.

Applicability

Model 369A, OH–6A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, and 369HS, certificated in any category, with a tail rotor (T/R) blade installed as follows including all serial numbers and those T/R blades with an ''M'' or an ''I'' painted on the T/R blade root:

- Helicopter Technology Company, LLC (HTC) part number (P/N) 500P3100–101 and –103, or MDHI P/N 369D21640–501, –503, and –505.
- HTC P/N 500P3100–301 and –303, or MDHI P/N 369D21641–501, –503, and –505.
- HTC P/N 500P3300–501 and –503, or MDHI P/N 369D21643–501, –503, and –505.
- HTC P/N 500P3500–701 and –703, or MDHI P/N 369D21642–501, –503, and –505.

Note 1: An ''M'' or an ''I'' painted on the root of the T/R blade indicates compliance to an Alternate Method of Compliance (AMOC) to Emergency AD 2003–08–51 (Docket No. 2003–SW–17–AD, Amendment 39–13215, April 15, 2003), issued by the FAA, Los Angeles Aircraft Certification Office (LAACO) on June 13, 2003 to HTC. The AMOC addressed shot peening of the pitch horn of the T/R assembly.

Compliance

Required as indicated.

To prevent disbonding and subsequent separation of an abrasion strip from a T/R blade, which could result in vibration, loss of the T/R, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS, inspect the abrasion strip-to-skin bond integrity on each T/R blade using a tap test method in accordance with Part 1—Inspection, in Helicopter Technology Company, LLC (HTC) Mandatory Service Bulletin Notice No. 3100–4R4, dated May 10, 2006 (SB).

Note 2: MD Helicopters Service Bulletin SB369D–203R1, SB369E–097R1, SB369F–082R1, and SB369H–246R1, dated January 23, 2006, pertain to the subject of this AD.

(b) Modifying each T/R blade in accordance with FAA-approved data by installing a titanium rivet at the outboard end and painting the letter ''T'' on the root-end of the T/R blade to indicate the modification has been accomplished is considered a terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: John Cecil, Aviation Safety Engineer, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on March 4, 2008.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–5068 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA–HQ–OAR–2006–0072; FRL–8539–4

RIN 2060–069

In-Use Testing for Heavy-Duty Diesel Engines and Vehicles; Emission Measurement Accuracy Margins for Portable Emission Measurement Systems and Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a rule published on June 14, 2005, EPA established a manufacturer-run, in-use testing program for heavy-duty diesel vehicles. The program requires engine manufacturers to measure exhaust emissions from their diesel engines using portable emissions measurement systems during real-world operation. At the time the rule was promulgated, EPA established interim emission measurement ''accuracy'' margins for the requisite portable emission measurement devices pending the development of final accuracy margins through a comprehensive research program. This notice proposes to adopt the resulting final accuracy margins for gaseous pollutants. Also, this rule proposes to make several changes to the program in the early years of in-use testing. First, we are proposing to eliminate the first calendar year, i.e., 2006, of the two-year pilot program for particulate emissions (PM) in response to engine manufacturers' concerns, which primarily relate to the availability and efficacy of the requisite portable measurement systems (PEMS) for that pollutant. Second, due to a delay in developing the final accuracy margin for PM under the aforementioned comprehensive research program, we are proposing to delay the first year of the fully enforceable PM test program from the 2008 calendar year to the 2009 calendar year. During the 2008 calendar year, there will be another year of pilot program testing for that pollutant. Third, and finally, we are proposing to extend the normal period for reporting in-use test results and allowing certain short-term changes in how vehicles are recruited and tested. These proposed revisions are primarily intended to address delays in initiating the gaseous emission and PM pilot programs, manufacturers' concerns regarding the schedule for initial purchases of PM measurement systems, and manufacturers' concerns regarding potential difficulties of initially instrumenting vehicles with these units.

DATES: Written comments must be received by April 14, 2008. Request for a public hearing must be received by March 28, 2008. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0072, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0072. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/oar/dockets.html.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Avenue, N.W., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4390; fax number: (734) 214–4939; e-mail address: *wilcox.rich@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

In the ''Rules and Regulations'' section of this **Federal Register,** we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on the rule, we will withdraw the direct final rule. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on

this action. Any parties interested in commenting must do so at this time.

II. Does This Action Apply to Me?

This action will affect companies that manufacture and certify heavy-duty diesel engines and vehicles for use on the highway.

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	336112 336120	Engine and Truck Manufacturers.
Industry	811112 81198	Independent commercial importers of vehicles and parts.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT.**

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Summary of Rule

The manufacturer-run, in-use testing program for heavy-duty diesel vehicles that are used on the highway was promulgated in 2005 to monitor the emissions performance of the engines used in those vehicles when operated under a wide range of real world driving conditions[1] The program is specifically intended to monitor compliance with the applicable Not-to-Exceed (NTE) exhaust emission standards for non-methane hydrocarbons (NMHC), oxides of nitrogen (NO_X), carbon monoxide (CO), and particulate matter (PM). It requires each manufacturer of heavy-duty highway diesel engines to assess the in-use exhaust emissions from their engines using onboard, portable emission measurement systems during typical operation while on the road.

A. Gaseous Emission Measurement Margins for Manufacturer-Run, In-Use Testing

For the purposes of the in-use testing program, it was necessary to establish emission measurement ''accuracy'' margins for the portable emission measurement system.[2] They are primarily designed to account for any differences between the accuracy of the onboard, portable emission measurement instruments and the accuracy of the instruments used during laboratory testing in the emissions certification process. When the in-use testing program was first established in 2005, there was uncertainty regarding what specific accuracy margins should be used in the in-use testing program, since the portable measurement systems had not been rigorously tested at that time. As a result, we promulgated interim accuracy allowances for use in the pilot programs for gaseous pollutants and PM.[3]

Shortly before the in-use test program was promulgated, EPA entered into an memorandum of agreement (MOA) with the California Air Resources Board (CARB) and the manufacturers of heavy-duty highway diesel engines (through the Engine Manufacturers Association (EMA)) to develop ''data driven'' emission measurement allowances through a comprehensive research, development, and demonstration program for the enforceable programs, i.e., beginning in the 2007 calendar year for gaseous emissions and the 2008 calendar year for PM. The overall test program was designed to be completed in two phases. The first phase addressed gaseous emission accuracy margins and the second phase addressed PM emission accuracy margins. All parties agreed to support the final accuracy margins assuming that the agreed upon test program was followed and the results incorporated into a direct final rulemaking, or a subsequent final rulemaking (preceded by proposed rulemaking) if adverse comment was received on the direct final rule.

The cooperative test program and additional follow-on development work for gaseous emissions have now been completed, and a resultant set of final emission measurement accuracy margins has been identified for use in the fully enforceable program that begins in 2007. The gaseous emission measurements accuracy margins vary based on the model year of the engine and the emission calculation methodology that is used to determine the final grams/brake horsepower-hour

[1] See ''Control of Emissions of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles, 70 FR 34594 (June 14, 2005).''

[2] The emission measurement accuracy margin added to the value of the applicable NTE standard and any in-use compliance testing margin that is already allowed by the regulations to determine the numerical compliance limit, i.e., NTE threshold, which is used in the in-use testing program.

[3] The in-use testing requirements consist of a two-year pilot program for gaseous emissions (i.e., NMHC, No_X, and CO) in calendar years 2005 and 2006, and calendar years 2006 and 2007 for PM emissions. This NPRM proposes to change the years of the PM pilot program to calendar years 2007 and 2008. The programs are fully enforceable after their respective pilot program ends.

emission. The proposed values are shown in Table 1.

TABLE 1.—FINAL MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins (g/bhp-hr)		
	2007–2009 model year engines		2010 and later model year engines
	Method 1 only	Methods 2 and 3	All methods
NMHC	0.02	0.01	0.01
CO	0.5	0.25	0.25
NO_X	0.45	0.15	0.15

B. NMHC NOx In-Use Testing Accuracy Margins

The June 2005 final rule that implemented the in-use testing program addressed accuracy margins for each of the gaseous pollutants and their associated individual standards, i.e., NMHC, NA_X, and CO. The MOA and subsequent gaseous emissions test program also focused on identifying the final accuracy margins for these individual pollutants. In developing the original rule and subsequent test program, however, we failed to recognize that 2004 through 2006 model year engine families are actually certified to a combined NO_X plus NMHC standard under § 86.004–11(a)(l) of the applicable regulations. Furthermore, under the ''phase-in options'' of § 86.007–11(g)(l) an engine manufacturer may optionally certify some of its production in model years 2007 through 2009 to the combined NO_X plus NMHC standard for 2006 model year engines under § 86.2004–11, rather than the otherwise applicable individual NO_X and NMHC standards. Therefore, we are correcting this oversight by proposing in-use testing accuracy margins for the combined NO_X plus NMHC standard.

The methodology for determining an accuracy margin for the combined NO_X plus NMHC emission standard is the same as that used to determine the numerical value of the combined standard itself. Specifically, the individual NO_X and NMHC accuracy margins are simply added together to provide a single value. Therefore, for 2004–2007 model year engines that may be tested under the gaseous emission pilot program for the 2006 and 2007 calendar years, we propose that the combined accuracy margin is the sum of the individual NO_X and NMHC values already contained in § 86.1912, or 0.67 g/bhp-hr. For engines tested in the enforceable program that begins in the 2007 calendar year and applies to 2007 and later model year diesel engines, the combined NO_X plus NMHC accuracy margins, using the individual values from Table 1, are shown in Table 2.

TABLE 2.—FINAL COMBINED NO_X PLUS NMHC MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins 2007–2009 model year engines (g/bhp-hr)	
	Method 1 only	Methods 2 and 3
NO_X + NMHC	0.47	0.16

C. Delaying the Enforceable PM Program From 2008 to 2009

The MOA described in section IV.A. acknowledged that in order to promulgate new measurement accuracy margins with adequate lead time to begin the 2008 enforceable PM I program, certain key milestone dates in the test program had to be achieved. Contingencies for missing the final delivery date were specified in the MOA and in the June 2005 final rulemaking.[4] Most relevant to today's proposal was that if the final values and documentation were delayed more than three months from November 1, 2007 then the PM pilot program would continue for calendar year 2008 in place of the fully enforceable program for that year.

Completing the PM test program on schedule required that the initial work be conducted in parallel with the ongoing gaseous emission test program Using the same contractors and personnel from EPA, CARB, and the engine manufacturers. Due to unexpected issues in the gaseous emission test program and the lack of other resources, all work on the PM test plan and subsequent test program had to be postponed until recently. The end result of this postponement is that the final accuracy margin for PM will be delayed by approximately one year. Accordingly, the MOA and in-use test program regulations require that the first year of the previously adopted enforceable program (calendar year 2008) be placed into abeyance and the PM pilot program continued for that year. Hence, we are proposing to modify the in-use testing regulations so that the PM pilot program extends into 2008 and the fully enforceable PM program begins in 2009.

D. Suspending the 2006 PM Pilot Program

The in-use testing program, as originally adopted in June 2005, included a two-year pilot (i.e., demonstration) program for PM emissions in calendar years 2006 and 2007. In establishing this requirement,

[4] See 40 CFR 86.1935.

EPA noted that the onboard measurement of PM emissions was significantly more challenging than for gaseous emissions, and that further development of the requisite portable measurement systems would be needed. We also noted our expectation that engine manufacturers would use ''best available'' prototype systems that were capable of measuring PM emissions as required. Nonetheless, in recognition of the then remaining technical uncertainties, we added a provision to the regulations that would suspend the in-use test program as it applied to PM measurement if we discovered fundamental technical problems with portable in-use PM measurement systems that could not be resolvable in a reasonable time.

In a letter dated January 4, 2007, EMA requested that the first year of the two-year PM pilot program be held in abeyance. The principle reasons cited were associated with certain technical concerns primarily relating to the availability and efficacy of the requisite portable measurement systems for that pollutant. In a subsequent letter dated April 11, 2007, EMA more specifically detailed its concerns with currently available portable PM measurement systems. The trade group also argued that it would be better to take the time now to develop better portable PM measurement devices in order to ensure a successful launch of the fully enforceable program in 2009. Finally, EMA noted that even with the suspension of the 2006 PM pilot program, there would still be a full two years of the PM pilot as originally called for in the regulations.

After carefully considering EMA's concerns, we agree that it is better to eliminate the 2006 calendar year PM pilot program in order to focus our collective efforts on improving the current portable PM measurement systems and conducting the cooperative research and deve1opment program for this pollutant. Therefore, we are proposing such a delay.

E. Revised Schedules and Testing Flexibilities the for the 2005 Through 2009 In-Use Test Programs

The June 2005 final rule that established the heavy-duty in-use test program stated that EPA would typically select engine families for testing in June of each calendar year. Further, the regulations allowed 18 months from the time engine families were designated for engine manufacturers to complete all testing and report the results to EPA. Subsequent to the final rule, we concluded that certain adjustments to the test schedules were necessary in the early years of the program to address: (1) Delays in initiating certain aspects of the program, (2) manufacturers' concerns regarding the schedule for initial purchases of PM measurement systems, and (3) manufacturers' concerns instrumenting test vehicles for PM emission testing in the early years of the program. Our proposed adjustments for engine family designation and reporting dates are summarized in Table 3, which also reflect the other proposed programmatic revisions discussed previously.

TABLE 3.—REVISED ENGINE FAMILY DESIGNATION AND REPORTING SCHEDULES

Program	Designate families		Report due	
	Original	Revised	Original	Revised
2005 Gaseous Pilot	06/2005	Unchanged	11/2006	11/2007.
2006 Gaseous Pilot	06/2006	12/2006	11/2007	11/2008.
2007 Gaseous Enforceable	06/2007	12/2007	11/2008	11/2009.
2007 PM Pilot	06/2007	12/2007	11/2008	05/2010.
2008 Gaseous Enforceable	06/2008	09/2008	11/2009	03/2010.
2008 PM Pilot	06/2008	09/2008	11/2009	09/2010.
2009 Gaseous Enforceable	06/2009	Unchanged	11/2010	04/2011.
2009 PM Enforceable	06/2009	Unchanged	11/2010	04/2011.
2010 Gaseous Enforceable	06/2010	Unchanged	11/2011	Unchanged.
2010 PM Enforceable	06/2010	Unchanged	11/2011	Unchanged.

* For illustration only. The 2010 program dates are as originally promulgated.

EF. Removing the Gaseous Accuracy Test Program from the Regulations

We are proposing to delete the references in § 86.1935 that pertain to the final report for gaseous emission accuracy margins and the consequences that would ensue if the report was delayed beyond certain dates. These provisions are no longer needed because final accuracy margins for gaseous pollutants are being proposed in this rulemaking. The proposed revised section, therefore, would appropriately focus on the ongoing development of accuracy margins for PM emissions.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register**. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This proposed rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the in-use testing implementation dates for the fully enforceable PM test program as either envisioned or allowed for in the original final rule. This proposal also grants a request from the affected engine manufacturers for a one year delay in the start of the pilot testing program for PM. Further, here are no costs associated with this rule beyond those envisioned in the original rule.

B. Paperwork Reduction Act

This proposed rule does not include any new collection requirements, as it acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. There are no new paperwork requirements associated with this rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is, not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that, the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. We have, therefore, concluded that today's proposal will relieve regulatory burden for all small entities and will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments. EPA has determined that this proposed rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This proposed rule acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today **Federal Register** for a more extensive discussion of UMRA policy,

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule merely replaces interim measurement accuracy allowances for portable emission measurement systems with final values as envisioned in the original rule. See the direct final rule EP A has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13132.

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

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule does not uniquely affect the communities of Indian Tribal Governments, Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This proposed rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, Executive Order 13175 does not apply to this rule. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13132.

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

This proposed rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This proposed rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

I. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards. This proposed rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, we have determined that the requirements of the NTTAA do not apply. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of NTTAA policy.

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

EPA has determined that this proposed rule will not have disproportionately high and Adverse human health or environmental effects on minority or low income populations because it does not affect the level of protection provided to human health or the environment. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

K. Statutory Authority,

The statutory authority for this action comes from 42 U.S.C. 7401–7671q. C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 28, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. 08–1017 Filed 3–12–08; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 676]

Rail Transportation Contracts Under 49 U.S.C. 10709

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board seeks public comments on a proposal to require railroads to include a disclosure statement in any document that they consider to be a rail transportation contract under 49 U.S.C. 10709.

DATES: Comments are due by May 12, 2008.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and comply with the instructions at the E-FILING link on the Board's Web site, at: *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 676, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available from the Board's contractor, ASAP Document Solutions (Mailing Address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: *asapdc@verizon.net*; telephone number: 202–306–4004). The comments will also be available for viewing and self-copying in the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site at: *http://www.stb.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy J. Strafford at 202–245–0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In recent proceedings, the Board has noted that there is often no clear distinction between regulated common carrier rates and unregulated rail transportation contracts. *See, e.g., Kansas City Power & Light Company* v. *Union Pacific Railroad Company*, STB Docket No. 42095 (STB served July 27, 2006); *Interpretation of the Term ''Contract'' in 49 U.S.C. 10709*, STB Ex Parte No. 669 (STB served Mar. 29, 2007). The Board has instituted this rulemaking proceeding to consider imposing a requirement that each rail carrier provide a full disclosure statement when it seeks to enter into a rail transportation contract under 49 U.S.C. 10709. The statement would explicitly advise the shipper that the carrier intends the document to be a rail transportation contract, and that any transportation under the document would not be subject to regulation by the Board. Moreover, it would advise the shipper that it has a statutory right to request a common carriage rate that the carrier would then have to supply promptly, and such a rate might be open to challenge before the Board. The proposal would also require that, before entering into a rail transportation contract, the carrier provide the shipper an opportunity to sign a written informed consent statement in which the shipper acknowledges, and states its willingness to forgo, its regulatory options. Interested persons are invited to comment on the proposal and the Board welcomes suggestions as to what language should be included in this full disclosure/informed consent requirement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 10709.

Decided: March 6, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–5058 Filed 3–12–08; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 73, No. 50
Thursday, March 13, 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

Submission for OMB Review; Comment Request

March 7, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Local Agency Directory.

OMB Control Number: 0584–0431.

Summary of Collection: The Supplemental Nutrition Program for Women, Infants, and Children (WIC) is authorized by Section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. Local agencies authorized to furnish WIC participants with supplemental foods, nutrition education, breastfeeding promotion and support activities and referral to related health services are subject to change. New local agencies may be selected to operate the WIC Program and local agencies already in operation may be disqualified for continued operation. FNS will collect information using form FNS–648 to report additions and deletions of local agencies operating the WIC program and local agency address changes, when such changes occur.

Need and Use of the Information: The FNS will collect information to maintain a local agency directory that lists the names and addresses of all WIC local agencies. The WIC local agency directory serves as the primary source of data on the number and location of local agencies and is published annually. It is used to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 90.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–4988 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to South Carolina Scientific, Inc. of Columbia, South Carolina, an exclusive license to U.S. Patent Application Serial No. 11/080,892, ''Attractant Pheromone for the Male Pink Hibiscus Mealybug Maconellicoccus hirsutus (Green) (Homoptera: Pseudococcidae)'', filed on March 14, 2005.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as South Carolina Scientific, Inc. of Columbia, South Carolina has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–4986 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0070]

Interstate Movement of Municipal Solid Waste From Hawaii; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a regional programmatic environmental assessment relative to requests to allow the interstate movement of municipal solid waste from Hawaii to landfills in the States of Idaho, Oregon, and Washington. The environmental assessment contains a general assessment of the potential environmental effects associated with moving garbage interstate from Hawaii to Idaho, Oregon, and Washington subject to certain pest risk mitigation measures and documents our review and analysis of the environmental impacts associated with, and alternatives to, such movements. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 14, 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-2007-0070* 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–2007–0070, 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–2007–0070.

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: Ms. Shannon Hamm, Acting Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road, Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 (referred to below as the regulations) in order to protect against the introduction into and dissemination within the United States of plant and animal pests and diseases.

APHIS has received several requests to transport baled municipal solid waste via barge from Hawaii to landfills in other States, including Idaho, Oregon, and Washington, and we recognize that it is possible that additional companies may request approval from APHIS for such activity in the future. Given that expectation, we believe it would be most efficient to comprehensively review the impacts of these potential municipal solid waste actions in a single regional programmatic environmental assessment of those connected and similar actions.

Therefore, we have prepared a regional programmatic environmental assessment, titled ''Regional Movement of Plastic-baled Municipal Solid Waste from Hawaii to Washington, Oregon, and Idaho'' (February 2008), that considers the movement of a cumulative maximum amount of baled municipal solid waste from the State of Hawaii to any qualified landfill in Washington, Oregon, or Idaho, under compliance agreements with APHIS and in accordance with the standards previously established by APHIS regarding baling, handling, spill response, and disposal.

As new requests to move municipal solid waste from Hawaii are received, a specific environmental analysis will be prepared relative to each request to determine whether the request is consistent with the environmental effects and impacts analyzed in our February 2008 regional programmatic environmental assessment. The specific environmental analysis prepared for each new request to move municipal solid waste will be made available for a 30-day public comment period, after which APHIS will announce its environmental and pest risk decision regarding the new municipal solid waste movement proposal. If a new petitioner's request were to result in exceeding the amount of municipal solid waste moved from Hawaii (either individually or cumulatively) or exceeding the number of barge trips or the amount of rail or truck traffic considered in our February 2008 regional programmatic environmental assessment, APHIS will amend the regional programmatic environmental assessment to analyze the potential impacts resulting from the changed conditions. The amended environmental assessment would be made available for public comment followed by an environmental and pest risk decision regarding the changed characteristics for the movement of municipal solid waste from Hawaii under the proposal.

We are making the regional programmatic environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. The environmental assessment may be viewed on the Internet on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and for information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 7th day of March 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–5043 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0150]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers and users of veterinary biological products and other interested individuals that we will be holding our 14th public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. This notice provides information on the agenda, as well as the dates, times, and place of the meeting. It also identifies a contact person for obtaining registration forms, lodging information, and copies of the agenda.

DATES: The public meeting will be held Monday, April 7, 2008, through Wednesday, April 9, 2008, from noon to approximately 5 p.m. on Monday, from 8:30 a.m. to approximately 5 p.m. on Tuesday, and from 8 a.m. to approximately noon on Wednesday.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Light, Center for Veterinary Biologics, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785 extension 128, fax (515) 232–7120; or e-mail *Betty.J.Light@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on December 13, 2007 (72 FR 70819, Docket No. APHIS–2007–0150), we announced that the Center for Veterinary Biologics (CVB) would be holding its 14th annual veterinary biologics public meeting and requested that interested persons submit suggestions for agenda topics. Based on the responses and on other considerations, the agenda for the 14th public meeting will include, but is not limited to, the following:

- Influenza related topics (avian, canine, equine, and swine);
- Control of *E. coli* O157:H7 contamination in beef cattle;
- Agroterrorism; and
- Veterinary Services and CVB regulatory updates.

In addition, we will utilize handouts and information stations to provide updates concerning compliance activities, adjuvant approval, the evaluation of Erysipelothrix rhusiopathiae surface protective antigen A (spa A), *Clostridium haemolyticum* Beta Toxin as a protective immunogen, risk analysis, the CVB quality management system, CVB export services, expediting the processing of submissions to CVB, the International Institute for Cooperation in Animal Biologics, International Harmonization, the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH), changes to regulations and memoranda, and licensing diagnostic test kits.

Registration forms, lodging information, and copies of the agenda for the 14th public meeting may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. This information is also available on the Internet at *http://www.aphis.usda.gov/animal_health/vet_biologics/vb_pubmtg.shtml*.

The registration deadline is March 26, 2008. A block of hotel rooms has been set aside for this meeting until March 26, 2008. Early reservation of rooms is strongly encouraged.

Done in Washington, DC, this 7th day of March 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–5042 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for an Extension of a Currently Approved Information Collection; County Committee Elections

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on an extension of a currently approved information collection associated with the FSA County Committee Elections. The collection of information from FSA Farmers and Ranchers is used to receive nominations from eligible voters for the County Committee.

DATES: Comments on this notice must be received on or before May 12, 2008 to be assured consideration.

Additional Information: We invite you to submit comments on this Notice. In your comment, include volume, date and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

Mail: Kenneth Nagel, Field Operations Manager for the Deputy Administrator for Field Operations, Farm Service Agency, USDA, STOP 0542, 1400 Independence Avenue, Washington, DC 20250.

E-mail: Send comments to: *Kenneth.nagel@wdc.usda.gov.*

Fax: (202) 720–6964.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth Nagel, Field Operations Manager, telephone (202) 720–7890.

SUPPLEMENTARY INFORMATION:

Title: County Committee Election.

OMB Control Number: 0560–0229.

Expiration Date of Approval: September 30, 2008.

Type of Request: Extension.

Abstract: This information collection is necessary to effectively allow farmers and ranchers to nominate potential candidates for the county committee election in accordance with the requirements as authorized by the Soil Conservation and Domestic Allotment Act, as amended. Specifically, the Agency uses the information annually or if needed through-out the year for special elections to create ballots for county committee elections.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response. The average travel time, which is included in the total burden, is estimated to be 1 hour per respondent.

Respondents: Any individual with farming interest in the Local Administrative Area (LAA) (eligible voters).

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6700.

Comments are invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether information will have practical utility;

(2) The accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility and clarity of the information collected; or

(4) Ways to minimize the burden of the information collection on those who are to respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection.

Signed in Washington, DC on March 6, 2008.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E8–4989 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rosemont Copper Project, Coronado National Forest, Pima County, Arizona

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: In accordance with the President's Council on Environmental Quality Regulations Implementing the Procedural Provisions of the National Environmental Policy Act of 1969, the U.S. Department of Agriculture, Forest Service, announces its intent to prepare an environmental impact statement to document and publicly disclose the environmental effects of proposed construction and operation of an open-pit mine on National Forest System land and the effects of any necessary amendments to the Coronado National Forest Land and Resource Management Plan. The proposed mining project would be located on 995 acres of private land and 3,670 acres of National Forest System land about 30 miles southeast of Tucson, Arizona, within Townships 18 and 19, Ranges 15 and 16, Gila and Salt River Meridian, Pima County, Arizona. Land under the jurisdiction of the U.S. Department of the Interior, Bureau of Land Management, and the State of Arizona may be affected by certain activities associated with the proposed project. Production of 234 million pounds of copper, 4.5 million pounds of molybdenum, and 2.7 million ounces of silver is estimated annually over a period of approximately 20 years.

DATES: To be given full consideration during this National Environmental Policy Act (NEPA) review, written and oral comments concerning the scope of the environmental impact statement (EIS) analysis must be received by the Coronado National Forest (Forest) within 30 days following the publication of this notice in the **Federal Register**. Written and oral comments may also be submitted during open houses that will be held by the Forest Service as follows:

1. March 18, 2008, 7 p.m. to 9 p.m., Pima Community College, Desert Vista Campus, 5901 South Calle Santa Cruz, Tucson, Arizona;

2. March 19, 2008, 6:30 p.m. to 8:30 p.m., Canoa Hills Recreation Center, 3660 South Camino del Sol, Green Valley, Arizona; and

3. March 20, 2008, 6 p.m. to 8 p.m., Patagonia Union High School, Highway 82, Patagonia, Arizona.

A Draft EIS (DEIS) for the Rosemont Copper Project (Project) is expected to be filed with the Environmental Protection Agency (EPA) in March 2009, at which time EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The NOA will begin a period of public review of the DEIS that will extend 45 days from the date of publication of the NOA in the **Federal Register**. The Final EIS (FEIS) and a Record of Decision (ROD) are scheduled to be completed in November 2009.

ADDRESSES: Written comments on this notice may be mailed or hand-delivered to ATTN: Ms. Beverley Everson, Geologist, Coronado National Forest, 300 W. Congress St., Tucson, Arizona 85701. Comments may be also be submitted by facsimile to (520) 388–8305 and by electronic mail (e-mail) to comments-southwestern-*coronado@fs.fed.us.* Postal envelopes and the subject line of email and facsimiles should include the words ''Rosemont Copper Project EIS.'' Addresses for open house meetings are given above.

FOR FURTHER INFORMATION CONTACT: For further information on the Rosemont Copper Project (Project), please contact Ms. Beverley Everson in writing at the address above or by telephone at (520) 388–8428. Questions on the Forest Service NEPA process may be directed to Ms. Andrea Wargo Campbell, Forest NEPA Coordinator, at the same address and telephone (520) 388–8352.

SUPPLEMENTARY INFORMATION:

Background

The Project area is located on the Nogales Ranger District, Coronado National Forest, in the northern Santa Rita Mountains in Pima County, Arizona, where production of copper began in the 1880s and continued until 1951. Although several exploration projects have been undertaken since then, there has been no recent production of copper ore. In the past few years, a significant increase in the value of copper has made mining of certain claims in the area economically viable.

The Project is proposed by the Rosemont Copper Company (Company), a subsidiary of Augusta Resource Corporation, which acquired the Rosemont Mine property in 2005. In July 2007, the Company submitted a Mine Plan of Operations (MPO), including a reclamation plan, to the Forest, requesting approval to construct and operate ore-mining and related facilities on and adjacent to National Forest System (NFS) land in Pima County, Arizona.

There are 132 patented lode claims, 850 unpatented lode claims, and 14 parcels of fee land in the Project area. Lode deposits that would be mined as part of the Project are, for the most part, on Company (private) property. Most unpatented claims were staked on Federal land managed by the Forest Service; however, a few of these claims in the northwest portion of the property are on Federal land managed by the BLM.

Proposed Action

The EIS will disclose the potential environmental and social impacts of (1) Approval by the Forest Service of an MPO and reclamation plan that addresses construction and operation of an open-pit mine and related facilities on claims held by the Company, and (2) amendment of the Coronado National Forest Land and Resource Management Plan (Forest Plan), if necessary, to allow specific mining activities to be undertaken on NFS land. Connected actions related to the MPO (e.g., construction of roads, utilities) will also be evaluated in the EIS, regardless of whether they are proposed to be undertaken on NFS land. Impacts of reasonably foreseeable actions in the Project area will be considered in combination with the impacts of the Project to estimate the potential cumulative impacts of Project implementation.

The Project would be undertaken on a mosaic of privately owned and Federally managed land. Extraction of ore from an approximately 2,900-foot-deep open-pit mine would be conducted primarily on private land. Processing, waste management, and other support

facilities are proposed to be located on the Forest, and project infrastructure, such as utilities, could be located on BLM and state land. Access to mining claims would originate on State Highway 83 east of the property. A new access road is proposed.

Project-related activities to be addressed in the EIS include, but are not be limited to, the following:

☐ Construction, operation and reclamation of an open-pit copper, silver and molybdenum mine primarily on private land.

☐ Construction, operation, and reclamation of an ore-processing plant, tailings, waste rock and leach facilities on NFS land adjacent to the mine.

☐ Construction and operation of infrastructure, such as utilities and their corridors, on non-NFS land.

☐ Construction of a new access road, leach field, retention structures, wells, ore transportation systems, and test reclamation plots.

☐ Use of existing roads, new road construction, and maintenance of both.

☐ Labor requirements for construction, operation, processing, and reclamation.

☐ Implementation of mitigation to avoid or minimize impacts;

☐ Closure, reclamation and maintenance of the mine and related facilities.

☐ Resource monitoring during construction, operation, and reclamation.

The Forest Service will serve as the lead agency in the preparation of the EIS, in accordance with the Council on Environmental Quality Regulations (CEQ) at 40 CFR 1501.6, and will be responsible for compliance with the NEPA, CEQ regulations, Forest Service NEPA directives, and various resource-protection laws and regulations. Other agencies, such as the BLM, State of Arizona, and Pima County, may be invited to participate in the NEPA review as cooperating agencies, depending on their jurisdiction and/or expertise, and in accordance with CEQ NEPA regulations.

Purpose of and Need for Action

The purpose of the proposed Forest Service action is to grant permission to the Company to use NFS land for certain activities related to operation of the Rosemont Mine. The agency's need for action is based on statutes and policy that govern mining on NFS land.

Most NFS land is subject to the location of certain minerals under the Mining Law of 1872, as amended (30 U.S.C. 21–54, *et seq.*), and the directives in Forest Service Manual 2800. Prospecting, locating, and developing the mineral resources on NFS land are also subject to other rules and regulations. These include, but are not limited to, the following:

1. The 1897 Organic Administration Act (30 Stat. 11, as amended; 16 U.S.C. 473–475, 477–482, 551) grants the Secretary of Agriculture the authority to regulate the occupancy and use of NFS lands. It provides the public with the continuing right to conduct mining activities under general mining laws and in compliance with rules and regulations applicable to NFS lands. It also recognizes the rights of miners and prospectors to access NFS lands for prospecting, locating and developing mineral resources.

2. The 1960 Multiple-Use Sustained-Yield Act (74 Stat. 215; 16 U.S.C. 528–531) requires that NFS lands be administered in a manner that includes consideration of the relative values of various resources as part of management decisions and specifically provides that nothing in the Act be construed to affect the use or administration of the mineral resources on NFS lands.

3. The 1970 Mining and Minerals Policy Act (84 Stat. 1876; 30 U.S.C. 21a) established the Federal Government's policy for mineral development, ''* * * to foster and encourage private enterprise in the development of economically sound and stable industries and in the orderly development of domestic resources to help assure satisfaction of industrial, security, and environmental needs''.

4. Regulations at Title.36, Code of Federal Regulations, part 228A, set forth rules and procedures governing the use of NFS lands in conjunction with operations authorized by general mining laws. Part 228.3(a) specifically addresses the development of mineral resources.

Preliminary Identification of Issues

Based on a preliminary review of the proposed action by Forest resource specialists, the following potential issues were identified:

☐ Effects on the economy, public services, quality of life and other community resources in Pima County, Tucson, and nearby communities;

☐ Effects on the quality and availability of surface water groundwater resources;

☐ Effects on vegetation and wildlife, including those having special-status designations by the U.S. Fish and Wildlife Service, Arizona Game and Fish Department, Forest Service, Region 3 Regional Forester; and Forest Plan;

☐ Effects on soils and geology;

☐ Effects on aesthetic resources, including Forest visual quality objectives and State Highway 83, a state-designated scenic highway;

☐ Effects on archaeological, historic, and cultural resources, including Native American interests and values;

☐ Effects on Forest recreational use and compatibility with other land uses;

☐ Effects of increased traffic on local roads and transportation systems;

☐ Effects of mining and processing and vehicle traffic on;

☐ Effects of noise on nearby residents, Forest users, and sensitive wildlife.

The preceding list is subject to change, based on future comments received from the public and resource agencies.

Responsible Official

Ms. Jeanine Derby, Forest Supervisor, Coronado National Forest, will be the Responsible Official who prepares the Record of Decision (ROD) at the conclusion of this NEPA review. The Forest address is provided above.

Nature of NEPA Decision To Be Made

Based on the results of the NEPA analysis, the Forest Supervisor's ROD regarding the MPO and reclamation plan will recommend implementation of one of the following: (1) The proposed action and mitigation necessary to minimize or avoid adverse impacts; (2) an alternative to the proposed action and mitigation necessary to minimize or avoid adverse impacts, or (3) the no-action alternative. The ROD will also document the consistency of the proposed action with the Coronado National Forest Land and Resource Management Plan (Forest Plan) (1986, as amended) and approval of Proposed amendments to it.

National Forest Management Act Consistency

The Forest must ensure that the Project is consistent with the Forest Plan, which was prepared in accordance with direction in the National Forest Management Act (16 U.S.C. 1600). The Forest Plan provides land management guidance and direction to Forest managers in terms of Forest-wide and management-area-specific goals, objectives, standards, and guidelines, based on desired future conditions on the Forest. If implementation of the Project will require amendments to the Forest Plan, all proposed amendments will be evaluated for environmental effects in conjunction with the NEPA review of the Project.

Request for Comments on the NEPA Review

The Forest Service encourages citizens to express issues, concerns, and suggestions they may have about this proposed action. Comments should be directly related to issues associated with the proposed action, rather than general advocacy of or opposition to the project, to best assist us in the NEPA analysis. Although comments are welcome at any time during the NEPA review, they will be most useful to us if they are received within 30 days following the publication of this notice. If you have questions about this notice or the scoping process, please contact Ms. Beverley Everson, Geologist, Coronado National Forest, at telephone (520) 388–8352 prior to submitting your comments.

Written comments may be mailed or hand-delivered to Ms. Everson at Coronado National Forest, 300 W. Congress St., Tucson, Arizona 85701; sent by facsimile to (520) 388–8305; or submitted by email to comments-southwestern-*coronado@fs.fed.us.* Envelopes and the subject line of email and facsimiles should include the words ''Rosemont Copper Project EIS.'' Oral and written comments may also be submitted at the open houses listed above or in person at the Forest address above.

Please be advised that comments and personal information associated with them, such as names and addresses, will become part of the administrative record for this NEPA review. As such, they may be made available to a third-party in response to a Freedom of Information Act (FOIA) request. You may prefer to submit comments without including personal information. Or, you may request of the Forest Service that your personal information be exempted from release under the FOIA. You will subsequently be informed by the Forest Service whether or not your request qualifies for an exemption. If it does not, you will be afforded the opportunity to resubmit your comments without personal information or to withhold them altogether.

Early Notice of the Importance of Public Participation in the NEPA Process

Following the 30-day scoping period announced in this notice, the Forest Service will prepare a draft environmental impact statement (DEIS). Upon completion, the DEIS will be made available for a 45-day public review and comment period that will begin on the date that the EPA publishes an NOA of the DEIS in the **Federal Register**. The Forest Service believes that, at this early stage, it is important to provide the public with notice about several court rulings related to public participation in the NEPA environmental review process.

First, reviewers of a DEIS must structure their participation in the NEPA review so that it is meaningful and alerts the agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Com.* v. *NRDC, 435 U.S. 519, 553* (*1978*)]. Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS) 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. Wise. 1980)]. Because of these court rulings, it is very important that those parties who are interested in this proposed action participate before the close of a public comment period so that substantive comments and objections are available to the Forest Service in a timely manner that will allow them to be meaningfully considered and subsequently addressed in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on a DEIS should be as specific as possible. It is also helpful if comments refer to specific line numbers, pages, and/or chapters of the DEIS. Comments may address the adequacy of the DEIS or the merits of the alternatives formulated an discussed in it. For comments of this nature, reviewers may choose to refer to CEQ regulations at 40 CFR 1503.3.

Comments received, including the names and addresses of those who comment, will be considered part of the public record of this NEPA review and will be available for public inspection unless exempted from such.

(Authority: 40 CFR parts 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21).

Authorization: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1 b).

February 28, 2008.

Jeanine A. Derby,

Forest Supervisor.

[FR Doc. E8–4780 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection, the Generic Clearance for Survey Research Studies.

DATES: Comments on this notice must be received by May 12, 2008 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, Generic Clearance to Conduct Survey Research Studies, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number and title above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Survey Research Studies.

OMB Control Number: 0535—NEW.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The NASS of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for generic clearance that will allow NASS to rigorously develop, test, and evaluate its survey instruments and methodologies. The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to

conduct the Census of Agriculture. This request is part of an on-going initiative to improve NASS surveys, as recommended by both its own guidelines and those of OMB.

In the last decade, state-of-the art techniques have been increasingly instituted by NASS and other Federal agencies and are now routinely used to improve the quality and timeliness of survey data and analyses, while simultaneously reducing respondents' cognitive workload and burden. The purpose of this generic clearance is to allow NASS to continue to adopt and use these state-of-the-art techniques to improve its current data collections on agriculture. They will also be used to aid in the development of new surveys.

NASS envisions using a variety of survey improvement techniques, as appropriate to the individual project under investigation. These include focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys, and split-panel tests.

Following standard OMB requirements NASS will submit a change request to OMB individually for each survey improvement project it undertakes under this generic clearance and provide OMB with a copy of the questionnaire (if one is used), and all other materials describing the project.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for these collections of information is estimated to average from 30 minutes to 2 hours per respondent, dependant upon the survey and the technique used to test for that particular survey.

Respondents: Farms, ranchers, farm managers, farm contractors, agri-businesses, and households.

Estimated Number of Respondents: 1,100.

Frequency of Responses: On occasion.

Estimated Total Annual Burden: 1,700 hours.

Copies of this information collection and related instructions can be obtained without charge from the NASS Clearance Officer, at (202) 720–2248.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 19, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–4985 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request approval for reinstatement and revision of an information collection, the Farm and Ranch Irrigation Survey. Revision to previous burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by May 12, 2008 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0234, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Farm and Ranch Irrigation Survey.

OMB Control Number: 0535–0234.

Type of Request: Intent to Seek Approval to Reinstate and Revise an Information Collection.

Abstract: The Farm and Ranch Irrigation Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113). The 2008 Farm and Ranch Irrigation Survey will use a probability sample of all farms and a sample of horticultural operations that reported irrigation on the 2007 Census of Agriculture. This irrigation survey for commodities other than horticultural specialties will provide a comprehensive inventory of farm irrigation practices with detailed data relating to acres irrigated by category of land use, acres and yields of irrigated and non-irrigated crops, quantity of water applied, and method of application to selected crops. Also included will be 2008 expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; cost of water received from off-farm water supplies; and questions related to water reuse and security. The irrigation survey for horticultural specialties will provide the land area irrigated and source of water by state, and the irrigation by method used by State. A new combined table will be published showing the total estimated quantity of water applied for crops including horticultural specialties. Irrigation data are used by the farmers, their representatives, government agencies, and many other groups concerned with the irrigation industry and water use issues. This survey will provide the only source of dependable, comparable irrigation data by State. NASS will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Farmers, Ranchers, Farm Managers, and producers of Nursery, Greenhouse and Floricultural Products.

Estimated Number of Respondents: 50,000.

Estimated Total Annual Burden on Respondents: 16,700 hours.

Copies of this information collection and related instructions can be obtained without charge from NASS Clearance Officer, at (202) 720–2248.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 19, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–4987 Filed 3–12–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1543]

Expansion of Foreign-Trade Zone 202 Los Angeles, California, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board for authority to expand its zone to include a site within the Tejon Industrial Complex (Site 23—177 acres) in Lebec, California, adjacent to the Los Angeles-Long Beach Customs and Border Protection port of entry (FTZ Docket 44–2006, filed 11/8/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 66499, 11/15/06) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 202 is approved, subject to the FTZ Act and the Board's regulations, including section 400.28, subject to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on March 31, 2013, for Site 23 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 27th day of February 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–5050 Filed 3–12–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1545]

Expansion of Foreign-Trade Zone 75 Phoenix, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Phoenix, Arizona, grantee of Foreign-Trade Zone 75, submitted an application to the Board for authority to expand its zone to include two sites located at the Riverside Industrial Center (Site 3–74 acres) and at the Santa Fe Business Park (Site 4–18 acres) in Phoenix, Arizona, within the Phoenix Customs and Border Protection port of entry (FTZ Docket 36–2007, filed 8/14/07);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 46603, 8/21/07) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 75 is approved, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 27th day of February 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–5049 Filed 3–12–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1542]

Reorganization and Expansion of Foreign-Trade Zone 39 Dallas/Fort Worth, TX, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-

Trade Zones Board (the Board) adopts the following Order:

Whereas, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, submitted an application to the Board for authority to reorganize and expand Site 2 (Dallas Logistics Hub–1,949 acres) and to expand the zone to include additional sites located at the Duke Intermodal Park in Hutchins (Site 7–39 acres), within the Sunridge Business Park in Wilmer (Site 8–434 acres), at the Dalport Business Park in Wilmer (Site 9–356 acres), within the Lancaster Municipal Airport Complex in Lancaster (Site 10–50 acres), at the ProLogis 20/35 Industrial Park in Lancaster (Site 11–175 acres), and at the Crossroads Trade Center in DeSoto (Site 12–112 acres), within the Dallas Customs and Border Protection port of entry (FTZ Docket 35–2007, filed 8/8/07);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 46603, 8/21/07) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 39 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on March 31, 2015, for Sites 2, 7, 8, 9, 11 and 12 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 27th day of February 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–5048 Filed 3–12–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 7, 2007, the Department of Commerce (''the Department'') published the preliminary results of its fourth administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. The review covers one producer of the subject merchandise, Hylsa Puebla, S.A. de C.V. (''Hylsa''). The period of review (''POR'') is October 1, 2005, through September 30, 2006. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: March 13, 2008

FOR FURTHER INFORMATION CONTACT: John Conniff or Jolanta Lawska, Office 3, Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1009 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2007, the Department published in the **Federal Register** the preliminary results of the fourth administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. *See Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Steel Alloy Steel Wire Rod from Mexico*, 72 FR 62820 November 7, 2007 (''*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On December 7, 2007, we received case briefs from Hylsa and petitioners.[1] On December 12, 2007, Hylsa and petitioners submitted rebuttal briefs. No party requested a hearing.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5

[1] Petitioners are Mittal Steel USA Inc. - Georgetown, Gerdau USA Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries Inc., and Rocky Mountain Steel Mills.

or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[2]

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary (''Wire Rod Decision Memorandum''), which is hereby adopted by this notice. A list of the issues addressed in the Wire Rod Decision Memorandum is appended to this notice. The Wire Rod Decision Memorandum is on file in the Central Records Unit in Room 1117 of the main Commerce building, and can also be accessed directly on the Web at www.ia.ita.doc.gov/frn. The paper copy and electronic version of the Wire Rod Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received for Hylsa, we have recalculated Hylsa's credit expenses incurred in the home market. Hylsa's adjustments are discussed in detail in the accompanying Wire Rod Decision Memorandum. See March 6, 2008, Final Calculation Memorandum for Hylsa.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period October 01, 2005, through September 30, 2006:

Producer	Weighted–Average Margin (Percentage)
Hylsa	17.94

Assessment Rate

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). For Hylsa, the Department has calculated importer–specific duty assessment rate 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 by that importer. Pursuant to 19 CFR 356.8, the Department shall not order liquidation until the ''forty–first day after the date of publication of the notice . . .'' following an administrative review of merchandise exported from Canada or Mexico. Accordingly, the Department will issue appropriate assessment instructions directly to CBP 41 days after the publication of these final results of review. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 70 FR 73437, 73443 (December 12, 2005).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of carbon and certain alloy steel wire rod from Mexico 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 Tariff Act of 1930, as amended (''the Act''): (1) for Hylsa, 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 a prior segment, the cash deposit rate will continue to be the company–specific rate from the final results; (3) if the exporter is not a firm covered in this review or a prior segment, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final determination; and (4) if neither the exporter nor the producer is a firm covered in this review or the investigation, the cash deposit rate will be 17.70 percent, the all–others rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

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

[2] Effective January 1, 2006, U.S. Customs and Border Protection (CBP) reclassified certain HTSUS numbers related to the subject merchandise. *See* http: //hotdocs.usitc.gov/ tariff__chapters__current/ toc.html.

could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent increase in antidumping duties by the amount of antidumping duties reimbursed.

Administrative Protective Order

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: March 6, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

APPENDIX

I. List of Comments:

Hylsa Puebla S.A. de C.V. (''Hylsa'')
Comment 1: Treatment of Sales with Negative Dumping Margins (''Zeroing'')
Comment 2: Calculation of Home Market Credit Expenses
Comment 3: Treatment of Dollar–Denominated Home Market Sales

[FR Doc. E8–5046 Filed 3–12–08; 8:45 am]

BILLING CODE: 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of the Supplemental Programmatic Environmental Impact Statement (SPEIS) for Army Growth and Force Structure Realignment To Support Operations in the Pacific Theater

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Army intends to prepare an SPEIS in order to evaluate the relative environmental and socioeconomic impacts of support operations growth in the Pacific Theater as it transforms and aligns its forces to address existing capabilities shortfalls. As part of Army growth, this evaluation will be conducted to supplement the analysis and decisions that were included in the PEIS for Grow the Army (for continental U.S. (CONUS) locations), which was completed in January 2008.

The Army will use the SPEIS analysis to evaluate and compare the environmental and socioeconomic impacts of alternatives for implementing its Proposed Action. The Army's Proposed Action is to grow, realign, and transform its forces to support operations in the Pacific Theater and to ensure the proper capabilities exist to sustain operations in promoting global and national security now and into the foreseeable future. The implementation of the Proposed Action is needed to better meet military operational and national security requirements and the needs of the Army's Soldiers and their Families.

The SPEIS will assess the capacity of Army installations and their ability to accommodate new units as part of Army growth and force structure realignment to support operations in the Pacific Theater. Alternatives in the SPEIS could include stationing of additional Combat Support (CS) or Combat Service Support (CSS) units or new support brigades. The following alternatives will be analyzed in the SPEIS: (1) Grow, transform, and realign forces by stationing approximately 5,000 additional CS/CSS Soldiers in reasonable locations that support operations in the Pacific Theater; (2) Grow, transform, and realign forces by stationing approximately 7,500 additional CS/CSS Soldiers in reasonable locations that support operations in the Pacific Theater and (3) Grow, transform, and realign forces by stationing approximately 10,000 additional CS/CSS Soldiers in reasonable locations that support operations in the Pacific Theater. The SPEIS will evaluate different stationing scenarios in reasonable locations, which may include Army installations in the CONUS, Hawaii and Alaska with the capability to support operations in the Pacific Theater.

In addition to the above alternatives, the No Action Alternative will be considered and used as a baseline for comparison of alternatives. The No Action Alternative is to retain the U. S. Army forces in the Pacific in their current end strength and force structure. The No Action Alternative includes those stationing decisions which have already been made to include stationing actions directed by Base Realignment and Closure legislation in 2005, Army Global Defense Posture Realignment, and Army Modular Forces initiatives. The No Action Alternative is not a viable means for meeting the current and future strategic security and defense requirements of the nation.

The SPEIS will analyze the Proposed Action's impacts upon the natural, cultural, and man-made environments at those stationing locations which are capable of supporting the needs of the Army and its Soldiers and Families. Viable alternatives include those stationing locations that are able to meet Army unit requirements for training ranges and maneuver space, housing and office space, maintenance and vehicle parking, and Soldier and Family quality of life (e.g., schools, gyms, medical facilities). In addition, viable alternatives must meet the operational mission requirements of the Pacific Command (PACOM).

ADDRESSES: Submit comments to *PublicComments@aec.apgea.army.mil*.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, U.S. Army Environmental Command, Building E4460, 5179 Hoadley Road, Attention: IMAE–PA, Aberdeen Proving Ground, MD 21010–5401; telephone: (410) 436–2556; facsimile: (410) 436–1693. The Public Affairs Office is open during normal business hours Monday through Friday 9 a.m. to 5 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: The global security environment is turbulent, unpredictable, and rapidly changing. It has placed considerable demands on the nation's military and highlighted the need for the Army to correct shortfalls in high-demand skills while reassessing its force capabilities. To meet the challenges of the 21st century security environment, the Army requires the growth and restructuring of its forces to support operations in the Pacific Theater to sustain the broad range of missions required to promote regional, national, and global stability.

Final decisions for the implementation of Army stationing actions within CONUS were published in the **Federal Register** in January 2008. Force structure requirements for U.S. Army Pacific (USARPAC) are still being evaluated. The SPEIS will consider the projected environmental and socioeconomic impacts of different stationing actions at locations capable of supporting operations in the Pacific Theater.

Alternatives for Army growth and force structure realignment to support operations in the Pacific Theater could involve the addition of new units, unit realignment from existing locations, and reconfiguration of the existing force structure in accordance with Army transformation. Adjustments to Army force structure could include changes in the numbers of CS/CSS Soldiers needed to support USARPAC operations with critical military skills such as military

police, engineers, explosive ordnance detachments, logistics and command and control functions. Secondly, growth, realignment, and transformation could involve the addition of new support brigades or constituent units of support brigades at reasonable locations capable of supporting operations in the Pacific Theater. Support brigade stationing decisions could involve the stationing of an aviation brigade, a fires brigade, a battlefield surveillance brigade, a maneuver enhancement brigade, a sustainment brigade, an engineer brigade, a military police brigade, or a combination of these support brigades and the units that compose them. The Army is not considering the stationing of new Brigade Combat Teams (BCT) in USARPAC at this time.

Proposed alternatives to grow the Army to support operations in the Pacific Theater could involve three primary actions depending on the installation being analyzed. These actions include the construction of housing and quality of life facilities (i.e., barracks, schools, gymnasiums), the construction of new training ranges and infrastructure, and changes in the intensity and frequency of use of maneuver land and firing ranges. Evaluations will include strategic military and national security considerations for new stationing actions at locations that, if selected, are capable of supporting the National Security Strategy (2006), the QDR (2006), National Military Strategy, and the Army Campaign Plan.

Based on public scoping and the factors discussed above, the Army will refine its range of reasonable alternatives to the extent possible to accommodate both mission requirements and quality of life considerations. In reaching its decision, the Army will assess and consider public concerns. The SPEIS will compare the direct, indirect, and cumulative environmental effects that may result from stationing actions connected with initiatives to grow the Army. The primary environmental issues to be analyzed will include those identified as the result of the scoping process and installation-specific considerations. These issues may include impacts to soil, water and air quality, airspace conflicts, natural and cultural resources, land use compatibility, noise, socioeconomics, environmental justice, energy use, human health and safety considerations, and infrastructure and range/training requirements.

Scoping and Public Comment: All interested members of the public, federally-recognized Indian Tribes, Alaska Natives, Native Hawaiian groups, federal, state, and local agencies are invited to participate in the scoping process for the preparation of this SPEIS. Comments identifying environmental issues, concerns and opportunities to be analyzed in the SPEIS will be accepted for 30 days following publication of this Notice of Intent in the **Federal Register**.

Dated: March 5, 2008.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. E8–4882 Filed 3–12–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–61–000, ER08–61–001]

ISO New England Inc.; Notice Establishing Post-Technical Conference Comments

March 6, 2008.

On March 5, 2008, Commission staff convened a technical conference pursuant to the Commission's January 25, 2008 Order in this proceeding.[1] In accordance with the comment procedures established at the technical conference, post-technical conference comments are due no later than 5 p.m. Eastern Time on March 19, 2008.

For further information please contact Joshua Konecni at (202) 502–6291 or by e-mail at *joshua.konecni@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5027 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–510–000; FERC–510]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 6, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due May 15, 2008.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filing/elibrary.asp*) or to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–510–000.

Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a username and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–510 ''Application for Surrender of Hydropower License'' (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of sections 4(e) and 6 and 13

[1] ISO New England Inc., 122 FERC ¶ 61,057 (2008).

of the Federal Power Act (FPA) 16 U.S.C. sections 797(e), 799 and 806. Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmissions lines or other power project works necessary or convenient for developing and improving navigation, transmissions and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed or natural catastrophes have damaged or destroyed the project facilities. The information collected under the designation FERC–510 is in the form of a written application for surrender of a hydropower license. The information is used by Commission staff to determine the broad impact of such surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a careful review of the prepared application before issuing an order for Surrender of a License. The order is the result of an analysis of the information produced, i.e., economic, environmental concerns, etc., which are examined to determine if the application for surrender is warranted. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CRF 6.1–6.4.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
8	1	10	80

Estimated cost burden to respondents is $4,861.00. (80 hours/2080 hours per year times $126,384 per year average per employee = $4,861.00). The cost per respondent is $608.00.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5028 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–512–000, FERC–512]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 6, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by May 13, 2008.

ADDRESSES: An example of this collection of information may be obtained from the Commission's Documents & Filing Web site (*http://www.ferc.gov/docs-filing/elibrary.asp*) or by contacting the Federal Energy Regulatory Commission, Attn: Michael, Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–512–000.

Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing

(*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by E-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–512, ''Application for Preliminary Permit'' (OMB No. 1902–0073) is used by the Commission to implement the statutory provisions of Sections 4(f), 5 and 7 of the Federal Power Act (FPA), 16 U.S.C. 797, 798 & 800. The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydropower facility while the applicant conducts surveys to prepare maps, plans, specifications and estimates; conducts engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of the permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine an applicant's qualifications to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application in order to solicit public and agency comments. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.31–.33, 4.81–.83.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
200	1	37	7,400

Estimated cost burden to respondents is $508,000; (*i.e.*, 7 hours @$200 an hour (legal) + 30 hours @$38 an hour (technical) × 200) per year equals $508,000).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information *technology,* e.g., permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5029 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–357–008]

Cheniere Creole Trail Pipeline, L.P.; Notice of Application

March 6, 2008.

Take notice that on February 26, 2008, Cheniere Creole Trail Pipeline, L.P. (Cheniere), 700 Milam Street, Suite 800, Houston, Texas 77002, filed in the above-referenced docket an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the regulations of the Commission, to amend its certificate authority issued on June 15, 2006 in Docket No. CP05–357–000 *et al.*, as amended, in order to revise the initial transportation rates for Cheniere's Zone 1 facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Comment Date: March 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5032 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–84–000]

Columbia Gas Transmission Corporation; Notice of Application

March 6, 2008.

Take notice that on March 3, 2008, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE, Charleston, West Virginia 25314, pursuant to section 7(c) of the Natural Gas Act (NGA), filed an application for a certificate of public convenience and necessity, seeking authority to test and evaluate its Coco C storage field located in Kanawha County, West Virginia. Columbia will collect and analyze the information it obtains to validate using these storage fields to develop further storage services, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. Geroge, Lead Counsel, Columbia Gas Transmission Corporation, PO Box 1273, Charleston, West Virginia 25325 at (304) 357–2359 or fax (304) 357–3206.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: March 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5026 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12509–001]

Eagle Crest Energy Company; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

March 6, 2008.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12509–001.

c. *Dated Filed:* January 10, 2008.

d. *Submitted By:* Eagle Crest Energy Company.

e. *Name of Project:* Eagle Mountain Pump Storage Project.

f. *Location:* In Riverside County, California. The project occupies private lands and lands of the United States managed by the Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Arthur W. Lowe, Eagle Crest Energy Company, PO Box 2155, Palm Desert, CA 92261; (760) 779–0040.

i. *FERC Contact:* Tim Looney at (202) 502–6096; or e-mail at *timothy.looney@ferc.gov.*

j. Eagle Crest Energy Company filed its request to use the Traditional Licensing Process on January 10, 2008. Eagle Crest Energy Company provided public notice of its request on January 9, 2008. In a letter dated March 4, 2008, the Director of the Office of Energy Projects approved Eagle Crest Energy Company's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and (b) the California State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Eagle Crest Energy Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5031 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–77–000]

Texas Gas Transmission, LLC; Notice of Request Under Blanket Authorization

March 6, 2008.

Take notice that on February 21, 2008, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP08–77–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own, and operate approximately 9.37 miles of 8-inch diameter pipeline lateral, located in Kentucky and Indiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Texas Gas proposes to construct approximately 9.37 miles of 8-inch diameter pipeline lateral, the Henderson-Dogtown 8-Inch Line Project, associated metering facilities, and ancillary auxiliary facilities, including two 6-inch side valves, over-pressure protection, an 8-inch pig launcher, an 8-inch pig receiver, a single 6-inch ultrasonic delivery meter station, flow control, communication tower, and associated buildings, commencing at Texas Gas' Slaughters-Montezuma System, located in Henderson County, Kentucky, and ending at a proposed interconnection with Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. (SIGECO), located in Vanderburgh County, Indiana. Texas Gas estimates the cost of construction to be $12,230,000. Texas Gas states that the proposed facilities are designed to deliver 36 MMcf/d to the new interconnection point with SIGECO.

Any questions regarding the application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky 42301, call (270) 688–6825, fax (270) 688–5871, or e-mail *katht.fort@bwpmlp.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5025 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–5–000, Docket No. OR07–7–000, Docket No. OR07–18–000, Docket No. OR07–19–000, Docket No. OR07–22–000]

ExxonMobil Oil Corporation v. Calnev Pipe Line LLC; Tesoro Refining and Marketing Company v. Calnev Pipe Line LLC; America West Airlines, Inc. and U.S. Airways, Inc., Chevron Products Company, Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., and Valero Marketing and Supply Company v. Calnev Pipe Line LLC; ConocoPhillips Company v. Calnev Pipe Line LLC; BP West Coast Products LLC v. Calnev Pipe Line LLC; Notice Permitting Futher Answers

March 6, 2008.

On March 3, 2008, Calnev Pipe Line LLC (Calnev) filed a combined answer to the complaints listed in the caption of this order. Given the novelty of some of the issues, notice is hereby given that the complainants may file answers to Calnev's March 3, 2008 filing no later than March 18, 2008. Any factual assertions in those answers shall be supported by sworn affidavits.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5030 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13100–000]

Midriver Power L.L.C.; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

March 6, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13100–000.

c. *Date Filed:* January 23, 2008.

d. *Applicant:* Midriver Power L.L.C.

e. *Name of the Project:* Coralville Lake Hydropower Project.

f. *Location:* The project would be located on the Iowa River in Johnson County, Iowa. The Coralville Lake Dam is owned and maintained by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Kenneth D. Bickner, Midriver Power L.L.C., 539 Kimball Road, Iowa City, IA 52245 (319) 337–5645.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13100–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U. S. Army Corps of Engineers' Coralville Lake Dam and would consist of: (1) Two 70-foot-long, 180-inch diameter proposed penstocks; (2) a proposed powerhouse containing two generating units with a total installed capacity of 5.7-megawatts; (3) a proposed transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of 50-gigawatts and would be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5024 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–10–000]

Transparency Provisions of Section 23 of the Natural Gas Act; Notice of Form No. 552 Technical Conference

March 6, 2008.

The staff of the Federal Energy Regulatory Commission (Commission) intends to hold a Technical Conference on Tuesday, April 22, 2008 to discuss issues related to the preparation and filing of Form No. 552. The Technical Conference will be held at the Commission's headquarters at 888 First Street, NE., Washington, DC, in the Commission Meeting Room and via teleconference.

On December 26, 2007, the Commission issued Order No. 704, Transparency Provisions of Section 23 of the Natural Gas Act.[1] Order No. 704 requires certain natural gas buyers and sellers to identify themselves to the Commission and report summary information about their physical natural gas transactions for the previous calendar year in Form No. 552, established for that purpose. During the Technical Conference, Commission staff and interested parties will discuss issues related to the preparation and submission of Form No. 552. Form No. 552 is available at *http://www.ferc.gov/docs-filing/eforms.asp#552.*

The Technical Conference will be organized around questions from natural gas buyers and sellers required to file Form No. 552. Participants who wish to submit questions in advance of the Technical Conference should submit questions by March 31, 2008, via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Filings submitting questions should refer to Docket No. RM07–10–000. Those filings will be available at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance accessing documents on eLibrary, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

All interested persons are invited to attend or call in for the Technical Conference. Those interested in participating by phone must register no later than April 11, 2008, on the FERC Web site at *https://www.ferc.gov/whats-new/registration/form-552-04-22-form.asp.* Those who will participate in person are encouraged, but not required, to register. There is no registration fee. Information for the meeting will be sent to registered participants. For additional information, please contact Michelle Reaux of FERC's Office of Enforcement at (202) 502–6497 or by e-mail at *michelle.reaux@ferc.gov*.

Commission conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll-free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5033 Filed 3–12–08; 8:45 am]

BILLING CODE 6717–01–P

[1] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. & Regs. ¶ 31,260 (2008).

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 4, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before May 12, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by email or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701 and 73.1943, Political Files.

Form Number: FCC Form 355.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for-profit institutions.

Number of Respondent and Responses: 56,030 respondents; 56,030 responses.

Estimated time per Response: 2.5–52 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,072,814 hours.

Total Annual Cost: $11,600,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On November 27, 2007, the Commission adopted a *Report and Order* in MM Docket 00–168, *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*. The *Report and Order* adopts a Standardized Television Disclosure Form, FCC Form 355, and also requires require television licensees and applicants to post a portion of the contents of its public inspection file on its Web site, as proposed in the *Notice of Proposed Rulemaking* in MB Docket 00–168 in October 2000. Television broadcast stations and Class A television broadcast stations are both required to file FCC Form 355. The Standardized Television Disclosure Form, FCC Form 355, provides: (a) A consistent format for reporting by all licensees, and (b) documents the licensees efforts to determine the issues facing its community and the public interest programming aired during the preceding three month period in response to such issues.

47 CFR 73.3526 and 73.3527 require that licensees and permittees of commercial and noncommercial AM, FM and TV stations maintain a file for public inspection at its main studio or at another accessible location in its community of license. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports, statements certifying compliance with filing announcements in connection with renewal applications, a list of donors supporting specific programs, and a list of community issues addressed by the station's programming. These rules also specify the length of time, which varies by document type, that each record must be retained in the public file. The public and FCC use the data to evaluate information about the licensee's performance and to ensure that station is addressing issues concerning the community to which it is licensed to serve.

47 CFR 73.1943 and 76.1701 require licensees of broadcast stations and cable television systems, respectively, to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests. The data is used by the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other legally qualified candidates. Section 76.1701 also requires that, when an entity sponsors origination cablecasting material that concerns a political matter or a discussion of a controversial issue of public importance, a list must be maintained in the public file of the system that includes the sponsoring entity's chief executive officers, or members of its executive committee or of its board of directors.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–5051 Filed 3–12–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, March 18, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Previously scheduled meetings on Tuesday, March 4, 2008, and Thursday, March 8, 2008 were cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 08–1029 Filed 3–11–08; 3:14 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated.

The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2008.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Live Oak Bancshares Corporation, to acquire Forehand Title Management LLC, both of George West, Texas; and thereby engage in title insurance activities in a town of less than 5,000 in population, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, March 10, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–5054 Filed 3–12–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—02/19/2008			
20080650	Liberty Media Corporation	The V.I.P. Tour Company	The V.I.P. Tour Company.
20080660	Barry Diller	The V.I.P. Tour Company	The V.I.P. Tour Company.
20080680	Icahn Partners L.P.	CSX Corporation	CSX Corporation.
20080681	Icahn Partners Master Fund L.P.	CSX Corporation	CSX Corporation.
20080682	Carl C. Icahn	CSX Corporation	CSX Corporation.
20080683	Icahn Partners Master Fund II L.P	CSX Corporation	CSX Corporation.
20080732	Mason Wells Buyout Fund II, Limited Partnership.	John M. Johnson	Northland Group, Inc.
20080737	Shamrock Activist Value Fund, L.P	Reddy Ice Holdings, Inc.	Reddy Ice Holdings, Inc.
20080741	Employers Holdings, Inc	AmComp Incorporated	AmComp Incorporated.
TRANSACTIONS GRANTED EARLY TERMINATION—02/20/2008			
20080747	Verizon Communications Inc	SureWest Communications	SureWest Wireless, West Coast PCS LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—02/25/2008			
20071137	UnitedHealth Group Incorporated	Sierra Health Services, Inc	Sierra Health Services, Inc.
20080703	Blackstone Holdings I L.P.	GSO Capital Partners L.P.	GSO Capital Partners L.P.
20080704	NYSE Euronext	Ronald B. Verstappen	Wombat Financial Software, Inc.
20080708	Ciena Corporation	World Wide Packets, Inc	World Wide Packets, Inc.
20080734	Global BPO Services Corp	H.I.G. Capital Partners III, L.P	Stream Holdings Corporation.
20080756	C. L. de Carvalho-Heineken	Scottish & Newcastle plc	Scottish & Newcastle plc.
20080760	Thomas H. Lee Equity Fund VI, L.P	MoneyGram International, Inc	MoneyGram International, Inc.
20080761	Thomas H. Lee Parallel Fund VI, L.P	MoneyGram International, Inc	MoneyGram International, Inc.
20080762	ArcLight Energy Partners Fund III, L.P	Renewpower LLC	Caithness Wind Limited Partnership, Cameron Ridge, LLC, Pacific Crest Power, LLC, Terra-Gen Wind Holdings II, LLC.
20080763	ArcLight Energy Fund IV, L.P	Renewpower LLC	Caithness Wind Limited Partnership, Cameron Ridge, LLC, Pacific Crest Power, LLC, Terra-Gen Wind Holdings II, LLC.
20080765	Korea National Oil Corporation	Phyllis M. Taylor	Taylor Energy Company LLC.
20080769	Finance Holding Corporation	Financial Industries Corporation	Financial Industries Corporation.
20080771	MBF Healthcare Acquisition Corp	Kohlberg Investors V, L.P	Critical Homecare Solutions Holdings, Inc.
20080772	QBE Insurance Group Limited	North Pointe Holdings Corporation	North Pointe Holdings Corporation.
20080773	Genmab A/S	PDL BioPharma, Inc.	PDL BioPharma, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/26/2008			
20080722	Brose International GmbH	Continental AG	Continental AG.
20080742	General Electric Company	San Faustin N.V.	Hydril Company, Hydril LLC.
20080753	Nucor Corporation	SHV Holdings N.V.	SHV North America Corporation.

Trans No.	Acquiring	Acquired	Entities
20080784	Platinum Equity Capital Partners II, L.P	WPI Holding Corp.	WPI Holding Corp.
TRANSACTIONS GRANTED EARLY TERMINATION—02/27/2008			
20080693	Oracle Corporation	BEA Systems, Inc.	BEA Systems, Inc.
20080729	EKR Holdings, Inc.	PDL BioPharma, Inc.	PDL BioPharma, Inc.
20080770	Providence Equity Partners VI L.P	John J. Hemmingson	Assessment Technologies Institute, LLC.
20080776	D.E. Shaw Composite International Fund.	Globe Specialty Metals, Inc	Globe Specialty Metals, Inc.
20080777	Alan Kestenbaum	Globe Specialty Metals, Inc	Globe Specialty Metals, Inc.
20080779	Stichting Gerdau Johannpeter	Lynn Leany	Calico Construction Supply, LLC, Century Properties Henderson 18 LLC, Century Steel Holdings, Inc., Century Steel, Inc., Pinnacle Data International, LLC.
20080799	Plainfield Special Situations Offshore Feeder Fund Limited.	Globe Specialty Metals, Inc	Globe Specialty Metals, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/28/2008			
20080705	Hewlett-Packard Company	Exstream, Inc.	Exstream Holdings, Inc., Exstream Software, LLC, Exstream Software North America, LLC.
20080725	Harbinger Capital Partners Offshore Fund I, Ltd.	Cleveland-Cliffs Inc.	Cleveland-Cliffs Inc.
20080731	Cogdell Spencer Inc.	MEA Holdings, Inc.	MEA Holdings, Inc.
20080733	Jahm Najafi	Henkel KGaA	Henkel Corporation.
20080743	Audax Private Equity Fund II, L.P	Economy Restaurant Fixtures, Inc	Economy Restaurant Fixtures, Inc.
20080785	Palladium Equity Partners III, L.P	American Gilsonite Company	American Gilsonite Company.
TRANSACTIONS GRANTED EARLY TERMINATION—02/29/2008			
20080752	Peter M. Brant	SP Newsprint Co.	SP Newsprint Co.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303, Washington, DC 20580; (202) 326–3100.

By Direction of the Commission,

Donald S. Clark,

Secretary.

[FR Doc. E8–4883 Filed 3–12–08; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, announces the following meeting for the aforementioned subcommittee:

Time And Date: 9 a.m.–5 p.m., March 25, 2008.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compenstion program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes the discussion of cases under review on the 4th, 5th, and 6th sets of individual dose reconstruction; selection of cases for future review; and discussion of the summary report on the first 100 cases.

The agenda is subject to change as priorities dictate.

ABRWH determines that agency business requires its consideration of this matter on less than 15 days notice to the public and that no earlier notice of this meeting was possible.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to

the contact person below well in advance of the meeting.

For Further Information Contact: Christine Branche, Ph.D., Executive Secretary, NIOSH, CDC, 395 E Street, SW., Suite 9200, Washington, DC 20201, telephone (513) 533–6800, toll free 1 (800) 35–NIOSH, e-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 6, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 08–1014 Filed 3–10–08; 9:14 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request Title: Children's Justice Act Program.

OMB No.: 0980–0196.

Description: The Program Instruction, prepared in response to the enactment of the Children's Justice Act (CJA), as set forth in Title II of Pub. L. 108–36, Child Abuse Prevention and Treatment Act Amendments of 2003, provides direction to the States and Territories to accomplish the purposes of assisting States in developing, establishing and operating programs designed to improve: (1) The handling of child abuse and neglect cases, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim; (2) the handling of cases of suspected child abuse or neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, particularly child sexual abuse and exploitation; and (4) the handling of cases involving children with disabilities or serious health-related problems who are victims of abuse and neglect. This Program Instruction contains information collection requirements that are found in Pub. L. 108–36 at Sections 107(b) and 107(d), and pursuant to receiving a grant award. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application & Annual Report	52	1	60	3,120

Estimated Total Annual Burden Hours: 3,120.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: March 5, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–4804 Filed 3–12–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Title IV–E State Plan for the Foster care, Independent Living and Adoption Assistance Programs.

OMB No.: 0980–0141.

Description: A State plan is required by sections 471 and 477(b)(2), part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting Federal funding for foster care, independent living services and adoption assistance under the Act. The State plan is a comprehensive narrative description of the nature and scope of a State's programs and provides assurances the programs will be administered in conformity with the specific requirements stipulated in title IV–E. The plan must include all applicable State statutory, regulatory, or policy references and citations for each requirement as well as supporting documentation. A State may use the pre-print format prepared by the Children's Bureau of the Administration for Children and Families or a different format, on the condition that the format used includes all of the title IV–E State plan requirements of the law.

Respondents: State and Territorial Agencies (State Agencies) administering or supervising the administration of the title IV–E programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title IV–E State Plan	12	1	15	180

Estimated Total Annual Burden Hours: 180.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Dated: March 5, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–4805 Filed 3–12–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0150]

Draft Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims.'' This draft guidance is intended to assist applicants in developing labeling for cardiovascular outcome claims for drugs that are indicated to treat hypertension. Because blood pressure control is well established as beneficial in preventing serious cardiovascular events, FDA believes that the appropriate use of these drugs can be encouraged by making the connection between lower blood pressure and improved cardiovascular outcomes more explicit in labeling. This draft guidance is intended to recommend standard labeling for antihypertensive drugs except where differences are clearly supported by clinical data.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance byMay 12, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Devi Kozeli, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4183, Silver Spring, MD 20993–0002, 301–796–1128.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims.'' On June 15, 2005, the Cardiovascular and Renal Drugs Advisory Committee met in open public session to discuss class labeling for cardiovascular outcome claims for drugs that are indicated to treat hypertension. With few exceptions, current labeling for antihypertensive drug products only includes the information that these drugs are indicated to reduce blood pressure; the labeling does not include information on the clinical benefits related to cardiovascular outcomes expected from such blood pressure reduction. However, blood pressure control is well established as beneficial in preventing serious cardiovascular events, and inadequate treatment of hypertension is acknowledged as a significant public health problem. The committee voiced a broad consensus in favor of labeling changes to describe briefly the clinical benefits related to cardiovascular outcomes expected from lowering blood pressure with any antihypertensive drug. The labeling proposed in this draft guidance is consistent with the advisory committee's recommendations.

This draft guidance is being made available to afford the public the opportunity to comment on both the intent of the labeling revisions and the specific proposed language. This draft guidance is intended to recommend standard labeling for antihypertensive drugs except where differences are clearly supported by clinical data. After this guidance has been finalized, applicants will be encouraged to submit labeling supplements containing the new language.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on labeling for cardiovascular outcome claims for drugs indicated to treat hypertension. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the

requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 6, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–5083 Filed 3–12–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Revision to Existing System of Records; Revised

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notification of an Altered System of Records; revised.

SUMMARY: In accordance with the requirements of the Privacy Act, the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to alter the system of records for the C.W. Bill Young Cell Transplantation Program. This system of records is required to comply with the implementation directives of Public Law 109–129. Records are used for the C.W. Bill Young Cell Transplantation Program's planning, implementation, evaluation, monitoring, and document storage purposes.

HRSA published in the **Federal Register** of August 17, 2007, a document concerning notice of a new system of records, 09–15–0068, C.W. Bill Young Cell Transplantation Program (FR. Doc. 07–4019). This document more fully explains the routine uses of records maintained in the system and amends the record retention and disposal policy. Accordingly, the notice is published below in its entirety, as amended.

DATES: Persons wishing to comment on this revised system of records notice may do so until April 14, 2008. Unless there is a further notice in the **Federal Register**, this revised system of records will become effective on April 14, 2008.

ADDRESSES: Please address comments to Health Resources and Services Administration Privacy Act Coordinator, Donn Taylor, 5600 Fishers Lane, Room 14A–20, Rockville, Maryland 20857; telephone (301) 443–0204. This is not a toll-free number. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James F. Burdick, M.D., Director, Division of Transplantation, HSB, HRSA, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov*. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration published in the **Federal Register** of August 17, 2007, notice of a new system of records, 09–15–0068, C.W. Bill Young Cell Transplantation Program. The Stem Cell Therapeutic and Research Act of 2005 (the Act) establishes the C.W. Bill Young Cell Transplantation Program (the Program) which maintains information related to patients in need of a blood stem cell transplant and potential adult volunteer blood stem cell donors who have agreed to be listed on the registry maintained by the Program. Additionally, the Program maintains information related to the outcomes of patients who have undergone blood stem cell transplantation.

The Stem Cell Therapeutic and Research Act of 2005 authorizes the C.W. Bill Young Cell Transplantation Program and provides for the collection, maintenance, and distribution of human blood stem cells for the treatment of patients and for research. The Program consists of four interrelated components each operated under a separate contract. The four components are: the Bone Marrow Coordinating Center; the Cord Blood Coordinating Center; the Office of Patient Advocacy/Single Point of Access; and the Stem Cell Therapeutic Outcomes Database. The contracts for operation of the Bone Marrow Coordinating Center, Cord Blood Coordinating Center, and Office of Patient Advocacy/Single Point of Access were awarded to the National Marrow Donor Program in September 2006. A single contract for the Stem Cell Therapeutic Outcomes Database was awarded to the Center for International Blood and Marrow Transplant Research (CIBMTR) at the Medical College of Wisconsin in September 2006 as well.

As identified by the Act, the Program is charged with: Operating a system for identifying, matching, and facilitating the distribution of bone marrow that is suitably matched to candidate patients; operating a system for identifying, matching, and facilitating the distribution of donated umbilical cord blood units that are suitably matched to candidate patients; providing a means by which transplant physicians, other healthcare professionals, and patients can electronically search for and access all available adult marrow donors available through the Program; recruiting potential adult volunteer marrow donors; coordinating with other Federal programs to maintain and expand medical contingency response capabilities; carrying out informational and educational activities; providing patient advocacy services; providing case management services for potential donors; and collecting, analyzing, and publishing blood stem cell transplantation related data, including patient outcomes data, in a standardized electronic format. This system of records is required to comply with the implementation directives of the Act, Public Law 109–129. The records will be used for the C.W. Bill Young Cell Transplantation Program's planning, implementation, evaluation, monitoring, and document storage purposes.

Dated: February 19, 2008.

Elizabeth M. Duke,

Administrator.

09–15–0068

SYSTEM NAME:

C.W. Bill Young Cell Transplantation Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data collected by the C.W. Bill Young Cell Transplantation Program (the Program) are maintained by the National Marrow Donor Program (NMDP) and the Medical College of Wisconsin, contractors for the Program. The Division of Transplantation within the

Health Resources and Services Administration oversees the Program and the contracts with the NMDP and Medical College of Wisconsin.

Records associated with the C.W. Bill Young Cell Transplantation Program are located at the National Marrow Donor Program, 3001 Broadway Street, NE., Suite 500, Minneapolis, MN 55413.

Additional records associated with the Stem Cell Therapeutic Outcomes Database component of the Program are located at the Medical College of Wisconsin's Center for International Blood and Marrow Transplant Research (CIBMTR), 8701 Watertown Plank Road, Milwaukee, WI 53226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Volunteers whose bone marrow, peripheral blood or cord blood donations are to be used for hematopoietic reconstitution or other therapeutic applications on behalf of patients in need.

2. Patients searching for an unrelated donor or who are receiving transplant or ancillary services through the C.W. Bill Young Cell Transplantation Program.

3. Recipients of allogeneic blood stem cell transplantation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of documents (printed and electronic) containing all information necessary to manage and facilitate patient searches and to track detailed post-transplant clinical status, including documentation and correspondence concerning patients in need of (or recipients of) blood stem cell transplants and volunteers listed on the Program's registry as potential blood stem cell donors. These documents include all information necessary to manage and facilitate patient searches, and to track detailed post-transplant and post-donation clinical status. The following information is maintained in the system: individual identifiers about the recipients and donors (e.g., social security number (voluntary), names, date of birth, etc.); recipient and donor demographics and socio-demographics; recipients' disease, disease history and treatment, transplant procedure details, post-transplantation medical history, events, and complications; donor medical history; donation procedure and blood stem cell product details; long-term follow-up of medical outcomes and assessment of functioning for donors and recipients; provider identifiers; transplant and collection facility identifiers; and, donor management center identifiers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 109–129 establishes the C.W. Bill Young Cell Transplantation Program, authorizing the Department to establish by contract a system for identifying, matching, and facilitating bone marrow and cord blood transplants, including recruitment, patient advocacy and maintenance of a stem cell therapeutic outcomes database.

PURPOSE(S):

The C.W. Bill Young Cell Transplantation Program is comprised of the Office of Patient Advocacy/Single Point of Access, the Bone Marrow Coordinating Center, the Cord Blood Coordinating Center, and the Stem Cell Therapeutic Outcomes Database. The purpose of the system is to support the Program's mission to facilitate and increase access to blood stem cell transplantation. Additionally, information in the system will be used to advise the Secretary of the Department of Health and Human Services and the Advisory Council on Blood Stem Cell Transplantation on matters related to the Program and for ongoing monitoring of the Program by the Health Resources and Services Administration to determine the effectiveness of the Program and to guide implementation of the policies and procedures that govern the Program's structure. Records from this system will be used to carry out the statutory charge of the C.W. Bill Young Cell Transplantation Program. Specifically, records vital and attendant to the full scope of activities involved at every stage of the process of facilitation of blood stem cell transplantation or other therapies for recipients suitably matched to biologically unrelated donors; analyzing factors affecting transplant outcomes; monitoring and reporting of adverse events; monitoring and reporting of quality, compliance, and performance indicators; monitoring and reporting on the size and composition of the registry of adult bone marrow donors and size and composition of the umbilical cord blood inventory; and to provide pertinent information to transplant programs, physicians, patients, other entities awarded a contract under Section 379 of the Public Health Service Act, donor registries, and cord blood banks as stated in Public Law 109–129.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of records from this system of records may be made as provided in the Privacy Act, 5 U.S.C. 552a(b), and to the following recipients for the purposes stated:

1. Departmental contractors who have been engaged by the Department to assist in accomplishment of a departmental function related to the purposes of this system of records and who have a need to access the records in order to carry out that function.

2. Transplant centers, physicians and staff, and NMDP participating organizations, for the purpose of searching for donors or products and/or facilitating transplants, matching donor blood stem cells with recipients, monitoring participant outcomes, and monitoring compliance of member organizations with contractor requirements.

3. Personnel involved in the care of volunteer blood stem cell donors and management of their participation in the Program. Disclosures of clinically relevant de-identified information contained in certain donor records may be made to transplant physicians, patients or their designated representatives for purposes of facilitating searches for blood stem cell donors or products and/or facilitation of unrelated donor transplants.

4. Disclosures may be made by the contractors for the Office of Patient Advocacy/Single Point of Access, the Bone Marrow Coordinating Center, the Cord Blood Coordinating Center, the Stem Cell Therapeutic Outcomes Database, NMDP and CIBMTR participating centers to one another as well as participating umbilical cord blood banks to carry out the purposes of the C.W. Bill Young Cell Transplantation Program.

5. Disclosure may be made to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

6. Disclosure may be made to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the

Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

7. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

8. Disclosure may be made for research purposes. Rarely, with the appropriate safeguards and consistent with the applicable provisions of the Privacy Act and the Common Rule (45 CFR Part 46), disclosure for research purposes may be made when the Department, independently or through its contractor(s): (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that a bona fide research/analysis purpose exists; (c) has required the recipient to: (1) Establish strict limitations concerning the receipt and use of patient-identified data; (2) establish reasonable administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent the unauthorized use or disclosure of the record; (3) remove, destroy, or return the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information; and (4) make no further use or disclosure of the record except as authorized by HHS or its contractor(s) or when required by law; (d) has determined that other applicable safeguards or protocols will be followed; and (e) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in computer data files.

RETRIEVABILITY:

Patient and donor records may be retrieved by a unique ID assigned by the system or through the use of other identifying information (e.g., names, date of birth, social security number, or address).

SAFEGUARDS:

1. *Authorized Users:* Access is limited to authorized personnel responsible for administering the program, including program managers and program specialists who have responsibilities for implementing the program and the HRSA Information Systems Security Officer. The contractor(s) shall maintain current lists of authorized users. Retrieval of donor or patient records will be limited to authorized users for search, outcomes data collection and data auditing, or transplant management purposes.

2. *Assign Responsibility for Security:* Responsibility is assigned to a management official knowledgeable of the nature of the information and processes supported by the C.W. Bill Young Cell Transplantation Program and in the management, personnel, operational, and technical controls used to protect it.

3. *Perform Risk Assessment:* A risk assessment was conducted in conjunction with the development of the system. The system design ensures vulnerabilities, risks, and other security concerns are identified and addressed in the system design and throughout the life cycle of the project. This is consistent with the HHS Automated Information Systems Security Program Handbook.

4. *Certification and Accreditation:* The Program's electronic data systems are certified under the auspices of HRSA's Office of Information Technology Certification and Accreditation system.

5. *Physical Safeguards:* All computer equipment and files and hard copy files are stored in areas where fire and life safety codes (e.g., OSHA standards) are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, key/passcard/combination controls, and receptionist controlled area. Most hard copy files are maintained in a file room used solely for purposes of the Program with access limited by combination lock to authorized users identified above. Computer files are password protected and are accessible only by use of computers which are password protected. Servers are password protected and protected in locked rooms, with access restricted to specific authorized staff using controls specified in the certification and accreditation process.

6. *Procedural Safeguards:* A password is required to access computer files. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. All authorized users sign a nondisclosure statement. All passwords, keys and/or combinations are changed when a person leaves or no longer has authorized duties. Access to records is limited to those authorized personnel trained in accordance with the Privacy Act and automated data processing (ADP) security procedures. The transmission of records is protected using secure protocols. Individuals with access to the system have User IDs and passwords and must be granted access to the system. External access to the data requires two-factor authentication. The safeguards described above were established in accordance with NIST 800–53 and OMB Circular A–130 Appendix III.

RETENTION AND DISPOSAL:

HRSA is working with the National Archives and Records Administration (NARA) to obtain the appropriate retention value of these records.

SYSTEM MANAGER AND ADDRESS:

Director, Blood Stem Cell Transplantation Program, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requests by Mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer, and a reasonable description of the record desired, and whom it concerns. Written requests must contain the name and address of the requester, his/her date of birth and his/her signature. Requests must be notarized to verify the identity of the requester, or the requester must certify that (s)he is the individual who (s)he claims to be and that (s)he understands that to knowingly and willfully request or acquire a record pertaining to another individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine (45 CFR 5b.5(b)(2)(ii)).

Requests in person or by telephone, electronic mail or facsimile cannot be honored.

REQUESTS IN PERSON:

No requests in person at the system location will be honored.

REQUESTS BY TELEPHONE:

Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Record access procedures are the same as notification procedures. Requesters should also provide a reasonable description of the contents of the record being sought. A parent or guardian who requests notification of, or access to, a minor's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the minor/incompetent person as well as his/her own identity. Records will be mailed only to the requester's address that is on file, unless a different address is demonstrated by official documentation.

CONTESTING RECORD PROCEDURES:

To contest a record in the system, contact the official at the address specified above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Sources of records include, but are not limited to, patients, donors, and/or their representatives under the C.W. Bill Young Cell Transplantation Program and any other sources of information or documentation submitted by any other person or entity for inclusion in a request for the purpose of facilitating and monitoring blood stem cell transplantation (e.g., transplant center healthcare professionals).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–5056 Filed 3–12–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Pathophysiology of Lung Injury by Smoke Inhalation.

Date: March 27, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Room 3AN 18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892; 301–594–3907; *pikbr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4807 Filed 3–12–08; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, RAPID Autism Intervention.

Date: April 1, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608; 301–443–0322; *elight@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4808 Filed 3–12–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special

Emphasis Panel NIH Loan Repayment Program Regarding Clinical Research.

Date: April 28, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Internet Assisted Review Meeting, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709; (919) 541–0752; *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4809 Filed 3–12–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Intestinal Mucosal Pathobiology Program Projects.

Date: April 15, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Mariott Suites, 6711 Democracy Blvd, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, Scientific Review Administrator, Review Branch, Dea, Niddk, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452; (301) 594–7791; *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–4923 Filed 3–12–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0035]

Proposed Expansion of the Cove Point Facility, Cove Point, MD: Draft Supplemental Environmental Assessment

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a draft supplemental Environmental Assessment (EA) for the proposed issuance of a Letter of Recommendation (LOR) on the suitability of the waterway for the expansion of the Cove Point LNG facility for Dominion Cove Point LNG, LP, in Cove Point, MD. The Coast Guard requests public comments on the draft supplemental EA.

DATES: Comments and related material must reach the Docket Management Facility on or before April 14, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0035 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:* Docket Management Facility (M–30), U.S. Department of Transportation, Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or the supplemental Environmental Assessment, call Lieutenant Commander Rogers Henderson, Coast Guard, telephone 202–372–1411 or Mr. Ken Smith, Coast Guard, telephone 202–372–1413. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments or other related material on the draft supplemental Environmental Assessment (EA). 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 their 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 notice (USCG–2008–0035), and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Federal Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. 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. For example, we may ask you to resubmit your comment if we are not able to read your original submission. If you submit them by mail or delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reach the Facility, please enclose a stamped, self-addressed postcard or envelop. We will consider all comments and material

received during the comment period for the draft supplemental EA.

Viewing the comments and draft supplemental EA: To view the comments and draft supplemental EA, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0035) in the box under ''Search'', and click go. 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 30590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The draft supplemental EA is also available at public libraries in Maryland (P.D. Brown Memorial Library, Accokeek Library, Potomac Library, La Plata Library, Calvert Library, Southern Branch, Prince Frederick Branch, Fairview Branch and Twin Beaches Branch, Surratts-Clinton Library, Upper Marlboro Library, and the Public Documents Reference Library) and at the Loudoun County Public Library in Ashburn, VA.

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*.

Proposed Action

On August 8, 2005, the Federal Energy Regulatory Commission (FERC) requested Dominion Cove Point, LP, to prepare a Waterway Suitability Assessment (WSA) for the proposed Cove Point LNG Expansion Project to be submitted to the United States Coast Guard. The purpose of the WSA was to identify credible security threats and safety hazards associated with increased LNG marine transportation in the Chesapeake Bay and identify appropriate risk management measures. The Coast Guard Captain of the Port, Baltimore, and the Captain of the Port, Hampton Roads, received the WSA from Dominion Cove Point on January 17, 2006. The conclusions of the WSA were included in the **Federal Register** on February 14, 2006 (71 FR 7791). The Coast Guard solicited public comments on the WSA to consider when preparing preliminary recommendations to FERC for inclusion in their final Environmental Impact Statement (FEIS) on the Cove Point Expansion Project, which was completed April 2006, regarding the suitability of the Chesapeake Bay for the increased LNG vessel traffic. The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The FEIS was intended to evaluate all foreseeable environmental impacts of the proposed Cove Point LNG Expansion Project including, but not limited to, possible environmental impacts from USCG issuance of the LOR on the suitability of the waterway for LNG vessel traffic. The Coast Guard later discovered that there were issues associated with issuance of the LOR that were not fully addressed in the FEIS. The applicant was notified of those issues and additional information was requested from the applicant. These issues were quickly addressed by additional information the applicant submitted to the Coast Guard. The Coast Guard assessed the applicant-prepared draft EA that supplements the FERC's final EIS for the Cove Point LNG Expansion Project. Based on Cove Point's follow-up research, analysis, and proposed mitigation measures provided to the Coast Guard to address issues needed to support the LOR, the Coast Guard has preliminarily concluded that the additional LNG vessel traffic associated with the Cove Point LNG Expansion Project does not pose an undue or significant environmental hazard to the environment for the LNG vessel transit route covered by our proposed LOR.

The Coast Guard will take into consideration the results of the Cove Point assessment and public comments received when making its final conclusion on whether to adopt the proffered draft applicant-prepared supplemental EA and issue a Finding of No Significant Impact. To make this decision, the Coast Guard will use comments received to further assess the possible impacts on endangered species, cultural resources, essential fish habitat issues, general environmental effects, and the other public interest factors. The results will also be considered as the Coast Guard prepares a Letter of Recommendation which will identify what actions and resources are necessary to make the waterway suitable for increased LNG traffic to the Cove Point LNG facility.

Draft Supplemental Environmental Assessment

The Coast Guard has assessed the applicant-prepared draft EA that supplements the FERC's final EIS. See ''Viewing the comments and draft supplementary EA'' above. The draft supplementary EA identifies and examines the reasonable alternatives and assesses their potential environmental impact.

We are requesting your comments on environmental concerns that you may have related to the draft supplemental EA. We will consider all comments and material received during the comment period.

Dated: March 7, 2008.

J.G Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E8–4922 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of Guidance.

SUMMARY: This Notice provides guidelines that describe the application process for grants and the criteria for awarding grants in the 2008 Assistance to Firefighters Grant program year, as well as an explanation for any differences with the guidelines recommended by representatives of the Nation's fire service leadership during the annual Criteria Development meeting. The program makes grants directly to fire departments and nonaffiliated emergency medical services organizations for the purpose of enhancing first-responders' abilities to protect the health and safety of the public as well as that of first-responder personnel facing fire and fire-related hazards. In addition, the authorizing statute requires that a minimum of 5 percent of appropriated funds be expended for fire prevention and safety grants, which are also made directly to local fire departments and to local, regional, State or national entities recognized for their expertise in the field of fire prevention and firefighter safety research and development.

Authority: 15 U.S.C. 2229, 2229a.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Assistance to Firefighters Program Office, U.S. Department of Homeland Security, FEMA: 5th Floor Suites AFG—TechWorld Building, SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The purpose of the Assistance to Firefighters Grant (AFG) Program is to provide

grants directly to fire departments and nonaffiliated Emergency Medical Services (EMS) organizations to enhance their ability to protect the health and safety of the public, as well as that of first-responder personnel, with respect to fire and fire-related hazards.

Appropriations

For fiscal year 2008, Congress appropriated $560,000,000 to carry out the activities of the AFG Program. The Department of Homeland Security (DHS) is authorized to use up to $28,000,000 for administration of the AFG program (5 percent of the appropriated amount). In addition, DHS must set aside no less than $28,000,000 of the funds (5 percent of the appropriation) for the Fire Prevention and Safety Grants (FP&S). However, for fiscal year 2008, DHS will award $35,000,000 for FP&S. Under FP&S, DHS may make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention grants and firefighter safety research and development grants.

The remaining $497,000,000 will be used for competitive grants to fire departments and nonaffiliated EMS organizations for equipment, training and first responders' safety. Within the portion of funding available for these competitive grants, DHS must assure that no less than 3.5 percent of the appropriation, or $19,600,000, is awarded for EMS equipment and training. However, awards to nonaffiliated EMS organizations are limited to no more than 2 percent of the appropriation or $11,200,000. Therefore, at least the balance of the requisite awards for EMS equipment and training must go to fire departments.

Background

DHS awards the grants on a competitive basis to the applicants that best address the AFG program's priorities and provide the most compelling justification. Applicants whose requests best address the program's priorities will be reviewed by a panel composed of fire service personnel. The panel will review the narrative and evaluate the application in four different areas: (1) The clarity of the proposed project description, (2) the organization's financial need, (3) the benefit to be derived from the proposed project relative to the cost, and (4) the extent to which the grant would enhance the applicant's daily operations and/or how the grant would positively impact the applicant's ability to protect life and property.

The AFG program for 2008 generally mirrors previous years' AFG programs including changes made in 2007. Those changes included the removal of the restriction regarding the number of vehicles that an applicant may request in a single application; the provision to allow organizations that protect urban or suburban communities to apply for multiple vehicles (with a limit of one vehicle per station); and an allowance for applicants to submit as many as three separate applications: a vehicle application, an application for operations and safety, and an application for a ''regional project.'' A ''regional project,'' generally, is a project undertaken by an applicant to provide services and support to a number of other regional participants, such as training for multiple mutual-aid jurisdictions. Regional applications will be required to reflect the general characteristics of the entire represented region. The population covered by the regional project will affect the amount of required local contribution to the project, i.e. the cost share required for the project.

The 2008 program will again segregate the FP&S program from the AFG. DHS will have a separate application period devoted solely to FP&S tentatively scheduled to occur in the Fall of 2008. The AFG Web site *http://www.firegrantsupport.com* will provide updated information on this program.

Congress has enacted statutory limits to the amount of funding that a grantee may receive from the AFG program in any fiscal year (15 U.S.C. 2229(b)(10)). These limits are based on population served. A grantee that serves a jurisdiction with 500,000 people or less may not receive grant funding in excess of $1,000,000 in any fiscal year. A grantee that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of $1,750,000 in any fiscal year. A grantee that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of $2,750,000 in any fiscal year. DHS may waive these established limits to any grantee serving a jurisdiction of 1,000,000 people or less if DHS determines that extraordinary need for assistance warrants the waiver. No grantee, under any circumstance, may receive ''more than the lesser of $2,750,000 or .5 percent [one-half of 1 percent] of the funds appropriated under this section for a single fiscal year.''

Grantees must share in the costs of the projects funded under this grant program (15 U.S.C. 2229(b)(6)). Fire departments and nonaffiliated EMS organizations that serve populations of less than 20,000 must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population between 20,000 and 50,000, inclusive, must match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost. Fire departments and nonaffiliated EMS organizations that serve populations of over 50,000 must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project costs. All non-Federal funds must be in cash, i.e., in-kind contributions are not eligible. The only waiver granted for this requirement will be for applicants located in Insular Areas as provided for in 48 U.S.C. 1469a.

The law imposes additional requirements on ensuring a distribution of grant funds among career, volunteer, and combination (volunteer and career personnel) fire departments, and among urban, suburban and rural communities. More specifically with respect to department types, DHS must ensure that all-volunteer or combination fire departments receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect (15 U.S.C. 2229(b)(11)). There is no corresponding minimum for career departments. Therefore, subject to the other statutory limitations on DHS ability to award funds, DHS will ensure that, for the 2008 program year, no less than 33 percent of the funding available for grants will be awarded to combination departments, and no less than 22 percent will be awarded to all-volunteer departments. If, and only if, other statutory limitations inhibit DHS ability to ensure this distribution of funding, DHS will ensure that the aggregate combined total percent of funding provided to both combination and volunteer departments is no less than 55 percent.

DHS generally makes funding decisions using rank order resulting from the panel evaluation. However, DHS may deviate from rank order and make funding decisions based on the type of department (career, combination, or volunteer) and/or the size and character of the community the applicant serves (urban, suburban, or rural) to the extent it is required to satisfy statutory provisions.

Fire Prevention and Safety Grant Program

In addition to the grants available to fire departments in fiscal year 2008 through the competitive grant program, DHS will set aside $35,000,000 of the funds available under the AFG program to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention projects, and for research and development grants that address firefighter safety.

In accordance with the statutory requirement to fund fire prevention activities, support to Fire Prevention and Safety Grant activities concentrates on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, DHS places an emphasis on funding innovative projects that focus on protecting children under 14, seniors over 65, and firefighters. Because the victims of burns experience both short- and long-term physical and psychological effects, DHS places a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries.

DHS will issue an announcement regarding pertinent details of the Fire Prevention and Safety Grant portion of this program prior to the application period. Interested parties should monitor the grant program's Web site at: *http://www.firegrantsupport.com.*

Application Process

Prior to the start of the application period, DHS will conduct applicant workshops across the country to inform potential applicants about the AFG program for 2008. In addition, DHS will provide applicants an online web-based tutorial and other information to use in preparing a quality application. Applicants are advised to access the application electronically at *https://portal.fema.net,* or through the AFG Web site at: *http://www.firegrantsupport.com*. In completing the application, applicants will provide relevant information on the applicant's characteristics, call volume, and existing capacities. Applicants will answer questions regarding their assistance request that reflects the funding priorities (iterated below). In addition, each applicant will complete a narrative addressing statutory competitive factors: financial need, benefits/costs, and improvement to the organization's daily operations. During the application period, applicants will be encouraged to contact DHS via a toll free number or online help desk with any questions. The electronic application process will permit the applicant to enter data and save the application for further use, and will not permit the submission of incomplete applications. Except for the narrative, the application uses a ''point-and-click'' selection process, or requires the entry of information (e.g., name & address, call volume numbers, etc.).

The application period for the AFG grants will be announced in the full Program Guidance when posted on the AFG website. During the approaching application season, the program office expects to receive between 20,000 and 25,000 applications. When available, application statistics on the type of department, type of community, and other factors reflected in the submitted requests will be posted on the AFG Web site: *http://www.firegrantsupport.com.*

Application Review Process

DHS evaluates all applications in the preliminary screening process to determine which applications best address the program's announced funding priorities. This preliminary screening evaluates and scores the applicants' answers to the activity specific questions. Applications containing multiple activities will be given prorated scores based on the amount of funding requested for each activity. The best applications as determined in the preliminary step are deemed to be in the ''competitive range.''

Once the competitive range is established DHS will review the list of applicants that are not included in the competitive range to determine if any of those applicants are responsible for protecting DHS-specified critical infrastructure or key resources. If it is determined that an applicant has responsibility for protecting one or more critical infrastructure or key resources but is not included in the competitive range, DHS will determine whether it is appropriate to place that application before the peer review panel due to the importance of its mission to protect these critical resources. This action will not affect any other application or otherwise undermine the process used to determine the competitive range. Peer review panelists will not be aware of any applicant's protection of critical infrastructure/key resources and all applications will be peer reviewed against the criteria described in this document.

All applications in the competitive range are subject to a second level review by a technical evaluation panel made up of individuals from the fire service including, but not limited to, firefighters, fire marshals, and fire training instructors. The panelists will assess the application's merits with respect to the clarity and detail provided about the project, the applicant's financial need, the project's purported benefit to be derived from the cost, and the effectiveness of the project to enhance the health and safety of the public and fire service personnel.

Using the evaluation criteria included here, the panelists will independently score each application before them and then discuss the merits and shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The panelists will assign a score to each of the elements detailed above. DHS will then consider the highest scoring applications resulting from this second level of review for awards. Applications that involve interoperable communications projects will undergo a separate review by the State Administrative Agency to assure that the communications project is consistent with the Statewide Communications Interoperability Plan (SCIP). If the State determines that the project is inconsistent with the State SCIP, the project will not be funded.

After the completion of the reviews, DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. DHS will announce the awards over several months and will notify non-successful applicants as soon as feasible. DHS will not make awards in any specified order, i.e., not by State, program, nor any other characteristic.

Criteria Development Process

Each year, DHS conducts a criteria development meeting to develop the program's priorities for the coming year. DHS brings together a panel of fire service professionals representing the leadership of the nine major fire service organizations:

- Congressional Fire Service Institute (CFSI),
- International Association of Arson Investigators (IAAI),
- International Association of Fire Chiefs (IAFC),
- International Association of Firefighters (IAFF),
- International Society of Fire Service Instructors (ISFSI),
- National Association of State Fire Marshals (NASFM),
- National Fire Protection Association (NFPA),
- National Volunteer Fire Council (NVFC), and

• North American Fire Training Directors (NAFTD).

The criteria development panel is charged with making recommendations to the grants program office regarding the creation and/or modification of program priorities as well as development of criteria and definitions as necessary.

The governing statute requires that DHS publish each year in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards. DHS must also include an explanation of any differences between the published guidelines and the recommendations made by the criteria development panel. The guidelines and the statement regarding the differences between the guidelines and the criteria development panel recommendations must be published in the **Federal Register** prior to awarding any grants under the program. 15 U.S.C. 2229(b)(14).

When considering the criteria development panel's recommendations, DHS looks to the broader Administration priorities established in Homeland Security Presidential Directive 8 (HSPD 8), 39 *Weekly Comp. Pres. Docs.* 1822 (Dec. 17, 2003). DHS is mindful of some differences between the AFG statutory mandates and HSPD–8 priorities, such as the statutory requirement that DHS make AFG grants directly to fire departments and non-affiliated EMS organizations, as contrasted with the HSPD–8 preference for funding through the States. However, the AFG is consistent with the National Preparedness Guidelines called for by HSPD–8 by prioritizing investments based upon the assessment of an applicant's need and capabilities to effectively prepare for and respond to all hazards, including terrorism threats, and a consideration of the characteristics of the community served (e.g. presence of critical infrastructure, population served, call volume) to the extent permitted by law. To the extent practical, AFG has attempted to harmonize the directions from the President and the Secretary with the requirements and limitations of the authorization and the structure of the fire service. Federal funding of assets devoted to basic firefighting should complement all aspects of responding to the more complex chemical/biological/radiological/nuclear/explosive (CBRNE) threat.

The Fiscal year 2008 criteria development panel meeting occurred June 6–7, 2007. For the 2008 program year, DHS implemented all recommendations presented by the criteria development panel. However, DHS implemented additional program changes that were not considered during the criteria development panel's deliberations. Those changes are as follows:

• In determining which applications will be reviewed by the peer panelists, DHS will review the list of applicants that are not included in the competitive range to determine if any those applicants are responsible for protecting critical infrastructure or key resources on this classified list. If it is determined that an applicant has responsibility for protecting one or more critical infrastructure or key resources but is not included in the competitive range, DHS will determine whether it is appropriate to place that application before the peer review panel due to the importance of its mission to protect these critical resources. This action will not affect any other application or otherwise undermine the process used to determine the competitive range. Peer review panelists will not be aware of any applicant's protection of critical infrastructure/key resources and all applications will be peer reviewed against the criteria

• For regional communications requests, DHS will require that any regional communications projects comply with the applicant's State-approved Statewide Communications Interoperability Plan.

• Under the wellness and fitness activities, DHS will not allow grantees to request funds for consultants such as nutritionists and fitness trainers. Also, costs of incentives to bolster participation in a wellness and fitness programs will not be eligible.

• Under the equipment acquisition activity, DHS will not allow funding for all-terrain vehicles, rescue boats, snowmobiles, and other small specialty vehicles.

Review Considerations

Fire Department Priorities

Specific rating criteria for each of the eligible programs and activities are discussed below. The funding priorities described in this Notice have been recommended by a panel of representatives from the Nation's fire service leadership and have been accepted by DHS for the purposes of implementing the AFG. These rating criteria provide an understanding of the grant program's priorities and the expected cost-effectiveness of any proposed project(s). The activities listed below are in no particular order of priority. Within each activity, DHS will consider the number of people served by the applicant with higher populations afforded more consideration than lower populations. DHS will further explain program priorities in program guidance to be published separately.

(1) Operations and Firefighter Safety Program

(i) *Training Activities*. In implementing the fire service's recommendations, DHS has determined that the most benefit will be derived from instructor-led, hands-on training that leads to a nationally-sanctioned or State certification. Training requests that include Web-based home study or distance learning or the purchase of training materials, equipment, or props are a lower priority. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, will receive a higher competitive rating. Training that (1) involves instructors, (2) requires the students to demonstrate their grasp of knowledge of the training material via testing, and (3) is integral to a certification will receive a high competitive rating. Instructor-led training that does not lead to a certification, and any self-taught courses, are of lower benefit, and therefore will not receive a high priority.

DHS will give higher priority, within the limitations imposed by statute, to training proposals which improve coordination capabilities across disciplines (Fire, EMS, and Police), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*i.e.* bomb threat or IED response), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

Due to the inherent differences between urban, suburban, and rural firefighting characteristics, DHS has accepted the recommendations of the criteria development panel for different priorities in the training activities of departments that service these different types of communities. CBRNE awareness training has a high benefit, however, and will receive the highest consideration regardless of the type of community served and regardless of the absence of any national standard.

For fire departments serving rural communities, DHS has determined that funding basic, operational-level firefighting, operational-level rescue, driver training, and first-responder EMS, EMT-B, and EMT-I training (*i.e.*, training in basic firefighting, EMS, and rescue duties) has greater benefit than funding officer training, safety officer

training, or incident-command training. In rural communities, after basic training, there is a greater cost-benefit ratio for officer training than for other specialized types of training such as mass casualty, HAZMAT, advance rescue and EMT-P, or inspector training.

Conversely, for departments that are serving urban or suburban communities, DHS has determined that, due to the number of firefighters and the relatively-high percentage of the population protected, any training requests will receive a high priority rating regardless of the level of training requested. As such, when considering applications for training from departments serving urban and suburban communities, DHS will give higher priority to training proposals which improve coordination capabilities across first-responder disciplines (fire, EMS, and law enforcement), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*e.g.*, weapons of mass destruction (WMD) awareness and incident operations, chemical or biological operations, or bomb threats), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

(ii) *Wellness and Fitness Activities*. In implementing the criteria panel's recommendations, DHS has determined that fire departments must offer periodic health screenings, entry physical examinations, and an immunization program to have an effective wellness/fitness program. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds all three benefits to receive funding for any other initiatives in this activity. After entry-level physicals, annual physicals, and immunizations, DHS will give priority to formal fitness and injury prevention programs. DHS will give lower priority to stress management, injury/illness rehabilitation, and employee assistance.

DHS has determined the greatest relative benefit will be realized by supporting new wellness and fitness programs. Therefore, applicants for new wellness/fitness programs will receive higher competitive ratings when compared with applicants whose wellness/fitness programs lack one or more of the three top priority items cited above, and applicants that already employ the requisite three activities of a wellness/fitness program. Finally, because participation is critical to achieving any benefits from a wellness or fitness program, applications that mandate participation or provide incentives for participation will receive higher competitive ratings.

(iii) *Equipment Acquisition*. As stated in the AFG statute, DHS administers this grant program to protect the health and safety of firefighters and the public from fire and fire-related hazards. As such, equipment that has a direct effect on the health and safety of either firefighters or the public will receive a higher competitive rating than equipment that has no such effect. Equipment that promotes interoperability with neighboring jurisdictions (especially for communications equipment interoperable with a regional shared system) will receive additional consideration in the cost-benefit assessment if the application makes it into the competitive range.

The criteria development panel concluded that this grant program will achieve the greatest benefits if the grant program provides funds to purchase firefighting equipment (including rescue, EMS, and/or CBRNE preparedness) that the applicant has not owned prior to the grant, or to replace used or obsolete equipment.

According to the panel, a department takes on a ''new mission'' when it expands its services into areas not previously offered, such as a fire department seeking funding to provide emergency medical services for the first time. A ''new risk'' presents itself when a department must address risks that have materialized in the department's area of responsibility, *e.g.* the construction of a plant that uses significant levels of certain chemicals could constitute a ''new risk.'' An organization taking on ''new risks'' should be afforded higher consideration than departments taking on a ''new mission.'' New missions receive a lower priority due to the potential that an applicant will not be able to financially support and sustain the new mission beyond the period of the grant. However, applicants can mitigate the impact of ''new missions'' on the competitiveness of their application by providing evidence that the department will be able to support and sustain the new mission beyond the period of the grant.

Departments responding to high call volumes will be afforded a higher competitive rating than departments responding to lower call volumes. In other words, those departments that are required to respond more frequently will receive a higher competitive rating then those that respond less frequently.

The purchase of equipment that brings the department into statutory or regulatory compliance will provide the highest benefit and therefore will receive the highest consideration. The purchase of equipment that brings a department into voluntary compliance with national standards will also receive a high competitive rating, but not as high as for the purchase of equipment that brings a department into statutory compliance. The purchase of equipment that does not affect statutory compliance or voluntary compliance with a national standard will receive a lower competitive rating.

(iv) *Personal Protective Equipment Acquisition*. To achieve the Program's goals and maximize the benefit to the firefighting community, DHS believes that it must fund those applicants needing to provide personal protective equipment (PPE) to a high percentage of their personnel. Accordingly, DHS will assign a higher competitive rating in this category for fire departments where a larger number of active firefighting staff is without compliant PPE. DHS will assign a high competitive rating to departments that will purchase the equipment for the first time as opposed to departments replacing obsolete or substandard equipment (*e.g.*, equipment that does not meet current NFPA and OSHA standards). For those departments that are replacing obsolete or substandard equipment, DHS will factor the age and condition of the equipment to be replaced into the score with a higher priority given to replacing old, damaged, torn, and/or contaminated equipment.

DHS will only consider funding applications for personal alert safety system (PASS) devices that meet current national safety standards, *i.e.*, integrated and/or automatic or automatic-on PASS. Finally, DHS takes into account the number of fire response calls that a department makes in a year with the higher priority going to departments with higher call volumes, while applications from departments with low call volumes are afforded lower competitive ratings.

(v) *Modifications to Fire Stations and Facilities*. DHS believes that more benefit is derived from modifying fire stations than by modifying fire-training facilities or other fire-related facilities. The frequency of use has a bearing on the benefits derived from grant funds. As such, DHS will afford facilities occupied 24-hours-per-day/seven-days-a-week the highest consideration when contrasted with facilities used on a part-time or irregular basis. Facilities open for broad usage and have a high occupancy capacity receive a higher competitive rating than facilities that have limited use and/or low occupancy capacity. The frequency and duration of

a facility's occupancy have a direct relationship to the benefits realized from funding in this activity.

(2) *Firefighting Vehicle Acquisition Program*. Due to the inherent differences between urban, suburban, and rural firefighting conventions, DHS has developed different priorities in the vehicle program for departments that service different types of communities. The following chart delineates the priorities in this program area for each type of community. Due to the competitive nature of this program and the imposed limits of funding available for this program, it is unlikely that DHS will fund many vehicles not listed as a Priority One during the 2008 program year.

FIREFIGHTING VEHICLE PROGRAM PRIORITIES

Urban communities	Suburban communities	Rural communities
Priority One		
Pumper Aerial Quint (Aerial < 76′) Quint (Aerial > 76′) Rescue	Pumper Aerial Quint (Aerial < 76′) Quint (Aerial > 76′)	Pumper Brush/Attack Tanker/Tender Quint (Aerial < 76′)
Priority Two		
Command HAZMAT Light/Air Rehab	Command HAZMAT Rescue Tanker/ Tender Brush/Attack	HAZMAT Rescue Light/Air Aerial Quint (Aerial > 76′)
Priority Three		
Foam Truck ARFFV Brush/Attack Tanker /Tender Ambulance Fire Boat	Foam Truck ARFFV Rehab Light/Air Ambulance Fire Boat	Foam Truck ARFFV Rehab Command Ambulance Fire Boat

DHS will evaluate the marginal value derived from an additional vehicle of any given type on the basis of call volume. As a result, departments with fewer vehicles of a given type than other departments who service comparable call volumes are more likely to score competitively than departments with more vehicles of that type and comparable call volume unless the need for an additional vehicle of such type is made apparent in the application.

As in 2007, applicants in the 2008 program year may submit requests for more than one vehicle. Applicants must supply sufficient justification for each vehicle contained in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional vehicle(s) given the potential use and the population protected. DHS anticipates that the panels will only recommend an award for a multiple-vehicles application when the cost-benefit justification is adequately compelling.

DHS believes that a greater benefit will be derived from funding an additional vehicle(s) to departments that own fewer or no vehicles of the type requested. As such, DHS assigns a higher competitive rating in the apparatus category to fire departments that own fewer firefighting vehicles relative to other departments serving similar types of communities (i.e., urban, suburban, and rural). DHS assesses all vehicles with similar functions when assessing the number of vehicles a department possesses within a particular type. For example, the ''pumper'' category includes: Pumpers, engines, pumper/tankers (apparatus that carries a minimum of 300 gallons of water and has a pump with a capacity to pump a minimum of 750 gallons per minute), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I). Apparatus that has water capacity in excess of 1,000 gallons and a pump with pumping capacity of less than 750 gallons per minute are considered to be a tanker/tender.

DHS assigns a higher competitive rating to departments possessing an aged fleet of firefighting vehicles. DHS will also assign a higher competitive rating to departments that respond to a high volume of incidents.

DHS will give lower priority to funding departments seeking apparatus with the goal to expand into new mission areas unless the applicant demonstrates that they will be able to support and sustain the new mission or service area beyond the grant program.

DHS will assign no competitive advantage to the purchase of standard model commercial vehicles relative to custom vehicles, or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that, depending on the type and size of department, the peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

DHS will allow departments serving urban or suburban communities to apply for more than one vehicle. DHS, however, will only allow departments serving rural communities to apply for one vehicle. DHS will limit applications from suburban or urban departments to one vehicle per station as well as per statutory funding limits. DHS will not limit 2008 applications because of a vehicle award from previous AFG program years.

(3) Administrative Costs. Panelists will assess the reasonability of the administrative costs requested in any application and determine if the request is reasonable and in the best interest of the program.

Nonaffiliated EMS Organization Priorities

DHS may make grants for the purpose of enhancing the provision of emergency medical services by nonaffiliated EMS organizations. The statute limits funding for these organizations to no more than 2 percent of the appropriated amount. DHS has determined that it is more cost-effective to enhance or expand an existing emergency medical service organization by providing training and/or equipment than to create a new service. Communities that do not currently offer emergency medical services but are turning to this grant program to initiate such a service received the lowest competitive rating. DHS does not believe creating a nonaffiliated EMS program is a substantial and sufficient benefit under the program.

Specific rating criteria and priorities for each of the grant categories are provided below following the descriptions of this year's eligible programs. The rating criteria, in conjunction with the program description, provide an understanding of the evaluation standards. In each activity, the amount of the population served by the applicant will be taken into consideration with higher populations afforded more consideration than low populations served. DHS will further explain program priorities in the Program Guidance upon publication thereof.

(1) EMS Operations and Safety Program

Five different activities may be funded under this program area: EMS training, EMS equipment, EMS personal protective equipment, wellness and fitness, and modifications to facilities. Requests for equipment and training to prepare for response to incidents involving CBRNE were available under the applicable equipment and training activities.

(i) *Training Activities.* DHS believes that upgrading a service that currently meets a basic life support capacity to a higher level of life support creates the most benefit. Therefore, DHS will give a higher competitive rating to nonaffiliated EMS organizations that seek to upgrade from first responder to EMT–B level or EMT–I level of service. Because training is a prerequisite to the effective use of EMS equipment, organizations with requests that focused more on training activities received a higher competitive rating than organizations whose requests focused more on equipment. The second priority is to elevate emergency responders' capabilities from EMT–B or EMT–I to a higher level of service.

(ii) *EMS Equipment Acquisition.* As noted above, training received a higher competitive rating than equipment. Applications seeking assistance to purchase equipment to support the EMT–B level or EMT–I level of service received a higher priority than requests seeking assistance to purchase equipment to support advance level EMS services. Items that are eligible but a lower priority include tents, shelters, generators, lights, and heating and cooling units. Firefighting equipment is not eligible under this activity.

As discussed previously, organizations taking on ''new risks'' will be afforded much higher consideration than an organization taking on a ''new mission.''

(iii) *EMS Personal Protective Equipment.* DHS gives the same priorities for EMS PPE as it did for fire department PPE discussed above. Acquisition of PASS devices or any firefighting PPE is not eligible, however, for funding for EMS organizations.

(iv) *Wellness and Fitness Activities.* DHS believes that to have an effective wellness/fitness program, nonaffiliated EMS organizations must offer periodic health screenings, entry physical examinations, and an immunization program similar to the programs for fire departments discussed previously. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* (periodic health screenings, entry physical examinations, and an immunization program) to receive funding for any other initiatives in this activity. The priorities for EMS wellness/fitness programs are the same as for fire departments as discussed above.

(v) *Modification to EMS Stations and Facilities.* DHS believes that the competitive rankings and priorities applied to modification of fire stations and facilities, discussed above, apply equally to EMS stations and facilities.

(2) EMS Vehicle Acquisition Program

DHS gives the highest funding priority to acquisition of ambulances and transport vehicles due to the inherent benefits to the community and EMS service provider. Due to the costs associated with obtaining and outfitting non-transport rescue vehicles relative to the benefits derived from such vehicles, DHS will give non-transport rescue vehicles a lower competitive rating than transport vehicles. DHS anticipates that the EMS vehicle awards will be very competitive due to very limited available funding. Accordingly, DHS will likely only fund vehicles that are listed as a ''Priority One'' in the 2008 program year.

The following chart delineates the priorities in this program area for EMS vehicle program. The priorities are the same regardless of the type of community served.

EMS VEHICLE PRIORITIES

Priority one	Priority two	Priority three
• Ambulance or transport unit to support EMT–B needs and functions	• First responder non-transport vehicles • Special operations vehicles	• Command vehicles. • Hovercraft. • Other special access vehicles.

Along with the priorities illustrated above, DHS has accepted the fire service recommendation that emerged from the criteria development process that funding applicants that own few or no vehicles of the type sought will be more beneficial than funding applicants that own numerous vehicles of that same type. DHS assesses the number of vehicles an applicant owns by including all vehicles of the same type. For example, transport vehicles will be considered the same as ambulances. DHS will give a higher competitive rating to applicants that have an aged fleet of emergency vehicles, and to applicants with old, high-mileage vehicles. DHS will give a higher competitive rating to applicants that respond to a significant number of incidents relative to applicants responding less often. Finally, DHS will afford applicants with transport vehicles with high mileage more consideration than applicants with vehicles that driven extensively.

(3) Administrative Costs. Panelists assess the reasonableness of the administrative costs requested in each application and determined whether the request will be reasonable and in the best interest of the program.

Dated: March 10, 2008.

David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–5039 Filed 3–12–08; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 680–08–5101–ER B266] [CACA 49138]

Notice of Intent and Notice of Preparation To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report and California Desert Conservation Area Plan Amendment, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent/Notice of Preparation.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the California Environmental Quality Act (CEQA), the Department of the Interior, Bureau of Land Management (BLM), together with the County of San Bernardino, California (County), intend to prepare an Environmental Impact Statement/Environmental Impact Report

(EIS/EIR) to assess the impacts of the Calnev Pipeline Expansion Project (Calnev Project). The Calnev Project runs adjacent to a portion of the existing Calnev system, from the North Colton terminal in the City of Colton, California to the Las Vegas Terminal in Las Vegas, Nevada. The Calnev Project is proposed by Calnev Pipe Line, LLC (Applicant). The Applicant has requested a new right-of-way (ROW) for pipeline reconstruction and new pipeline construction covering 233 miles. The EIS/EIR will analyze the site-specific and cumulative impacts to the environment from the construction, operation, and maintenance of the new pipeline. Actions under consideration by the BLM are the grant of the ROW and amendment to the California Desert Conservation Area (CDCA) Plan. Actions under consideration by the County are amendment to a franchise agreement and a Conditional Use Permit. The BLM will be the lead agency for NEPA compliance and the County will be the lead agency for the purposes of CEQA compliance.

DATES: A public scoping period of 60 days commences with the publishing of this notice. In order to be assured inclusion in the Draft EIS/EIR, written comments must be received prior to the close of the scoping period on May 12, 2008 at the address identified below. The public is also invited to make comments or hear more about the project at the following public scoping meetings:

Tuesday, April 1, 2008

Rialto Middle School, 6 p.m. to 8 p.m., presentation at 6:30 p.m. 324 N. Palm Ave., Rialto, CA

Wednesday, April 2, 2008

Victor Elementary School District, 6 p.m. to 8 p.m., presentation at 6:30 p.m. (Nisqualli Room), 15115 Nisqualli Road, Victorville, CA

Thursday, April 3, 2008

Parkdale Community Center, 6 p.m. to 8 p.m., presentation at 6:30 p.m. 3200 Ferndale St., Las Vegas

During the public scoping period the BLM and County are soliciting public comment on issues, concerns and opportunities that should be considered in the analysis of the proposed action as well as the planning criteria to be used during consideration of the plan amendment. Comments on issues, potential impacts, or suggestions for additional alternatives may also be submitted in writing to the address listed below. Additional opportunities for public participation and formal comment will occur when the Draft EIS/EIR is issued.

ADDRESSES: Comments and other correspondence should be sent to the BLM Barstow Field Office, attention Edythe Seehafer, Environmental Coordinator, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311 (760) 252–6021, by fax at (760) 252–6099 or by e-mail at *eseehafer@ca.blm.gov*. Documents pertinent to this proposal, including comments of respondents, will be available for public review at the BLM Barstow Field Office during regular business hours of 7:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Edythe Seehafer at the contact numbers and addresses above or Carrie Hyke, AICP, Principal Planner, San Bernardino County, Advance Planning Division, 385 N. Arrowhead Ave., First Floor, San Bernardino, CA 92415–0182, Tel. 909–387–4147.

SUPPLEMENTARY INFORMATION: Calnev Pipe Line, LLC has applied for a ROW on public lands to expand and reconstruct 233 miles of pipeline in California and Nevada. The pipeline transports jet fuel from the North Colton terminal in Colton, California to Bracken Junction in Las Vegas, Nevada. Projected increases in commercial air traffic in and out of McCarran International Airport in Las Vegas will require significant increases in jet fuel supplies over the next 20 years. An expanded and modernized pipeline will serve that need. The project would include construction, operation and maintenance of a new 16-inch diameter pipeline from Colton to Las Vegas; new pumps, an electrical substation and other ancillary facilities to increase pumping at Colton; a new pump station, electrical substation and ancillary facilities at Baker; as well as new or modified connections to existing laterals. Pipeline construction will take place over 12 months and is anticipated to begin in late 2009 or early 2010.

As proposed, the Project would require a right-of-way (ROW) on lands managed by the BLM, the U.S. Forest Service (USFS) and the Department of Defense (DoD), a franchise agreement and Conditional Use Permit from the County, and appropriate permits from state, federal and local jurisdictions. Therefore, approval of the Project will require compliance with NEPA and CEQA, as well as ROW rules promulgated under the Mineral Leasing Act. The BLM will be the NEPA lead agency and the County will serve as the CEQA lead agency. The BLM and County have agreed to work together on this Project and a Joint EIS/EIR will be prepared.

Since approval of the project as currently proposed would require amendment of the BLM's land-use plan, the California Desert Conservation Area (CDCA) Plan. The plan amendment process will be conducted concurrent with, and integrated with, the NEPA process, as part of the EIS/EIR. The analytical process for consideration of a plan amendment is the same as the analytical process for consideration of a project under NEPA, although a few additional considerations are required. See BLM Handbook, H 1601–1, App. F, p. 14 *et seq.* for an outline of an EIS-level Plan Amendment. Additional coordination activities with the Governor (Consistency Review), cooperating agencies, and the public, particularly with respect to timeframes for feedback of draft and final documents, are integrated into a NEPA process that also includes a plan amendment. Also, proposed planning decisions are identified and distinguished from appealable (NEPA) decisions. Proposed planning decisions are protested to the BLM Director and appealable decisions are taken to the Interior Board of Land Appeals for adjudication. As this is a joint EIS/EIR process, cooperating agency status for the County is already integrated into the process. BLM will consider approval of the proposed Project in a manner that avoids undue or unnecessary impacts to the public lands consistent with the Federal Land Policy and Management Act of 1976 (FLPMA) and the CDCA Plan of 1980, as amended.

Planning Criteria

Planning criteria have been developed to ensure that the plan amendment is tailored to the issues identified and ensure that unnecessary data collection and analysis would be avoided. These criteria may change in response to

public comment and coordination with State and local governments or other Federal agencies. The criteria developed for the Calnev Project EIS/EIR include the following:

1. Comply with applicable laws, Executive Orders, and regulations.
2. Minimize deviations from the existing utility corridor to the extent feasible.
3. Select an alignment in consideration of its effects on other critical linear public utilities and transportation corridors.
4. Analyze a corridor modification that reestablishes a complete corridor along I–15 adequate to accommodate the current Calnev project and anticipated future projects and that avoids crossing lands within the Mojave National Preserve.

BLM must take into consideration state law when granting the ROW. The EIS/EIR will describe and analyze the proposed project as proposed and will include: (1) BLM measures to avoid, minimize, or mitigate impacts on the environment; (2) Additional mitigation measures; (3) The ''No Action'' alternative; and (4) Alternative pipeline routes, segments or other distribution methods. Through public scoping BLM expects to identify various issues, potential impacts and mitigation measures. BLM has identified a potential list of issues that will need to be addressed in this analysis including but not limited to: Air quality; social and economic, traffic; ground and surface water quantity and quality; plant and animal species including special status species; cultural resources; visual resources; and public health and safety. If approved, this pipeline project on public lands would be authorized in accordance with the Mineral Leasing Act at Title 30, Chapter 3A, Subchapter I, Subsection 185.

Dated: March 5, 2008.

Mickey Quillman,

Acting Field Manager, Barstow Field Office.

[FR Doc. E8–5004 Filed 3–12–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–BJ–TRST]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine Trust and Tribal land.

The lands we surveyed are:

Principal Meridian Montana

T. 26 N., R. 44 E.

The plat, in 2 sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through section 12, a portion of the subdivision of section 12, and survey of a portion of the meanders of the present left bank of the Missouri River, downstream, through section 12, the informative traverse of the present left bank of the Missouri River, downstream, through section 12, and certain division of accretion lines, Township 26 North, Range 44 East, Principal Meridian, Montana, was accepted February 1, 2008.

We will place copies of the plat, in 2 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 2 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 2 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: March 7, 2008.

James D. Claflin,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E8–5007 Filed 3–12–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–78796, N–80170, N–80171, N–80172, N–80173, and N–81374; 8–08807; TAS: 14X5232]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes (R&PP) Act request for lease and subsequent conveyance of approximately 230.26 acres of public land in Las Vegas, Clark County, Nevada. Clark County proposes to use the land as six public parks.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance of the lands until April 28, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Brenda Warner, (702) 515–5084.

SUPPLEMENTARY INFORMATION: The following described public land in Clark County, Nevada has been examined and found suitable for lease and subsequent conveyance for recreational or public purposes under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). These six parcels of land are in the Las Vegas Valley and are legally described as:

Mount Diablo Meridian, Nevada

N–78796 (76.49 Acres)

T. 21 S., R. 60 E.,
Sec. 24, within S½SE¼.

General Location: Central part of the Las Vegas Valley northwest of the intersection of Tropicana Avenue and Decatur Boulevard.

N–80170 (15 Acres)

T. 22 S., R. 60 E.,
Sec. 34, E½SW¼SW¼NE¼,
SE¼SW¼NE¼.

General Location: Southwestern part of the Las Vegas Valley northeast of the intersection of Erie Avenue and Tenaya Way.

N–80171 (20 Acres)

T. 22 S., R. 60 E.,
Sec. 27, N½SE¼NE¼.

General Location: Southwestern part of the Las Vegas Valley southwest of the intersection of Le Baron Avenue and Rainbow Boulevard.

N–80172 (15 Acres)

T. 22 S., R. 60 E.,
Sec. 21, S½NE¼NE¼SW¼,
SE¼NW¼NE¼SW¼,
NE¼SW¼NE¼SW¼,
N½SE¼NE¼SW¼.

General Location: Southwestern part of the Las Vegas Valley southwest of the intersection of Serene Avenue and Cimarron Road.

N–80173 (20 Acres)

T. 22 S., R. 60 E.,
Sec. 29, S½NE¼SW¼NE¼,
N½SE¼SW¼NE¼,
S½NW¼SE¼NE¼,
N½SW¼SE¼NE¼.

General Location: Southwestern part of the Las Vegas Valley northwest of the intersection of Durango Drive and Mountains Edge Parkway.

N–81374 (83.77 Acres)

T. 23 S., R. 61 E.,
Sec. 06, Lots 3 and 4;
Sec. 31, S½SW¼SW¼SW¼,
S½SW¼SE¼SW¼SW¼,
S½SE¼SE¼SW¼SW¼.

General Location: Southern part of the Las Vegas Valley southeast of the intersection of Decatur Boulevard and Starr Hills Avenue.

The areas described contain 230.26 acres, more or less.

Clark County has filed R&PP applications to develop the above described land as six public parks. Additional detailed information pertaining to this application, plan of development, and site plan are in the case files, which are located in the Bureau of Land Management (BLM) Las Vegas Field Office.

Clark County is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act. The land is not required for any Federal purpose. The lease/conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The plans of development have been reviewed and it is determined the proposed action conforms with land use plan decision, LD–1, established in accordance with section 202 of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1712). The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will be subject to:

(1) Valid existing rights;

(2) N–78796:

(a) A right-of-way for an electrical transmission line granted to Nevada Power Company, its successors or assigns, by right-of-way N–02557, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(b) A right-of-way for a natural gas pipeline granted to the Southwest Gas Corporation, its successors or assigns, by right-of-way N–24159, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28;

(c) A right-of-way for a detention basin and public roadway granted to Clark County, its successors or assigns, by right-of-way N–55083, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

(3) N–80170:

(a) A right-of-way for a sewer system granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–77199, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(b) A right-of-way for a water distribution system granted to the Las Vegas Valley Water District, its successors or assigns, by right-of-way N–77507, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(c) A right-of-way for a telephone line granted to the Central Telephone Company, its successors or assigns, by right-of-way N–77554, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(d) A right-of-way for a fiber optic facility granted to Cox Communications, its successors or assigns, by right-of-way N–77555, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(e) A right-of-way for an electrical transmission line granted to the Nevada Power Company, its successors or assigns, by right-of-way N–77845, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761; and

(f) A right-of-way for a natural gas pipeline granted to the Southwest Gas Corporation, its successors or assigns, by right-of-way N–77953, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28.

(4) N–80171:

(a) A right-of-way for a sewer system granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–75689, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(b) A right-of-way for a sewer system granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–77199, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(c) A right-of-way for a water distribution system granted to the Las Vegas Valley Water District, its successors or assigns, by right-of-way N–77507, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(d) A right-of-way for a telephone line granted to the Central Telephone Company, its successors or assigns, by right-of-way N–77554, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(e) A right-of-way for a fiber optic facility granted to Cox Communications, its successors or assigns, by right-of-way N–77555, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(f) A right-of-way for an electrical transmission line granted to the Nevada Power Company, its successors or assigns, by right-of-way N–77676, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(g) A right-of-way for a fiber optic communication line granted to the Nevada Power Company, its successors or assigns, by right-of-way N–77677, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(h) A right-of-way for an electrical transmission line granted to the Nevada Power Company, its successors or assigns, by right-of-way N–77845, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(i) A right-of-way for a natural gas pipeline granted to Southwest Gas Corporation, its successors or assigns, by right-of-way N–77953, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28;

(j) A right-of-way for a sewer line granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–80660, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761; and

(k) A right-of-way for an electrical transmission line granted to the Valley Electric Association, its successors or assigns, by right-of-way Nev–059100, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

(5) N–80172:

(a) A right-of-way for a sewer system granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–77199, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(b) A right-of-way for a water distribution system granted to the Las Vegas Valley Water District, its successors or assigns, by right-of-way N–77507, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(c) A right-of-way for a telephone line granted to the Central Telephone Company, its successors or assigns, by right-of-way N–77554, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(d) A right-of-way for a fiber optic facility granted to Cox Communications, its successors or assigns, by right-of-way N–77555, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(e) A right-of-way for an electrical transmission line granted to the Nevada

Power Company, its successors or assigns, by right-of-way N–77845, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(f) A right-of-way for an underground water pipeline granted to the Las Vegas Valley Water District, its successors or assigns, by right-of-way N–77998, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(g) A right-of-way for a sewer main granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–77999, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(h) A right-of-way for a fiber optic facility granted to Cox Communications, its successors or assigns, by right-of-way N–79655, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(i) A right-of-way for a natural gas pipeline granted to the Southwest Gas Corporation, its successors or assigns, by right-of-way N–79659, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185 Sec. 28;

(j) A right-of-way for a telephone line granted to the Central Telephone Company, its successors or assigns, by right-of-way N–79829, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

(k) A right-of-way for a sewer line granted to the Clark County Water Reclamation District, its successors or assigns, by right-of-way N–79832, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761; and

(l) A right-of-way for an electrical power line granted to the Nevada Power Company, its successors or assigns, by right-of-way N–80069, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

(6) N–80173: a right-of-way for an electrical transmission line granted to the Nevada Power Company, its successors or assigns, by right-of-way N–58888, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

(7) N–81374: no encumbering rights-of-way.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and subsequent conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior and will become effective on May 12, 2008. The lands will not be available for lease/conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Dated: March 6, 2008.

Kimber Liebhauser,

Assistant Field Manager, Division of Lands.

[FR Doc. E8–5018 Filed 3–12–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (1024–xxxx).

DATES: Public comments will be accepted on the proposed Information Collection Request (ICR) on or before May 12, 2008.

ADDRESSES: Send Comments To: Dr. Susan A. Crate, co-PI, Department of Environmental Science and Policy, George Mason University, 4400 University Drive, MS 5F2, Fairfax, Virginia 22030; or via phone at 703/993–1517; or via fax at 703/993–1066; or via e-mail at *pogogmu@gmu.edu.* Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240; or via e-mail at *leonard stow@nps.gov.* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information, Contact Dr. Susan A. Crate, co-PI, Department of Environmental Science and Policy, George Mason University, 4400 University Drive, MS 5F2, Fairfax, Virginia 22030; or via phone at 703/993–1517; or via fax at 703/993–1066; or via e-mail at *pogogmu@gmu.edu.*

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St., Washington, DC 20005; or via phone 202/513–7189; or via e-mail *James_Gramann@partner.nps.gov.* You are entitled to a copy of the entire ICR package free of charge once the package is submitted to OMB for review. You can access this ICR at *www.reginfo.gov/public/.*

SUPPLEMENTARY INFORMATION:

Title: Potomac Gorge Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New Collection.

Description of Need: The Potomac Gorge is a IS-mile stretch along the Potomac River, crossing jurisdictions in the states of Maryland, Virginia, and the District of Columbia. Public parkland in the Gorge includes the NPS's Chesapeake and Ohio Canal National Historical Park and George Washington Memorial Parkway. The Nature Conservancy and Potomac Conservancy own and protect areas in the Gorge. In addition, other public and private lands are included in the 10,000-acre area. The Gorge is one of the country's most biologically diverse areas, home to more than 1,400 plant species. The NPS has documented at least 30 distinct natural vegetation communities, several of which are globally rare and imperiled. The Potomac Gorge Site Conservation Plan (SCP), developed by the NPS and The Nature Conservancy, identifies conservation targets, analyzes threats to these targets, and presents strategies for mitigating environmental problems currently observed in the Potomac Gorge. Identified threats include both internal impacts inherent to a heavily

visited area and external drivers originating from densely populated adjacent landscapes. The SCP considered seven conservation targets: Riparian Communities, Groundwater Invertebrates, Terrace Communities, Anadromous Fish, Upland Forest, Tributary Stream Systems, and Wetlands. Of these conservation targets, only tributary stream systems hold a ''Very High'' threat status. Therefore, promoting Best Management Practices among neighbors of the Potomac Gorge to improve water quality in tributary streams is one of the priority actions in the SCP.

To better understand and mitigate the tributary stream threats, the Potomac Gorge Survey will gather information that will improve the understanding of NPS personnel as to the behaviors of local land owners that affect water quality in tributary streams and the socio-demographic characteristics that are associated with particular behaviors. The survey will be administered to a stratified random sample of residents in the Potomac Gorge watershed. The Potomac Gorge Survey includes questions relating to residents' choice of land use practices and behaviors that affect water resources in the Gorge, and residents' demographic profiles, mobility, information, attitudes, and beliefs. Survey data will be analyzed using statistical analysis to investigate the responsiveness of residents' environmental attitudes and behaviors to changes in demographic, cultural, and informational drivers of behavior. This pilot project will identify priorities for future work within the Potomac Gorge as well as provide a generalized application in social science issues confronting the National Parks as a whole. Landowner participation to respond is voluntary.

Automated data collection: This information will be collected primarily via telephone surveys with an option for those contacted to complete the survey on the internet, if preferred. No automated data collection will take place.

Description of respondents: Respondents will be among a random sample of watershed residents stratified by zip code.

Estimated average number of respondents: 400 respondents.

Estimated average number of responses: 400 responses.

Estimated average burden hours per response: 1 minute for non-respondents and 20 minutes for respondents.

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 3,433 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 5, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–4880 Filed 3–12–08; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ General Management Plan, Olympic National Park; Clallam, Gray's Harbor, Jefferson and Mason Counties, WA; Notice of Availability

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) has prepared a Final Environmental Impact Statement for the proposed General Management Plan (Final GMP/EIS), Olympic National Park, Washington. The purpose of the GMP is to provide management direction for resource protection and visitor use at Olympic National Park for the next 15 to 20 years. A GMP is needed to confirm the purpose and significance of the park, to clearly define resource conditions and visitor experiences to be achieved in the park, to provide a framework for park managers to use when making decisions as to how to best protect park resources and provide for a diverse range of visitor experiences, to ensure a foundation for decision making in consultation with interested stakeholders, and to serve as the basis for more detailed management documents. In addition to a ''baseline'' no-action alternative (*Alternative A*) which would maintain current management, the Final GMP/EIS describes and analyzes three ''action'' alternatives. *Alternative B* emphasizes cultural and natural resource protection and natural processes would take priority over visitor access in certain areas of the park. *Alternative C* emphasizes increased recreational and visitor opportunities. *Alternative D* is the ''management preferred'' alternative; it is a combination of the other alternatives, emphasizing both protection of park resources and improving visitor experiences. The foreseeable environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed; as documented in the Final EIS, *Alternative D* is deemed to be the ''environmentally preferred'' course of action.

Description of Alternatives: The Final GMP/EIS includes three action alternatives and a no-action alternative. The no-action alternative (*Alternative A*) assumes that existing programs, facilities, staffing, and funding would generally continue at their current levels, and the current management practices would continue. There would be no zoning designated within the park, and issues would be evaluated on a case-by-case basis without a long range plan or vision. The park would continue to be managed in accordance with existing plans and policies.

Alternative B emphasizes cultural and natural resource protection; natural processes would have priority over visitor access in certain areas of the park. In general, the park would be managed as a large ecosystem preserve emphasizing wilderness management for resource conservation and protection, with a reduced number of facilities to support visitation. Some roads and facilities would be moved or closed to protect natural processes, and visitor access and services in sensitive areas would be reduced. Boundary adjustments for the purposes of resource protection would be considered adjacent to the park in the Ozette, Lake Crescent, Hoh, Queets, and Quinault areas. When compared with the other alternatives, this alternative would have less front country acreage designated as development, and more acreage designated as low-use and day-use zones. This alternative includes a river zone and an intertidal reserve zone.

Alternative C emphasizes increased recreational and visitor opportunities. The natural and cultural resources are protected through management actions and resource education programs. However, maintaining access to existing facilities would be a priority, and access would be retained to all existing front country areas or increased by improving

park roads to extend season of use. New or expanded interpretation and educational facilities would be constructed. This alternative includes a boundary adjustment in the Ozette area. When compared with the other alternatives, this alternative would have increased acreages zoned as development and day use and decreased acreages of low-use zone areas. This alternative would include an intertidal reserve zone; there would be no river zone.

Alternative D is the park's ''preferred'' alternative. It was developed by integrating key components of the other alternatives, emphasizing both the protection of park resources and improving visitor experiences. All management activities minimize adverse effects on park resources to the extent possible. Access would be maintained to existing front country areas, but roads might be modified or relocated for resource protection, river restoration, and/or to maintain vehicular access. Visitor education and interpretative facilities would be improved or developed to improve visitor opportunities and to protect park resources. Three boundary adjustments are proposed, which include seeking land exchanges and partnering with Washington Department of Natural Resources, developing protective strategies in coordination with the U.S. Forest Service for its lands within the adjusted boundaries, and acquiring private land by willing seller only. This alternative includes slightly more development zone acreage in the front country when compared with *Alternative B*, and slightly less than *Alternative C*. This alternative has more day-use zone acreage than *Alternative B*, and more low-use zone acreage than *Alternative C*. A river zone is not included, but the alternative does include an intertidal reserve zone.

Changes Incorporated in the Final EIS: The park made minor changes and clarified aspects of the preferred alternative as a result of public comment; however, there were no substantive modifications. Editorial changes and additional explanatory text on topics of interest were incorporated. Other changes made to the Final GMP/EIS as a result of public comments included clarifying the purpose, need, and legislative procedures for boundary adjustments and the potential cost for property acquisition and land easements.

Several public comments related to the management of cultural resources in wilderness. The wilderness and cultural resources sections have been updated based on changes in NPS Management Policies 2006. The public also expressed concerns related to existing access rights to private property and the effects the alternatives would have on the socioeconomic resources in the region. Information on private property access rights has been included.

The socioeconomic information in the affected environment and environmental consequences section has been updated based on the best available information and data provided by the public during the Draft EIS comment period.

There were questions from the public related to management and wilderness zoning. Management zones have been rewritten to clarify front country zone descriptions and stock use. Wilderness zoning definitions remain within the plan but the exact on-the-ground designation has been removed from the plan and will be delineated through a subsequent wilderness management plan process (which will include ample opportunity for public involvement and review). Area Indian tribes provided comments and additional information for the Final EIS. Laws and policies governing use by Native Americans of park resources have been added to ''Laws, Regulations, Servicewide Mandates and Policies'' and desired conditions and strategies under ''Parkwide Policies and Servicewide Mandates'' have been updated or clarified for several topics. In addition, visitation information has been updated with the most up-to-date statistics. Responses to comments are provided in the Final GMP/EIS.

In addition to these minor changes and clarifications, several public comments resulted in minor modifications to the final preferred alternative (*Alternative D*). Instituting an overnight permit system for parking at Swan Bay was suggested so that lake users, including private property owners, could park overnight at that location. Keeping Rayonier Landing open for day use only was also proposed. Both of these ideas were included in the final preferred alternative. Some agencies, tribes, and communities requested increased partnering to improve visitor education and opportunities and collaborative cultural and natural resources management, and this is incorporated.

There were also suggestions to integrate components of *Alternatives A, B*, and *C* into the final preferred alternative. Many commenters felt that *Alternative A* should be selected as no change was necessary to meet park management objectives. However, continuing the current management would not fulfill the plan objectives and expressed purpose and need.

The park received numerous comments to expand the proposed boundary adjustment for the final preferred alternative to more closely match that included in *Alternative B*. This was considered but not incorporated in the final preferred alternative because the park determined that other options could be used to promote resource protection (such as working with partners and employing cooperative management strategies outside the park boundaries). The park also received multiple requests to integrate wild and scenic river studies for the 12 eligible rivers into the plan, and to institute a river zone as included in *Alternative B*. During development of the proposed GMP, the park reviewed the existing eligibility studies and determined that formal suitability studies related to wild and scenic rivers designation would be conducted in a separate planning process after the GMP is completed due to the high number of rivers involved and the detail needed for these studies. The park also included protective measures for rivers and floodplains in *Alternative D*; therefore a formal river zone designation is not needed to meet park desired conditions. The park also received recommendations to include improvements to park roads and facilities similar to those explored under *Alternative C*, including paving existing gravel roads, expanding existing facilities and parking lots, and increasing visitor services. These suggestions were rejected in the final preferred alternative because they are not needed to meet park purpose, needs, and objectives. Many suggestions provided were too detailed to be included in the final proposed plan (e.g. interpretive exhibits, wilderness management practices) and are recorded for consideration in future implementation plans.

Text in the final preferred alternative has been clarified to emphasize that any property acquisition would be by exchange, through easements, or by willing seller only; updated information has been provided to clarify the need for boundary expansions. Boundary adjustments would not occur until property is acquired through the willing seller process and accomplished pursuant to the legislative process. The preferred alternative has been modified slightly based on public concerns—the potential area of exchange for mineral rights has been changed from lands solely in the Ozette watershed to lands within the State of Washington. The NPS would work with the State of

Washington to identify priority areas for exchange.

Public Engagement: The park's Notice of Intent initiating the conservation planning and environmental impact analysis\GMP planning process was published in the **Federal Register** on June 4, 2001. Public engagement and information measures have included public meetings, presentations and meetings, newsletter and postcard mailings, local and regional press releases, and Web site postings. The official public scoping process began in June 2001 when a scoping newsletter was distributed to approximately 800 people on the park's mailing list. During September and October 2001, public scoping meetings were held in several locations around the Olympic Peninsula and in the region. More than 500 comments were received during the scoping process. The majority of comments fell into the following categories: resource protection, wilderness management, visitor use and experience, access to park areas, and partnerships. Due consideration of these comments aided in defining the issues to be considered in developing the draft plan.

In January 2002, a newsletter was distributed to summarize the planning issues and concerns brought forward during scoping, and to announce five workshops to be held in late January to seek public participation in developing alternatives. This was followed by the releases of a preliminary alternatives newsletter (distributed in May 2003) and a park update newsletter (distributed November 2004) to the project mailing list, which had reached approximately 1,200 individuals, agencies, area tribes, and organizations. In March 2006 an R.S.V.P. card with a postage paid response was sent to those on the mailing list to announce the upcoming release of the draft plan and to determine who on the mailing list wanted a copy of the plan. Approximately 340 cards were returned with requests for a copy of the plan or for notification of its release.

The EPA's notice of filing of the draft EIS was published in the **Federal Register** on June 16, 2006, and the document was available for extended public review for 105 days through September 30, 2006, during which time the NPS distributed approximately 900 copies. The park's Notice of Availability was published in the **Federal Register** on July 14, 2006. The document was available at park offices, visitor centers and at area libraries, and it was posted on the Internet. Printed and CD–ROM copies were sent upon request, and also distributed to agencies, government representatives, area tribes, organizations, and interested individuals.

Detailed information announcing the opportunity for public review and the locations, times and dates for public workshops was published in several area newspapers, including *The Peninsula Daily News, Forks Forum, The Daily World, The Seattle Times,* Port Townsend and Jefferson County *Leader*, and the *Kitsap Sun*. Public workshops were conducted in Port Townsend, Port Angeles, Sequim, Forks, Sekiu-Clallam Bay, Amanda Park, Shelton, Silverdale, and Seattle. Over 250 people attended the workshops.

The NPS received approximately 500 comments on the Draft EIS by mail, fax, hand delivery, oral transcript, and via the Internet. In addition, approximately 637 additional individuals responded by using one of seven different form letters and approximately 827 individuals signed one of three petitions. The following topics received the most comment: access to park facilities, boundary adjustments, management zoning, Olympic Hot Springs restoration, Ozette Lake, partnerships, rivers and floodplains, socioeconomic resources, tribal treaty rights and trust resources, protection of ethnographic resources, employment opportunities, government-to-government consultation, partnerships, and how to improve relationships with the park, visitor use, stock use opportunities, wilderness management, and cultural resources management. Some commenters cited concerns related to accessibility, air quality, air tours and overflights, park budget and budget priorities, climate change, costs of implementing the preferred alternative, education and outreach, facilities management, fisheries resources, geologic processes, habitat, night sky, soundscape management, topics dismissed (e.g. environmental justice, unique farmlands), vegetation, water resources, wild and scenic river studies, and wildlife management (native, extirpated, and non-native).

Throughout the planning process, the NPS has consulted with various tribal, federal, state, and local government agencies, including the U.S. Forest Service, U.S. Fish and Wildlife Service (Western Washington Office and the Washington Islands National Wildlife Refuge), National Oceanic and Atmospheric Administration (Fisheries Office and Olympic Coast National Marine Sanctuary), Federal Highways Administration, Washington State Historic Preservation Office, the Advisory Council for Historic Preservation, Washington State Department of Natural Resources, Washington State Department of Transportation, and local, city, and county officials and agencies.

Consultations and informational meetings were also held with area tribal governments. Tribal consultation meetings were held with all eight tribes in 2001, and follow-up meetings were held in 2004 and 2005 to provide an update on the status of the plan. During the public review period, in 2006, meetings were offered to all eight tribes, and six tribes requested meetings. Six tribes provided a wide range of comments on the draft plan. Several tribes brought forward issues that need to be addressed outside the scope of the plan, such as jurisdiction, trust resources, treaty rights, gathering, and land issues. Tribes were also concerned about how boundary adjustments would affect their tribal treaty rights. The park integrated many tribal comments and suggested revisions into the final plan. At the request of the tribes, a meeting was held July 20, 2007 to review the tribal comments and the park responses and changes to the final plan. Seven of the eight tribes attended the meeting, plus three tribes requested individual meetings after the group session. While not all issues were addressed in the final plan, many issues were resolved and/or clarified.

SUPPLEMENTARY INFORMATION: The Final GMP/EIS is now available, and interested persons and organizations wishing to obtain the Final GMP/EIS may retrieve the document online at *http://parkplanning.nps.gov/olym.* The document is also available at these locations: Office of the Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, Washington, 98362 (telephone requests taken at 360–565–3004); the Olympic National Park Visitor Center at Port Angeles; Olympic National Park-National Forest Information Station in Forks; and the Hoh Rain Forest Visitor Center. The document will also be available for inspection at the following area libraries: Daniel J. Evans Library, Evergreen State College; Kitsap Regional Library, Bremerton branch; North Olympic Library System at Clallam Bay, Forks, Port Angeles, and Sequim; Peninsula College Library; Port Townsend Public Library and Quilcene branch; Seattle Public Library; Tacoma Public Library; Timberland Regional Library at Aberdeen, Amanda Park, Hoodsport, and Hoquiam; University of Washington Library; William G. Reed Public Library; and at the Wilson Library, Western Washington University.

Decision Process: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of its notice of filing of the Final Environmental Impact Statement in the **Federal Register**. As a delegated EIS the official responsible for final approval of the General Management Plan is the Regional Director; subsequently the official responsible for implementing the new plan would be the Superintendent, Olympic National Park.

Dated: March 5, 2008.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. E8–5045 Filed 3–12–08; 8:45 am]

BILLING CODE 4312–KY–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–597]

In the Matter of Certain Bassinet Products; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order Stipulation and Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 25) of the presiding administrative law judge (''ALJ'') in the above-captioned investigation terminating the investigation on the basis of a consent order stipulation and consent order.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 14, 2007, based on a complaint filed by Arm's Reach Concepts, Inc., of Malibu, California (''Arm's Reach''). 72 **Federal Register** 11902 (Mar. 14, 2007). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bassinet products by reason of infringement of one or more of claims 1–2, 5, 10–14, 16, and 18–19 of U.S. Patent No. 6,931,677 and claims 1–2, 10, 15–16, 24, 29–31, and 48–49 of U.S. Patent No. Re. 39,136. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue a limited exclusion order and a cease and desist order. The Commission named Simplicity, Inc., of Reading, Pennsylvania (''Simplicity''), as the sole respondent.

On January 29, 2008, Arm's Reach and Simplicity filed a joint motion pursuant to Commission Rule 210.21(c) to terminate the investigation as to Simplicity on the basis of a consent order stipulation and consent order. The Commission investigative attorney supported the motion.

On February 15, 2008, the ALJ issued an ID (Order No. 25) granting the parties' motion, terminating the investigation as to Simplicity, and terminating the investigation in its entirety on the basis of a consent order stipulation and consent order. No petitions for review of the ID were filed, and the Commission has determined not to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rules 210.21, 210.42, 19 CFR 210.21, 210.42.

By order of the Commission.

Issued: March 7, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–4955 Filed 3–12–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–625]

In the Matter of Certain Self-Cleaning Litter Boxes and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) of the presiding administrative law judge (''ALJ'') granting a motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 28, 2007, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Applica Incorporated and Applica Consumer Products, Inc., both of Miramar, Florida; and Waters Research Company of West Dundee, Illinois, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain self-cleaning litter boxes and components thereof by reason of infringement of certain claims of U.S. Patent No. RE36,847. 72 **Federal Register** 73884 (Dec. 28, 2007). The complainants named Lucky Litter, L.L.C. of Arlington, Texas and OurPet's

Company of Fairport Harbor, Ohio, as respondents.

On January 22, 2008, complainants Applica Consumer Products and Waters Research Company moved for leave to amend the complaint and notice of investigation to reflect a corporate merger between Applica Incorporated amd Applica Consumer Products, Inc.

On February 11, 2008, the ALJ issued Order No. 5 granting the motion. No party petitioned for review of the subject ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: March 7, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–4973 Filed 3–12–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1140–1142 (Preliminary)]

Uncovered Innerspring Units From China, South Africa, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, South Africa, and Vietnam of uncovered innerspring units provided for in 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 (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 and countervailing investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On December 31, 2007, a petition was filed with the Commission and Commerce by Leggett & Platt Inc., Carthage, MO, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of uncovered innerspring units from China, South Africa, and Vietnam. Accordingly, effective December 31, 2007, the Commission instituted antidumping duty investigation Nos. 731–TA–1140–1142 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 7, 2008 (73 FR 1229). The conference was held in Washington, DC, on January 22, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 14, 2008. The views of the Commission are contained in USITC Publication 3983 (February 2008), entitled *Uncovered Innerspring Units from China, South Africa, and Vietnam: Investigation Nos. 731–TA–1140–1142 (Preliminary).*

By order of the Commission.

Issued: February 27, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–5038 Filed 3–12–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–636]

In the Matter of Certain Laser Imageable Lithographic Printing Plates; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 11, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Presstek, Inc. of Hudson, New Hampshire. Letters supplementing the complaint were filed on February 14 and 28, 2008. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser imageable lithographic printing plates that infringe certain claims of U.S. Patent Nos. 5,339,737 and 5,487,338 and U.S. Trademark Registration No. 1,711,005. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint and supplemental letters, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http://*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

www.usitc.gov. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 6, 2008, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laser imageable lithographic printing plates that infringe one or more of claims 1, 10, and 27 of U.S. Patent No. 5,339,737 and claims 20, 21, and 23 of U.S. Patent No. 5,487,338, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laser imageable lithographic printing plates by reason of infringement of U.S. Trademark Registration No. 1,711,005, and whether an industry in the United States exists as required by subsection (a)(2) of Section 337; and

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Presstek, Inc., 55 Executive Drive, Hudson, New Hampshire 03051

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

VIM Technologies, Ltd., Kibbutz Hanita, 22885, Israel

Hanita Coatings RCA, Ltd., Kibbutz Hanita, 22885, Israel

Guaranteed Service & Supplies, Inc., 606 Schoenhaar Drive, West Bend, Wisconsin 53090

AteCe Canada, 3A Brussels Street, Suite 3A, Toronto, Ontario, Canada, M8Y 1H2

Ohio Graphco, Inc., 6563 Cochran Road, Solon, Ohio 44139

Recognition Systems, Inc., 30 Harbor Park Drive, Port Washington, New York 11050

(c) The Commission investigative attorney, party to this investigation, is T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Theodore R. Essex is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist orders or both directed against the respondent.

By order of the Commission.

Issued: March 7, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–4954 Filed 3–12–08; 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: 30-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. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 4, pages 1230–1231 on January 7, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 14, 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 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:* Revision of a currently approved collection.

(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 reports 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: March 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–4993 Filed 3–12–08; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on March 3, 2008, a proposed Settlement Agreement Regarding the Southeastern Missouri (SEMO) Mining District Sites was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re ASARCO, LLC, et al.*, No. 05–21207 (Bankr. S.D. Tex.). The SEMO Mining District Sites consist of the Big River Mine Tailings Site and the Federal Mine Tailings Site in St. Francois County; the Madison County Mines Site, including the Catherine Mine Subsite and the Little Saint Francis River Subsite, in Madison County; the Glover Smelter Site, in Iron County; and the Sweetwater Mine/Mill Site and the West Fork Mine/Mill Site, in Reynolds County. The proposed settlement provides the United States allowed general unsecured claims totaling $72.5 million to resolve past and future response cost and natural resource damage claims against ASARCO, LLC, for the SEMO Mining District Sites.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, comments should refer to *In re Asarco, LLC,* No. 05–21207 (Bankr. S.D. Tex.), D.J. Ref. No. 90–11–3–08633. In accordance with 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area.

The proposed Settlement Agreement may be examined at the office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd., #500, Corpus Christi, TX 78476–2001; and at the Region 7 office of the United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, KS 66101. During the comment period, the proposed Settlement Agreement may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html*. A copy of the proposed Settlement Agreement may be obtained by mail from the Department of Justice 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 $3.75 for the Settlement Agreement (25 cents per page reproduction costs) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–4972 Filed 3–12–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Supplemental Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 6, 2008, a proposed Supplemental Consent Decree in *United States.* v. *NCR Corp. and Allfirst Financial Center, National Association,* Civil Action No. 01–593–SLR, was lodged with the United States District Court for the District of Delaware.

In a civil action filed on August 31, 2001, under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the United States sought recovery of response costs from NCR Corporation and Allfirst Financial Center, National Association (predecessor to Manufacturers and Traders Trust Company), in connection with the NCR Corporation Superfund Site in Millsboro, Delaware (''the Site''). A Consent Decree resolving some of the claims in that civil action was entered by the Court on February 28, 2002. The Consent Decree reserved the right of the United States to seek further response costs from the defendants. Pursuant to that reservation of rights, the United States now seeks to recover response costs incurred since February 14, 2001. The proposed Supplemental Consent Decree lodged on March 6, 2008, resolves the liability of the defendants for response costs incurred by the United States in connection with the Site between February 14, 2001 and August 1, 2006, and requires defendants to pay $124,765 in reimbursement of response costs incurred through August 1, 2006. The Supplemental Consent

Decree also requires defendants to pay response costs incurred since August 1, 2006 in accordance with the terms of the Supplemental Consent Decree.

The Department of Justice will receive comments relating to the proposed Supplemental Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, by e-mail to *pubcomment-ees.enrd@usdoj.gov* or regular mail to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and refer to *United States* v. *NCR Corp. and Allfirst Financial Center, National Association,* D.J. Ref. 90–11–2–749/1.

The Supplemental Consent Decree may be examined at the Office of the United States Attorney for the District of Delaware, Nemours Building, Wilmington, DE 19801 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Supplemental Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/consent_decrees.html.* A copy of the Supplemental 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. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 for the Supplemental Consent Decree only, or $29.50 for the Supplemental Consent Decree and appendices (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 address above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. E8–4975 Filed 3–12–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *AT&T, Inc.* and Dobson Communications Corporation, No. 1:07–CY–01952–ESH, which was filed in the United States District Court for the District of Columbia on March 4, 2008, together with the response of the United States to the comment.

Copies of the comment and the response are available for inspection at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 200, Washington, DC 20530, (telephone (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

Case No. 1:07–cv–1952 (ESH); United States of America, Plaintiff, v. AT&T Inc. and Dobson Communications Corporation, Defendants; Plaintiff United States's Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. After careful consideration of the comment, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response has been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On October 30, 2007, the United States filed the Complaint in this matter alleging that the proposed merger of two mobile wireless telecommunications service providers, AT&T Inc. (''AT&T'') and Dobson Communications Corporation (''Dobson''), would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneously with the filing of the Complaint, the plaintiff filed a proposed Final Judgment and a Preservation of Assets Stipulation and Order signed by the United States and defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on October 30, 2007; published the proposed Final Judgment and CIS in the **Federal Register** on November 19, 2007, see 72 FR 65,060 (2007); and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the Washington Post for seven days beginning on November 18, 2007 and ending on November 24, 2007. The 60-day period for public comments ended on January 22, 2008, and one comment was received as described below and attached hereto.

I. Background

As explained more fully in the Complaint and CIS, the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in seven (7) geographic areas in the states of Kentucky, Missouri, Oklahoma, Pennsylvania and Texas. To restore competition in these markets, the proposed Final Judgment, if entered, would require defendants to divest (a) Dobson's mobile wireless telecommunications services businesses and related assets in three markets; (b) AT&T minority interests in other mobile wireless telecommunications services providers in two markets, and (c) Dobson's Cellular One Assets, which include the Cellular One service mark and related assets. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Legal Standard Governing the Court's Public Interest Determination

Upon publication of the public comments and this Response, the United States will have fully complied with the Tunney Act. It will then ask the Court to determine that entry of the proposed Final Judgment would be ''in the public interest,'' and to enter it. 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004,[1] is required to consider:

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also *United States* v. *SBC Commc'ns, Inc.,* 489

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448,1461 (D.C. Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SEC Commc'ns*, 489 F. Supp. 2d at 17; see also *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SEC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language codified what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Congo Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[3]

F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] Cf *BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally *Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should* * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

III. Summary of Public Comment and the United States's Response

During the 60-day public comment period, the United States received one comment—from Mid-Tex Cellular, Ltd. (''Mid-Tex''), a wireless competitor to the merging firms in certain geographic areas—which is attached hereto and summarized below. Upon review, the United States believes that nothing in the comment warrants a change in the proposed Final Judgment or is sufficient to suggest that the proposed Final Judgment is not in the public interest. The comment, in essence, argues that the United States should have identified, alleged, and remedied a different competitive concern than the one explained in the United States's Complaint. Copies of this Response and its attachment have been mailed to Mid-Tex.

A. Factual Background: Texas RSA 9

The United States's Complaint alleges that the merger of AT&T and Dobson would tend to lessen competition substantially, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in seven geographic areas, including Texas RSA 9—the subject of Mid-Tex's comments. The competitive landscape in Texas RSA 9 is somewhat complicated, and thus, this description is provided to assist in understanding the comments of Mid-Tex, the nature of the competitive concerns reflected in the United States's Complaint, and how the proposed Final Judgment adequately redresses the concerns.

Throughout the United States, in each local geographic area the Federal Communications Commission issues two cellular licenses, an ''A side'' and a ''B side,'' in the 800 MHz spectrum band for the provision of wireless service, as well as a number of PCS licenses in the 1900 MHz spectrum band. In rural areas, the cellular licenses are more attractive to carriers than PCS licenses because the propagation characteristics of this spectrum band allow sparsely populated areas to be served more efficiently. Frequently in rural areas, holders of PCS licenses do not fully build out their networks, except in areas where the population density is higher or there are major highways.

In Texas RSA 9, Dobson controls one of the two cellular licenses—the ''A-side'' license—throughout the entire RSA, and operates RSA-wide using that license. The situation for the ''B-side'' cellular license is much more complicated, as the license is split, geographically, between three different carriers. Mid-Tex, an entity in which AT&T had a minority interest,[4] controls the ''B-side'' license in five of the eleven counties that comprise the RSA, and a portion of a sixth. AT&T controls the ''B-side'' license in two counties in the RSA, and portions of three others.[5] And, a third company, Alltel Corporation, controls the ''B-side'' license in one county and a portion of two others.

In conducting an investigation of the merger of two mobile wireless providers, the United States does a fact-specific market-by-market analysis that examines a number of factors, including, but not limited to, the number of mobile wireless providers and their competitive strengths and weaknesses, market shares of the merging companies and other providers, the depth and breadth of coverage of providers and whether providers could expand their existing coverage.[6] In investigating the proposed merger of AT&T and Dobson, the United States considered the competitive effects of the combination of the Dobson and AT&T wholly-owned wireless business in Texas RSA 9, as well as the effect of AT&T retaining a minority interest in the Mid-Tex business subsequent to acquiring the Dobson business. However, the United States concluded that only the retention of the minority interest in Mid-Tex raised competitive concerns in the RSA and alleged only that harm in its Complaint.[7]

With regard to the wholly-owned businesses, the United States did not have sufficient reason to allege that the combination of the Dobson and AT&T businesses would present a competitive concern. AT&T's cellular license ownership is limited to a small minority of the geographic area of the RSA—essentially a strip of two counties, and portions of three others, along the northern border of the RSA. Although it competes to a limited extent elsewhere in the RSA via its PCS licenses,[8] AT&T appears to be a strong competitor primarily only in the areas where it is the cellular licensee. However, in that small portion of the RSA, there are three other competitors offering wireless service via a network built out utilizing their PCS spectrum: Sprint, Verizon, and T-Mobile. Based on these facts, the United States did not believe it could successfully allege and prove that the combination of the Dobson and AT&T wholly-owned wireless businesses would be likely to reduce competition substantially in the RSA, and thus, it made no such allegation.

On the other hand, Mid-Tex controls the cellular licenses for a much larger portion of the RSA—five counties, and a portion of a sixth. Moreover, the PCS carriers appear to have much less of a competitive presence in that portion of the RSA (including very limited networks) than in the area where AT&T controls the ''B side'' license. It thus appears that Dobson and Mid-Tex are the two strongest competitors in five-and-a-half counties which comprise a large portion of the RSA, facing little effective competition there from the PCS providers. Therefore, any significant diminution of either company's ability to function as an independent, aggressive competitive constraint likely would tend to lessen competition substantially. As alleged in the Complaint, AT&T had important management and control interests in Mid-Tex and thus, ''[p]ost-merger, the merged firm would likely have the ability and incentive to coordinate the activities of the wholly-owned Dobson wireless business and [Mid-Tex], and/or undermine the ability of the latter to compete against the former.'' The United States sought to remedy the identified competitive problem by including in the proposed Final

[4] AT&T withdrew from the Mid-Tex Cellular, Ltd. partnership on December 15, 2007, and thus, no longer has a minority interest in Mid-Tex. This withdrawal was accomplished pursuant to Sections II.H and Section IV of the proposed Final Judgment in this matter and Section IV.B of the Preservation of Assets Stipulation and Order signed by this Court on November 12, 2007, which requires the defendants to comply with the proposed Final Judgment pending the Judgment's entry.

[5] It is these counties, where AT&T owns the cellular licenses, that constitute the Texas RSA 9B1 and 9B4 partition areas that Mid-Tex refers to in its comment. Texas RSA 9B1 includes Eastland County and a portion of Erath County, and Texas RSA 9B4 includes Somervell County and portions of Bosque County and Hill County. AT&T also controls some PCS licenses throughout the RSA.

[6] Competitive Impact Statement at 7–8.

[7] In the Complaint, Texas RSA 9 is not alleged as an ''AT&T/Dobson Overlap Market'' in which the combination of the two businesses is the source of the competitive concern; instead, it is listed in the portion of the Complaint which discusses ''AT&T Minority Interest Markets'' and the competitive problem is described as follows: ''[E]ither Dobson or the business in which AT&T has a minority interest has the largest share and the other defendant is a particularly strong and important competitor in all, or a large part, of the RSA. * * * Post-merger, the merged firm would likely have the ability and incentive to coordinate the activities of the wholly-owned Dobson wireless business and the business in which it has a minority stake, and/or undermine the ability of the latter to compete against the former. Such activity would likely result in a significant lessening of competition.'' Complaint ¶¶ 21–22. Thus, the competitive problem alleged by the United States in Texas RSA 9 is the combination of Dobson and Mid-Tex (minority owned by AT&T); it is that problem—and only that problem—that the proposed decree properly seeks to remedy.

[8] In the counties in this RSA where AT&T only has PCS spectrum, its network is built out to a very limited extent, covering less than 15% of the population.

Judgment a requirement that the merged firm divest itself of the minority interest in Mid-Tex.

B. Summary of Comment

Mid-Tex raises two concerns regarding Texas RSA 9. First, it contends that the merged firm should be required to divest not only its minority interest in Mid-Tex, but also either the Dobson ''A side'' cellular license throughout the entire RSA, or AT&T's other ''B side'' interests in the RSA.[9] According to Mid-Tex, such a divestiture is necessary ''for the same reasons'' that the United States concluded that it was necessary for the merged firm to divest its interest in Mid-Tex: It argues that in certain subdivisions of Texas RSA 9, the merged firm would have ''well in excess of 70 percent of subscribers.'' Second, Mid-Tex argues that AT&T should not be prohibited from reacquiring a non-controlling interest in Mid-Tex during the ten-year term of the proposed Final Judgment. It contends that the proposed decree's prohibition on reacquisition is unnecessarily broad in that a reacquisition might not be harmful to competition if either (a) it was completely passive, or (b) competitive conditions had changed by the time of the proposed reacquisition.

C. Response

Mid-Tex does not take issue with the divestiture remedy embodied in the Final Judgment as far as it goes (except for the reacquisition provision), but instead contends that it does not go far enough: Essentially, it argues that the United States should have identified, and alleged, a different, additional competitive problem in its Complaint and remedied that problem. Mid-Tex contends that the overlap between the Dobson business, and the business controlled directly by AT&T in the ''Texas 9B1 market'' and ''Texas 9B4 market''[10] pose a competitive problem and that, therefore, the merged firm should be required to divest either the Dobson or AT&T interests in those areas. But as described above, the United States was unable to conclude that the combination of the Dobson business and the wholly-owned AT&T business was likely to reduce competition substantially in the alleged geographic market, Texas RSA 9, due to the relatively small portion of the RSA covered by AT&T's cellular licenses and the presence of multiple other competitors in that portion.[11] Accordingly, the United States did not allege that the combination of the Dobson and wholly-owned AT&T businesses posed a competitive concern in this RSA, nor did it seek to remedy any such concern.

With regard to Mid-Tex's second concern, regarding the reacquisition clause, it is typical for antitrust consent decrees containing a divestiture remedy to bar the merged firm from reacquiring the divested assets during the ten-year term of the decree. Such a provision is typically included because, except in unusual circumstances, it would defeat the purposes of a divestiture to allow the merged firm to simply reacquire the divested assets. Mid-Tex contends that if AT&T were to reacquire a ''truly passive'' non-controlling interest in Mid-Tex, it would not pose a competitive concern. But this is not necessarily the case: In some circumstances, even a passive interest can have anticompetitive consequences, e.g., reducing the incentives of the merged firm to use its wholly-owned business in the market in question to compete aggressively. A bright line prohibition on reacquisition—similar to that contained in numerous prior consent decrees entered by this Court[12]—ensures easy administrability as well as the ultimate success of the proposed divestiture, and it does so in a way that causes no undue harm to consumers or other third parties.[13]

Moreover, Mid-Tex contends that ''if market conditions change'' during the term of the proposed Final Judgment, a reacquisition by AT&T would not necessarily threaten competition. But this is the case in every antitrust consent decree: Market conditions can always change in a way that moot the need for a decree, or any specific provisions thereof. If market conditions change, the appropriate solution is a motion to modify the decree. The United States has supported a motion to modify, and the Court has modified, the reacquisition clause in appropriate circumstances.[14] The fact that market conditions might change in the future is not a reason to modify or delete otherwise important provisions from a decree before it has even been entered.

IV. Conclusion

After careful consideration of this public comment, the United States still concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting the public comment and its Response to the **Federal Register** for publication. After the comments and its Response are published in the **Federal Register**, the United States will move this Court to enter the proposed Final Judgment.

Respectfully submitted,

Hillary B. Burchuk (DC Bar No. 366755)

Lawrence M. Frankel (DC Bar No. 441532)

Attorney, Telecommunications & Media, Enforcement Section, Antitrust Division. U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile: (202) 514–6381.

Certificate of Service

I hereby certify that on March 4, 2008, a copy of the foregoing Plaintiff United States' Response to Public Comments was mailed via first class mail, postage prepaid, upon counsel for Mid-Tex Cellular, Ltd., addressed as follows: Michael R. Bennet, Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814.

Hillary B. Burchuk (DC Bar No. 366755), *Telecommunications & Media Enforcement Section, Antitrust Division. U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile: (202) 514–6381.*

[9] Although Mid-Tex operates in Texas RSA 9, it appears from its Web site that Mid-Tex does not compete in the Texas RSA 9B1 or 9B4 partition areas, the subdivisions that are the primary focus of its comment.

[10] The geographic market as alleged in the United States' Complaint is represented by all of Texas RSA 9; the United States did not allege a ''partitioned Texas 9B1 market'' or ''Texas 9B4 market'' as referred to by Mid-Tex. See Mid-Tex Comment at 2–3.

[11] Mid-Tex claims that, according to its estimates, in the Texas RSA 9B1 and 9B4 portions of the RSA, the combined Dobson and AT&T businesses ''serve 90–95% of wireless subscribers.'' It, however, provides no source for those estimates and, indeed, those estimates are not supported by the information reviewed by the United States.

[12] See, e.g., *United States* v. *Amsted Industries, Inc.*, ¶ XII, No. 1:07–cv–00710 (JDB) (D.D.C. July 16, 2007) (Final Judgment), available at *http://www.usdoj.gov/atr/cases/f224900/224931.htm*; *United States* v. *Cal Dive Int'l, Inc.*, ¶ XII, No. 1:05CY02041 (EGS) (D.D.C. Jan. 12, 2006) (Final Judgment), available at *http://www.usdoj.gov/atr/cases/f213100/213177.htm*; *United States* v. *Cingular Wireless Corp.*, ¶ XI, No. 1:04CY01850 (RBW) (D.D.C. Mar. 14, 2005) (Final Judgment), available at *http://www.usdoj.gov/atr/cases/f208000/208093.htm*.

[13] Mid-Tex briefly suggests that the no reacquisition prohibition could harm Mid-Tex. But, it is difficult to see why barring one out of an almost infinite number of possible investors from purchasing an interest in a company is, in itself, likely to cause undue harm to that company. Indeed, if the only entity willing to invest in a firm were one of its most important direct competitors, that in itself might warrant at least some reason for competitive concern.

[14] See, e.g., *U.S.* v. *SBC Commc'ns, Inc.*, 339 F. Supp.2d 116 (D.D.C. 2004) (modifying reacquisition clause of Final Judgment).

Before the United States Department of Justice

In the Matter of

United States of America v. *AT&T Inc.* and Dobson Communications Corporation, U.S. District Court for the District of Columbia Case No. 1:07–cv–01952; Proposed Final Judgment and Competitive Impact Statement

Comments of Mid-Tex Cellular. Ltd.

Mid-Tex Cellular, Ltd. (''Mid-Tex''), by its attorneys, and pursuant to the Notice published November 19, 2007 in the **Federal Register** (Vol. 72, No. 222), hereby submits its comments on the proposed settlement in the above-captioned U.S. District Court proceeding. In its Competitive Impact Statement (''CIS'') filed by the Antitrust Division of the U.S. Department of Justice (''Department'') in that proceeding, the Department concluded that AT&T Inc.'s (''AT&T'') proposed acquisition of Dobson Communications Corporation (''Dobson'') will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the Texas RSA–9 (CMA 660) market (''Texas RSA–9''), among other markets.[1] The Department filed a proposed Final Judgment which requires AT&T to divest its interest in Mid-Tex. For the reasons stated in its petition opposing the transfer of control of Dobson's wireless radio licenses to AT&T, filed with the Federal Communications Commission on August 27, 2007 (''Petition'')[2], Mid-Tex, with one exception, supports the proposed Final Judgment as it relates to the proposed divestiture of AT&T's interest in Mid-Tex.[3] For the same reasons as well as those stated below, Mid-Tex urges the Department to require the divestiture of a portion of AT&T's remaining interests in Texas RSA–9.[4]

I. The Department Should Require AT&T To Divest a Portion of Its Wireless Interests Throughout Texas RSA–9

Specifically, Mid-Tex requests that the Department require AT&T to divest either: (1) The A band license for the Texas RSA–9 market held by Dobson Cellular Systems, Inc., a wholly owned subsidiary of Dobson; or (2) its ownership interests in Texas 9B1 Limited Partnership, the Cellular B Block licensee in the partitioned Texas 9B1 market, and the license for the partitioned Texas 9B4 market held by AT&T Mobility Texas, LLC, a wholly owned subsidiary of AT&T. As discussed below, for the same reasons the Department has found divestiture of AT&T's interests in Mid-Tex to be necessary, the further divestiture of AT&T's interests in the Texas 9 RSA is also necessary.

The proposed Final Judgment requires the divestiture of AT&T's minority interest in Mid-Tex. The Department found that, without such divestiture, the merged AT&T ''would likely have the ability and incentive to coordinate the activities of the wholly-owned Dobson wireless business and the business in which it has a minority stake, and/or undermine the ability of the latter to compete against the former'' and that ''[s]uch activity would likely result in a significant lessening of competition'' in violation of Section 7 of the Clayton Act.[5] The Department reached this conclusion based on its finding that in Texas RSA–9 the businesses in which AT&T and Dobson have an interest collectively account for in excess of 70 percent of subscribers and that AT&T has significant rights under the Mid-Tex partnership agreement to control core business decisions, obtain critical confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share upon a sale of the partnership.[6]

In the partitioned Texas 9B1 market, the businesses in which AT&T and Dobson have an interest collectively account for well in excess of 70 percent of subscribers,[7] and, as the sole general partner in Texas RSA 9B1 Limited Partnership, AT&T has a controlling interest in that entity.[8] In the partitioned Texas 9B4 market, AT&T and Dobson collectively account for well in excess of 70 percent of subscribers.[9]

The Department recognizes that in Texas RSA–9, ''either Dobson or the business in which AT&T has a minority interest has the largest share and the other firm is a particularly strong and important competitor in all, or a large part, of the RSA.'' Due to the combined market share throughout the RSA, the Department should treat the remainder of Texas RSA–9 as it has already decided to treat Texas RSA–9B2, and require AT&T to divest a portion of its remaining interests in the market. To allow AT&T to retain wireless interests it holds outright or through a controlling general partnership interest, while requiring it to divest minority, yet controlling, limited partnership interests is inconsistent and without justifiable basis.[10]

II. AT&T Should Not Be Prohibited From Reacquiring a Non-Controlling Interest in Mid-Tex

Although Mid-Tex supports the Department's decision to condition merger approval on AT&T's divestiture of its interest in Mid-Tex in Texas 9B2, Mid-Tex opposes the proposed condition that AT&T be barred from reacquiring any part of its interest in Mid-Tex during the proposed ten year term of the Final Judgment. The Department's rationale for the divestiture requirement in Texas 9B2 is AT&T's ability to control Mid-Tex through rights granted to it under the partnership agreement. If AT&T wishes

[1] *United States* v. *AT&T Inc.* and Dobson Communications Corporation; Proposed Final Judgment and Competitive Impact Statement, 72 FR 65060 (Department of Justice Antitrust Division Nov. 19, 2007).

[2] A copy of the Petition was submitted to the Department by letter dated August 29, 2007.

[3] As discussed in Section II infra, Mid-Tex opposes a ten year restriction on AT&T reacquiring any ownership interest in Mid-Tex.

[4] Mid-Tex's position herein is not intended to address and should not be construed as its concurrence that the actions taken or proposed herein resolve all anti-competitive issues resulting from AT&T's actions in Texas RSA–9.

[5] Department of Justice Complaint in the above-captioned proceeding (''Complaint'') at par. 22; Competitive Impact Statement (''CIS''), 72 FR at 65072. The Department found that in Texas RSA–9 ''the merged firm will have the incentive and ability to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.'' 72 FR at 65072.

[6] *Id.* at pars. 21–22.

[7] By Mid-Tex's estimation, Dobson and the AT&T controlled Texas RSA 9B1 Limited Partnership serve 90–95% of wireless subscribers in the partitioned Texas RSA 9B1 market.

[8] See FCC Ownership Disclosure Information for the Wireless Telecommunications Services (FCC Form 602) filed by Texas RSA 9B1 Limited Partnership on February 26, 2007. New Cingular Wireless PCS (''NCW PCS'') holds a one percent general partnership interest in Texas RSA 9B1 Limited Partnership. *Id.* at Exhibit 1. NCW PCS is a wholly owned subsidiary of Cingular Wireless II, LLC, which has two members: AT&T Mobility LLC f/k/a Cingular Wireless LLC (''AT&T Mobility) (57%) and New Cingular Wireless Services, Inc. (''NCWS'') (43%). *Id.* NCWS is a direct wholly owned subsidiary of AT&T Mobility, which, in turn, is an indirect wholly owned subsidiary of AT&T. SWBW B-Band Development LLC (''SWBW''), a wholly owned subsidiary of NCW PCS, holds a 43.1449% limited partnership interest in Texas RSA 9B1 Limited Partnership. *Id.*

[9] As discussed above, the B Block cellular license is held by AT&T Mobility Texas, LLC, a wholly owned subsidiary of AT&T. By Mid-Tex's estimation, Dobson and AT&T serve 90–95% of wireless subscribers in the partitioned Texas RSA 9B4 market.

[10] Conversely, if divestiture is not required in the remainder of Texas RSA–9, it should not be required in Texas RSA 9B2. The entire market should be treated consistently.

to reinvest in Mid-Tex as a truly passive investor within the ten year effective period of the Final Judgment, it should not be prohibited from doing so. Such a prohibition will harm only Mid-Tex and not competition in Texas 9B2. Such reacquisition of divestiture assets should not be permitted, however, absent Department review of the amended limited partnership agreement, to enable the Department to ensure that AT&T has not regained rights to control core business decisions, obtain critical confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share upon a sale of the partnership.[11]

III. Conclusion

For the foregoing reasons, Mid-Tex respectfully requests that the Department require the additional divestitures discussed herein, and permit AT&T to reacquire a limited interest in Mid-Tex as discussed herein. Should the Department have any questions regarding the matters addressed herein, please communicate directly with the undersigned.

Dated: January 18, 2008.

Respectfully submitted,

MID-TEX CELLULAR, LTD.,

Michael R. Bennet,

Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, 202–371–1500.

cc: Hillary Burchuk

Declaration of Toney Prather

I, Toney Prather, do hereby declare under penalty of perjury the following:

1. I am the Manager of, and President of the sole member of the managing general partner of, Mid-Tex Cellular, Ltd.

2. I have read the foregoing Comments of Mid-Tex Cellular Ltd. I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

Dated: January 11, 2008.

Toney Prather.

[FR Doc. E8–4817 Filed 3–12–08; 8:45 am]

BILLING CODE 4410–11–M

[11] In addition, if market conditions change during the ten year effective period such that the Department is able to determine that AT&T control of Mid-Tex would no longer threaten competition, AT&T should then be permitted to acquire a controlling interest in Mid-Tex.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0031]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-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. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 004, page 1232 on January 7, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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

	Respondents	Burden (minutes)	Total hour burden	@ $10/hour =
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: March 7, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–4992 Filed 3–12–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of a Proposed Amendment to PTE 93–31; Proposed Amendment to Prohibited Transaction Exemption (PTE) 93–31, 58 FR 28620 (May 14, 1993), as Amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007), (PTE 93–31), Involving Bank of America, N.A., the Successor of NationsBank Corporation (D–11446)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of a Proposed Amendment to PTE 93–31.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 93–31, an Underwriter Exemption.[1] The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment to PTE 93–31, if granted, would provide a six month period to resolve certain affiliations between LaSalle Bank, N.A., the Trustee, and Bank of America, N.A. as members of the Restricted Group, as those terms are defined in the Underwriter Exemptions (the Proposed Amendment). The Proposed Amendment, if granted, would affect the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such plans.

DATES: Written comments and requests for a hearing should be received by the Department by April 14, 2008.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Exemption Application Number D–11446). Interested persons are invited to submit comments and/or hearing requests to the Department by the end of the scheduled comment period either by facsimile to (202) 219–0204 or by electronic mail to *moffitt.betty@dol.gov.* The application pertaining to the Proposed Amendment (Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed exemption to amend PTE 93–31, an Underwriter Exemption. The Underwriter Exemptions are a group of individual exemptions granted by the Department that provide substantially identical relief from certain of the restrictions of sections 406 and 407 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (Code), by reason of certain provisions of section 4975(c)(1) of the Code for the operation of certain asset pool investment trusts and the acquisition, holding, and disposition by Plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts.

All of the Underwriter Exemptions were amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), and PTE 2007–05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007). Certain of the Underwriter Exemptions were amended by PTE 2002–41, 67 FR 54487 (August 22, 2002).

The Department is proposing this amendment to PTE 93–31 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

1. The Underwriter Exemptions permit Plans to invest in pass-through securities representing undivided interests in asset-backed or mortgage-backed investment pools (Securities). The Securities generally take the form of certificates issued by a trust (Trust). The Underwriter Exemptions permit transactions involving a Trust, including the servicing, management and operation of the Trust, and the sale, exchange or transfer of Securities evidencing interests therein, in the initial issuance of the Securities or in the secondary market for such Securities (the Covered Transactions). The most recent amendment to the Underwriter Exemptions is PTE 2007–05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05). One of the General Conditions of the Underwriter Exemptions, as amended, requires that the Trustee not be an ''Affiliate'' of any member of the ''Restricted Group'' other than an ''Underwriter.'' PTE 2007–05, subsection II.A.(4). The term ''Restricted

[1] The ''Underwriter Exemptions'' are a group of individual exemptions that provide substantially identical relief for the operation of certain asset-backed or mortgage-backed investment pools and the acquisition and holding by Plans of certain securities representing interests in those investment pools.

[2] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

Group'' is defined under section III.M. as: (1) Each Underwriter; (2) Each Insurer; (3) The Sponsor; (4) The Trustee; (5) Each Servicer (6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; (7) Each counterparty in an Eligible Swap Agreement; or (8) Any Affiliate of a person described in subsections III.M.(1)–(7).'' The term ''Servicer'' is defined to include ''any Subservicer.'' PTE 2007–05, section III.G. The term ''Affiliate'' is defined, in part, to include ''(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, partner, employee * * * of such other person; and (3) Any corporation or partnership of which such other person is an officer, director or partner.'' PTE 2007–05, section III.N.

2. On May 14, 1993, PTE 93–31 was granted to NationsBank Corporation, a North Carolina corporation. Prior to September 25, 1998, NationsBank (DE) Corporation, a Delaware corporation, was organized as a wholly-owned subsidiary of NationsBank Corporation. On September 25, 1998, NationsBank Corporation merged into NationsBank (DE) Corporation with NationsBank (DE) Corporation being the survivor. Each share of NationsBank Corporation common stock was converted into a share of NationsBank (DE) Corporation common stock and continued as the outstanding stock after the merger. The assets owned by NationsBank Corporation became the assets of NationsBank (DE) Corporation. Simultaneously with this merger, NationsBank (DE) Corporation changed its name to NationsBank Corporation. The sole purpose of this merger was to reincorporate NationsBank Corporation as a Delaware corporation. On September 30, 1998, BankAmerica Corporation, a Delaware corporation, merged into NationsBank Corporation, with NationsBank Corporation being the survivor. All outstanding shares of NationsBank Corporation common stock continued to remain outstanding after the merger, and each share of BankAmerica Corporation common stock was exchanged for 1.1316 shares of NationsBank Corporation. Simultaneously with the September 30, 1998 merger, NationsBank Corporation changed its name to BankAmerica Corporation. Thus, BankAmerica Corporation, formally known as NationsBank Corporation, became owned by the former shareholders of both NationsBank and BankAmerica Corporations, with the shareholders of NationsBank Corporation owning the majority of the outstanding shares. Based on these facts, in a letter dated November 25, 1998, the Department confirmed that PTE 93–31 continued in effect and could be used by the newly formed corporation, BankAmerica Corporation.

3. Bank of America, N.A. (Bank of America or the Applicant) provides that on April 28, 1999, BankAmerica Corporation changed its name to Bank of America Corporation and filed its Amended and Restated Certificate of Incorporation with the Delaware Secretary of State. Bank of America Corporation is the parent holding company of Bank of America, N.A. Banc of America Securities, LLC is the U.S. investment banking subsidiary of Bank of America Corporation. The Proposed Amendment was requested by application dated September 25, 2007 and updated on January 16, 2008, by Bank of America (the Application). The Applicant states that on October 1, 2007, Bank of America Corporation acquired ABN Amro North America Holding Company, the holding company of LaSalle Bank Corporation (The Acquisition). LaSalle Bank, N.A. (LaSalle) is a subsidiary of LaSalle Bank Corporation. LaSalle is the Trustee in many Covered Transactions that include Bank of America. The Acquisition caused certain transactions previously subject to PTE 93–31 or the Underwriter Exemption that is relied upon in the particular transaction to fail to satisfy the requirement under the Underwriter Exemptions that the Trustee not be an Affiliate of any member of the Restricted Group other than an Underwriter. PTE 2007–05 subsection II.A.(4). Currently, for transactions where Bank of America is the Servicer, a six-month period is provided by the Underwriter Exemptions to sever the affiliation between the Servicer and the Trustee if the affiliation occurred after the initial issuance of the Securities. PTE 2007–05, subsection II.A.(4)(b). However, there is currently no transitional relief under the Underwriter Exemptions where Bank of America (as Banc of America Securities, LLC) is a Sponsor or a Swap Counterparty and LaSalle is the Trustee. Accordingly, Bank of America seeks a temporary amendment to PTE 93–31 to provide for a six-month period for resolution of certain prohibited affiliations caused by the Acquisition of LaSalle, the Trustee, by Bank of America.

In addition, the Applicant requests that the amendment provide similar relief for certain Covered Transactions where LaSalle is Trustee and Bank of America is a member of the Restricted Group, other than the Underwriter. In those transactions, the Underwriter, who is unrelated to Bank of America, relies upon an Underwriter Exemption other than PTE 93–31. Citigroup Global Market, Inc., Deutsche Bank Securities, and Goldman, Sachs & Co. have confirmed to the Applicant that they have been notified of the application for the Proposed Amendment and have agreed to coverage under the Proposed Amendment. In its September 25, 2007 Application, Bank of America represented that LaSalle placed a notice on its web pages for each of the Covered Transactions affected by the Acquisition. The Applicant represented that this notice would be updated upon publication of the Proposed Amendment, and if granted, the amendment. Further, the web pages noted the appointment of any co-trustee and the appointment of the replacement trustee. The Applicant states that LaSalle, in its role of Trustee, will bear the cost of appointing such co-trustee and that there will be no financial impact on any Underwriter.

4. Bank of America represents that the Covered Transactions affected by the Acquisition consist of 37 commercial or residential mortgage-backed securitizations (CMBS or RMBS) (Securitizations) as detailed at section III.KK of the Proposed Amendment (the Securitizations List). Bank of America states that all of the Securitizations were structured and are managed to meet the requirements of PTE 93–31 or another substantially similar Underwriter Exemption, in each case as amended by PTE 2007–05. LaSalle is the Trustee in each of the Securitizations. The Applicant represents that, in its role as Trustee, LaSalle is obligated under both the operative documents that securitize the loans, and under state law relating to fiduciaries, to protect the interests of security holders. Specifically, the Trustee is required to enforce the rights of security holders against other parties to the transaction, including Servicers, Swap Counterparties and loan sellers. The Applicant notes further that in practice, due to industry standards and reputation concerns by the various parties, little such protection or enforcement is necessary, and the Trustee's role, while vigilant, is relatively passive. Bank of America is a party to each of the Securitizations in the capacity or capacities detailed in the

Securitizations List. The Applicant states that, in any of these capacities, Bank of America is obligated, under the operative documents of the transaction, to perform its designated duties under contractual and, in some cases, industry standards for the benefit of security holders. The Applicant represents that each of the Pooling and Servicing Agreements has been structured to comply with PTE 93–31 or a substantially identical Underwriter Exemption, and that each of the Trusts has been managed in accordance with the related Pooling and Servicing Agreement. Consequently, Securities issued by each Trust currently are eligible for purchase by Plans that meet the requirements of PTE 93–31 or a substantially identical Underwriter Exemption.

5. The Applicant states that none of the Trusts were formed or marketed with the knowledge that Bank of America and LaSalle would become affiliated. Bank of America further states that once it became aware of the Acquisition, it stopped using LaSalle as a Trustee on securitization transactions. The Applicant notes that the Securitization List contains only three transactions closed in 2007. The Applicant states that, in general, the Pooling and Servicing Agreements governing the applicable Securitizations permit the cures detailed in their Application by contemplating a trustee's resignation and replacement so as to comply with applicable law and providing the Trustee the ability to appoint co-trustees and other agents authorized to carry out the Trustees' duties. The Applicant notes that the agreements do not provide specific qualifications for co-trustees. While the agreements vary in the detail, after due diligence, the Applicant asserts that it is not aware of any provisions of the agreements or SEC requirements that preclude the cures detailed in the Application.

6. Bank of America represents in its Application that during the proposed six month resolution period, for each Securitization on the Securitization List, the Trustee shall appoint a co-trustee, which is not an Affiliate of Bank of America, no later than the earlier of (a) January 2, 2008 or (b) five business days after LaSalle, the Trustee, has become aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be solely responsible for resolving such conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided that if the Trustee has resigned on or prior to January 2, 2008, and no event described in clause (b) has occurred, no co-trustee shall be required since a replacement trustee would be in place by January 2, 2008. Bank of America represents that as Trustee, LaSalle will appoint a co-trustee with the knowledge and skill necessary to resolve any conflict arising between LaSalle and any Bank of America affiliated member of the Restricted Group. In the event that a co-trustee were appointed, such co-trustee would assume LaSalle's role under the related Pooling and Servicing Agreement (solely with respect to any conflict between LaSalle and a Bank of America affiliate that is a member of the Restricted Group) until a replacement trustee replaced LaSalle.

On January 16, 2008, the Applicant informed the Department that LaSalle was replaced as Trustee in each Securitization on the Securitization List as of January 2, 2008. Wells Fargo Bank, N.A. is the replacement trustee for the majority of the Securitizations on the Securitization List. U.S. Bank National Association is the replacement trustee for the remaining Securitizations on the list. LaSalle represents that there were no actual conflicts during the period of affiliation, October 1, 2007 to January 2, 2008. Thus, no co-trustee had to be appointed during that period.

For purposes of this Proposed Amendment, a conflict would arise whenever (a) Bank of America is a member of the Restricted Group and fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from LaSalle, as Trustee, or (b) LaSalle, as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Bank of America, a member of the Restricted Group. The time as of which a conflict occurs is the earlier of the day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

Additionally, for purposes of this Proposed Amendment, the term conflict includes but is not limited to, the following: (1) Bank of America's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following LaSalle's request, as Trustee, for performance; (2) Bank of America, as Sponsor, notifies LaSalle, as Trustee, that it will not repurchase a loan for breach of representation, following LaSalle's request that Bank of America repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Bank of America, as Swap Counterparty, makes or requests a payment based on a value of LIBOR [3] that LaSalle, as Trustee, considers erroneous.

7. In Bank of America's September 25, 2007 application to the Department, the Applicant represented that it and LaSalle were currently identifying replacement trustees to replace LaSalle as Trustee in approximately 60 transactions (this number includes transactions where the conflict is not ERISA-related and the transaction is not on the Securitization List). The Applicant's intent was to complete the negotiations and paperwork for approximately 20 transactions per month, with the effective date for all changes to be January 2, 2008. This date was convenient for non-ERISA reasons primarily relating to tax and securities law reporting.

The Applicant further represented that, in contrast to co-trustees, any replacement trustee will have to meet the requirements of the related Pooling and Servicing Agreement for qualification as a Trustee. A copy of a typical Pooling and Servicing Agreement requirements for a trustee was provided to the Department. In the September 25, 2007 application, Bank of America stated that it and LaSalle were in the process of making arrangements for hiring such replacement trustees, with all such appointments scheduled to be effective on January 2, 2008. The Applicant noted that if a conflict were to arise prior to January 2, 2008 with respect to any Trust, it would be likely that the party that would become the replacement trustee (and hence meets the requirements of the related Pooling and Servicing Agreement for qualification as a Trustee) would be appointed co-trustee under the terms of the Proposed Amendment. The Applicant stated, however, that there might be situations where appointment of the future replacement trustee would be impossible or impractical, in which case the parties would have to appoint a different co-trustee until the replacement trustee assumed its role.

The Applicant stated that while Wells Fargo is the replacement trustee of choice, there are transactions where Wells Fargo is a member of the

[3] The London Interbank Offered Rate.

Restricted Group and consequently cannot be named Trustee. Bank of America noted that, in certain cases, LaSalle will continue as a securities administrator, retaining certain reporting requirements but be responsible to the replacement trustee. The replacement trustee will have legal title to the assets of the trust, will have fiduciary responsibility to the securities holders and will be responsible for supervising LaSalle in whatever role it retains.

8. Bank of America represents that, as of January 16, 2008, there was no outstanding conflict requiring resolution involving LaSalle and any Bank of America entity involved in the transactions listed in the Securitizations List. Further, Bank of America stated that it would notify the Department of Labor of any conflict that arose prior to the replacement of LaSalle as Trustee in any of these transactions. Bank of America notified the Department on January 16, 2008 that LaSalle was replaced as Trustee for each of the transactions on the Securitization List. The Applicant notes that, as a technical matter, in the most likely case (e.g. the assertion of a breach of representation or warranty by the Sponsor), the Pooling and Servicing Agreements all require that the Trustee provide the offending party 90 days to cure the issue before the Trustee may take any action to do so itself. Consequently, if an issue would have arisen after October 1, 2007; the Trustee would not have been able to take any action to cure the issue until after January 2, 2008. Since the Trustee replacements were made on January 2, 2008, LaSalle was replaced by a non-affiliated trustee before it could have taken any action.

9. The Applicant notes that Plans acquired Securities issued under the Securitizations in reliance on the exemptive relief provided by the Underwriter Exemptions. Absent additional relief, the Acquisition has caused these granted exemptions to cease to apply to several of the Securitizations. Bank of America represents that the Securities issued in transactions such as the Securitizations are attractive investments for Plans subject to Title I of ERISA or section 4975 of the Code and conversely, such plans are an important market for issuers of such Securities. Bank of America asserts that to force LaSalle to resign as Trustee in all of the Securitizations before the Acquisition was not administratively feasible because the number of available trustees is limited and there is work required in changing trustees. Similarly, to have the exemptions no longer apply to the Securitizations would force the Plans to sell their securities in the current unstable market, likely at a loss. The Applicant additionally notes that although the Acquisition has been widely covered, it is conceivable that Plan fiduciaries would not realize that the Underwriter Exemption relied upon by the Plans had ceased to apply, raising the possibility that a Plan would not sell and that non-exempt prohibited transactions would occur.

10. Bank of America states that the Plans purchased Securities in reliance on PTE 93–31 or a substantially identical exemption. At that time, the Plans had no knowledge that the Trustee would become an Affiliate of one or more members of the Restricted Group. On or after the Acquisition, except in cases covered by PTE 93–31 as amended by PTE 2000–58 (providing a six-month window for Trustee-Servicer affiliations) or PTE 2002–41 (Trustee-Underwriter affiliations), the purchased Securities would no longer be afforded coverage under the Underwriter Exemptions and the Plans would have been obligated to sell the Securities prior to October 1, 2007. The Applicant asserts that this is problematic for several reasons. First, as is customary for such transactions, the physical securities are not used in most cases. Rather, an electronic system, usually the Depository Trust Company's electronic system, is utilized and the securities are in global form. In such cases, it is difficult (and may be impossible) to ascertain the beneficial ownership of the securities, meaning that it is not known whether Plans are owners and to what extent. The Applicant asserts that identifying the affected Plans would be time consuming and expensive, and may be impossible to do with complete accuracy because of the book-entry system under which Securities were issued. As stated above, the Applicant represents that notice of this request for relief was posted on the Trustee's Web site at the time this Application was submitted, which would be updated to reflect any action of the Department with respect to the Application. The Applicant has informed the Department that, although LaSalle was replaced as Trustee on January 2, 2008, LaSalle will remain as the Securities Administrator for each of the Securitizations on the Securitization List and LaSalle will continue to update its Web site concerning the status of the Proposed Amendment. In this regard, the Applicant also requests that the publication of the Proposed Amendment in the **Federal Register** serve as the Notice to Interested Persons for purposes of this submission.

Second, and more importantly, the current disruption in the mortgage-backed securities market makes sales problematic, both in terms of finding buyers and establishing proper valuation. Granting the requested relief prevents these problems. The Applicant states further that the relief is of the same duration, six months, as that already provided by the Department for Trustee-Servicer affiliations, suggesting that the Department has already determined that this period is sufficiently brief to prevent serious conflicts of interest from arising.

11. Bank of America requests that the relief, if granted, be made retroactive to the October 1, 2007 Acquisition date. If the relief is granted retroactively, Plans would be able to retain their prior Securitization investments and to purchase Securities in the secondary market relying upon the Underwriter Exemptions once exemptive relief is granted, even if the transactions originally closed or will close prior to the date the final Amendment is published in the **Federal Register**, if granted by the Department.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans; and

3. The proposed amendment, if granted, will be supplemental to, and

not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending amendment to the address above, within the time frame set forth above, after the publication of this proposed amendment in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the Application at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify Prohibited Transaction Exemption (PTE) PTE 93–31, 58 FR 28620 (May 5, 1993); as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) (PTE 93–31).

1. Subsection II.A.(4) of PTE 93–31 is amended to add a new subsection (c) that reads as follows:

(c) Effective October 1, 2007 through April 1, 2008, LaSalle Bank, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of ABN Amro North America Holding Company, the holding company of LaSalle Bank Corporation and its subsidiary, LaSalle Bank, N.A. (LaSalle) by Bank of America Corporation and its subsidiaries (Bank of America) (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, LaSalle, ceases to be an Affiliate of any member of the Restricted Group no later than April 1, 2008;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, LaSalle, did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from October 1, 2007 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, LaSalle; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, LaSalle, appoints a co-trustee, which is not an Affiliate of Bank of America, no later than the earlier of (A) January 2, 2008 or (B) five business days after LaSalle becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided, that if the Trustee has resigned on or prior to January 2, 2008 and no event described in clause (B) has occurred, no co-trustee shall be required.

(iv) For purposes of this subsection II.A.(4)(c), a conflict arises whenever (A) Bank of America, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from LaSalle, as Trustee, or (B) LaSalle, as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Bank of America, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: the day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c), the term ''conflict'' includes but is not limited to, the following: (1) Bank of America's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following LaSalle's request, as Trustee, for performance; (2) Bank of America, as Sponsor, notifies LaSalle, as Trustee, that it will not repurchase a loan for breach of representation, following LaSalle's request that Bank of America repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Bank of America, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that LaSalle, as Trustee, considers erroneous.

2. The Definition of ''Underwriter'' at section III.C. of PTE 93–31 is temporarily replaced with a definition that includes other entities and reads:

C. Effective October 1, 2007 through April 1, 2008, ''Underwriter'' means:

(1) Bank of America Securities, LLC, or an entity identified as an underwriter on the Securitization List at section III.KK. (i.e., Citigroup Global Market, Inc., Deutsche Bank Securities, and Goldman, Sachs & Co.);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entities; or

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

3. The Definition of ''Sponsor'' at section III.D. of PTE 93–31 is temporarily extended to include language applicable to transactions on the Securitization List at section III.KK and reads:

D. ''Sponsor'' means:

(1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or

(2) Effective October 1, 2007 through April 1, 2008, for those transactions listed on the Securitization List at section III.KK., Bank of America.

4. Section III of PTE 93–31 is temporarily amended to add a new section III.KK that reads as follows:

KK. Effective October 1, 2007 through April 1, 2008, ''Securitization List'' means:

Name and exemption	Issuance type	BofA role
Banc of America Comm. Mtge. 2001–PB1, 93–31	C	U, S, SC, SER.
Banc of America Comm. Mtge. 2004–2, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2004–4, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2004–6, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2005–2, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2005–3, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2005–5, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2005–6, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2006–2, 93–31	C	U, S, SER.
Banc of America Comm. Mtge. 2006–5, 93–31	C	U, S, SER.

Name and exemption	Issuance type	BofA role
Banc of America Comm. Mtge. 2007–1, 93–31	C	U, S, SER.
Banc of America Large Loan 2006–BIX1, 93–31	C	U, S, SER.
Banc of America Large Loan 2004–BBA4, 93–31	C	U, S, SER.
Banc of America Large Loan 2005–BBA6, 93–31	C	U, S.
Bank of America Struct. Notes 2002–X1, 93–31	C	U, S, SC, SER.
Bear Stearns Series 2004–BBA3, 93–31	C	U, S, SER.
Bear Stearns Series 2007–BBA8, 93–31	C	U, S, SER.
Citigroup Commercial Mtg. 2006–FL2, 89–89 (Citigroup Global)	C	S, SER.
COMM Series 2006–FL12, 97–03E (Deutsche Bank)	C	S, SER.
COMM Series 2007–FL14, 97–03E (Deutsche Bank)	C	S, SER.
COMM Series 2001-J2, 93–31	C	U, S, SC, SER.
COMM 2006–C8, 97–03E (Deutsche Bank)	C	U, S, SER.
GE Capital Comm Mtge. Corp. 2002–2, 93–31	C	U, S, SER.
GE Capital Comm Mtge. Corp. 2003–C2, 93–31	C	U, S, SER.
GE Capital Comm Mtge. Corp. 2004–C2, 93–31	C	U, S, SER.
GE Capital Comm Mtge. Corp. 2005–C1, 93–31	C	U, S, SER.
GE Capital Comm Mtge. Corp. 2005–C3, 93–31	C	U, S, SER.
GE Capital Comm Mtge. Corp. 2006–C1, 93–31	C	U, S, SER.
GS Mortgage Sec. 2004–GG2, 89–88 (Goldman, Sachs)	C	S.
Merrill Lynch Series 2004–BPC1, 93–31	C	U, S, SER.
Merrill Lynch Series 2005–MKB2, 93–31	C	U, S, SER.
Mortgage Cap. Funding 1996–MC2, 93–31	C	U, S.
Mortgage Cap. Funding 1997–MC2, 93–31	C	U, S.
NationsLink Funding Corp. 1999–LTL–1, 93–31	C	U, S, SER.
NationsLink Funding Corp. 1999–SL, 93–31	C	U, S, SER.
Asset Backed Funding Corp. 2002–SB1, 93–31	R	U, S.
C–BASS 2007–CBS, 93–31	R	U, S.

Legend: C = Commercial mortgage-backed securitizations.
R = Residential mortgage-backed securitizations.
U = Underwriter.
S = Sponsor.
SC = Swap Counterparty.
SER = Servicer.

The availability of this amendment, if granted, is subject to the express condition that the material facts and representations contained in the Application are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the Application change, the amendment will cease to apply as of the date of such change. In the event of any such change, an application for a new amendment must be made to the Department.

Signed at Washington, DC this 7th day of March, 2008.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–4980 Filed 3–12–08; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions; 2008–03, 2008–04, and 2008–05 Grant of Individual Exemptions Involving; D–11343, Wellington Management Company, LLP (Wellington Management), PTE 2008–03; D–11389, GE Asset Management Incorporated, PTE 2008–04; and D–11421, Toeruna Widge IRA (the IRA), PTE 2008–05

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the

Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Wellington Management Company, LLP (Wellington Management) and Its Subsidiaries (together, Wellington) Located in Boston, MA

[Prohibited Transaction Exemption 2008–03; Exemption Application No. D–11343]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) and (D) of the Act (or ERISA) and the sanctions resulting from the application of section 4975(c)(1)(A) and (D) of the Code,[1] shall not apply (1) retroactively, from January 1, 2001 through December 31, 2003, and (2) prospectively, from the date the notice granting the final exemption is published in the **Federal Register**, to—

(A) The acquisition, from an offshore corporation (the Offshore Corporation) of certain non-voting equity securities (Shares), which represents interests in the economic value of the Offshore Corporation, by an ERISA-covered client plan (the Client Plan), where the Offshore is a party in interest with respect to the Client Plan, due to the ownership of all of the voting equity shares (Manager Shares) of the Offshore Corporation by Wellington Global Administrator, Ltd. (Wellington Global Administrator), a subsidiary of Wellington Management, which is (or may become) a fiduciary and a service provider with respect to the Client Plan; and

(B) The redemption of the Client Plan's Shares by the Offshore Corporation either in cash or in kind.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions, which apply both retroactively and prospectively, unless otherwise excepted:

(a) All decisions to acquire or redeem Shares have been made or are made on behalf of the Client Plan by an authorized fiduciary, which is independent of Wellington and the applicable Offshore Corporation.

(b) At the time of acquisition of Shares from an Offshore Corporation, each Client Plan either had or has assets at least equal to $100 million.

(1) In the case of a master trust that holds assets of multiple related Client Plans maintained by a single employer or a controlled group of employers, as defined in section 407(d)(7) of the Act, this requirement is satisfied if the master trust has aggregate assets at least equal to $100 million (assuming the fiduciary responsible for making the investment decision is the Client Plan sponsor or an affiliate of the Client Plan sponsor).

(2) In the case of a pooled fund (e.g., a group trust) whose assets are ''plan assets'' subject to the Act, this requirement is satisfied as long as either (i) the pooled fund has at least $100 million in aggregate assets and the fiduciary making the investment decision is unrelated to Wellington and manages at least $200 million in assets (exclusive of the aggregate assets invested in the Offshore Corporations); or (ii) at least 50 percent of the units of beneficial interest in the pooled fund are held by Client Plans, each of which has total net assets of at least $100 million.

(c) Wellington has not provided and does not provide investment advice (within the meaning of 29 CFR 2510.3–21(c)), nor is it a fiduciary with respect to any Client Plan's investment in an Offshore Fund.

(d) All acquisitions and redemptions of Shares by a Client Plan have been made or are made for fair market value, determined as follows:

(1) Equity securities have been valued or are valued at their last sale price or official closing price on the market on which such securities primarily trade using sources independent of Wellington and the issuer. If no sales occurred on such day, equity securities are valued at the last reported independent ''bid'' price or, if sold short, at the last reported independent ''asked'' price.

(2) Fixed income securities have been valued or are valued on either the basis of ''firm quotes'' obtained at the time of the acquisition or redemption of Shares from U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, which quotes reflect the share volume involved in the transaction, or on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities and various relationships between such securities that are generally recognized by institutional traders.

(3) Options have been valued or are valued at the mean between the current independent ''bid'' price and the current independent ''asked'' price or, where such prices are not available are valued at their fair value in accordance with Fair Value Pricing Practices by Wellington Management's pricing committee, which utilizes a set of defined rules and an independent review process.

(4) If current market quotations are not readily available for any investments, such investments have been valued or will be valued at their fair value by Wellington Management's pricing committee in accordance with Fair Value Pricing Practices.

(e) A Client Plan's Shares have been redeemed or may be redeemed, in whole or in part, without the payment of any redemption fee or other penalty, on a pre-specified, periodic (not longer than semi-annual) basis, upon no more than 45 days' advance notice, except for a one-year lock-up period imposed on new investors.

(f) Redemptions of Shares in an Offshore Corporation by a Client Plan have been made or are made in cash unless:

(1) A Client Plan consents to such in kind redemption; or

(2) Wellington requires that such redemption be made in kind on a pro rata basis to protect the best interests of the Offshore Fund and the remaining investors, including other Client Plan investors.

(g) In advance of the initial investment by a Client Plan in an Offshore Corporation's Shares, the independent fiduciary of a Client Plan has received or receives—

(1) A copy of the proposed exemption and the final exemption, following the publication of these documents in the **Federal Register**. (This disclosure provision applies to the prospective exemptive relief described herein.)

(2) An offering memorandum describing the relevant Offshore Fund(s), as well as the relevant investment objectives, fees and expenses and redemption and valuation procedures; and

(3) All reasonably available relevant information as such independent fiduciary may request.

(h) On an ongoing basis, Wellington has provided or provides a Client Plan with the following information:

(1) Unaudited performance reports at the end of each month;

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(2) Audited annual financial statements and access to a protected internet site; and

(3) Client services group assistance for any investor inquiries.

(i) No commission or sales charge has been assessed or is assessed against the Client Plan in connection with its acquisition of an Offshore Corporation's Shares.

(j) Not more than 10% of the assets of the Client Plan has been invested or is invested, in the aggregate, in Shares of all Offshore Corporations (determined at the time of any acquisition of such Shares) and not more than 5% of the assets of the Client Plan has been indirectly invested or is invested, in the aggregate, in any one offshore fund (the Offshore Fund), a separate collective investment vehicle underlying an Offshore Corporation, (also determined at the time of any acquisition of an interest in such Offshore Fund by such Client Plan).

(k) For prospective transactions only (and following the publication of the proposed exemption and the final exemption in the **Federal Register**), each Offshore Corporation, each Offshore Fund, Wellington Management Investment, Inc., Wellington Global Holdings, Ltd., Wellington Hedge Management, LLC, and Wellington Global Administrator—

(1) Has agreed to submit to the jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts;

(2) Has agreed to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Has consented to service of process on the Process Agent; and

(4) Has agreed that any enforcement by a Plan of its rights pursuant to this exemption will, at the option of the Plan, occur exclusively in the United States courts.

(l) For prospective transactions only (and following the publication of the proposed exemption and the final exemption in the **Federal Register**), Wellington maintains in the United States for a period of six years from the date of the covered transactions, such records as are necessary to enable the persons described in paragraph (m) of this section II to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in paragraph (m) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of Wellington, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest other than Wellington shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) of this section II and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (l) of this section II are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(ii) Any fiduciary of a Client Plan; or

(iii) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (m)(1)(ii) and (iii) of this Section II shall be authorized to examine trade secrets of Wellington, or any commercial or financial information, which is privileged or confidential.

Section III. Definitions

(a) The term ''Wellington'' means Wellington Management Company, LLP and its subsidiaries.

(b) An ''affiliate'' of Wellington means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Offshore Corporation'' means —

(1) WMIB;

(2) Any future expansion of WMIB that includes an additional class of securities or an additional Offshore Fund that is organized as a Bermuda limited partnership, which corresponds to the new WMIB class that is established by Wellington pursuant to the WMIB structure, and conforms to the same conditions, rules and regulations described in this exemption;

(3) Archipelago; or

(4) Any future ''fund of funds'' investment vehicle that is formed by Wellington under Bermuda law and is set up in substantially the same manner as Archipelago, with the same management structure, and conforms to the same conditions, rules and regulations described in this exemption.

(e) The term ''Offshore Fund'' means a collective investment vehicle that is organized as a Bermuda limited partnership, which corresponds to each class of WMIB securities. Each Offshore Fund invests primarily in publicly-traded securities, although up to 15% of each Offshore Fund may be invested in securities that are not readily marketable.

(f) The term ''U.S. broker-dealer'' means a broker-dealer registered in the United States under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the 1934 Act).

(g) The term ''foreign broker-dealer'' means a broker that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of not less than $200 million and is registered and regulated, under the relevant securities laws of a governmental entity of a country other than the United States, where such regulation and oversight by the governmental entities is comparable to regulatory regimes within the United States.

(h) ''Manager Shares'' refer to the equity securities of an Offshore Corporation that have voting rights and control the election of the Board of Directors of an Offshore Corporation. Manager Shares do not participate in the economic performance of the Offshore Corporation and are owned 100% by Wellington Global Administrator.

(i) ''Shares'' refer to the equity securities of an Offshore Corporation that do not have voting rights. Such shares represent substantially all of the economic value of the Offshore Corporation and are or will be directly linked either (i) by class to a corresponding Offshore Fund (in the case of WMIB) or (ii) to a mix of various WMIB classes (in the case of Archipelago or any other fund of funds entity).

Effective Date: This exemption is effective retroactively for the transactions involving Wellington and

two Client Plans that occurred from January 1, 2001 until December 31, 2003. For prospective transactions involving Wellington and a Client Plan, this exemption is effective on the date the notice granting the final exemption is published in the **Federal Register**.

Written Comments

The Department invited all interested persons to submit written comments with respect to the notice of proposed exemption (the Notice) within 45 days of the date of the publication of such notice in the **Federal Register** on October 26, 2007. All comments were due by December 10, 2007.

During the comment period, the Department received one written comment concerning the Notice. The comment was submitted by Wellington and it requests certain modifications or clarifications to the Notice in the areas discussed below.

1. *Footnote 3.* In Footnote 3 of the Summary of Representations, the last sentence states that, ''[b]ecause these two WMIB classes are not Offshore Funds, as defined in this proposed exemption, no plans will be permitted to invest in these WMIB classes.'' Wellington represents that this statement is overly-broad in that ERISA-covered plans can invest in these classes as long as such investment does not constitute a prohibited transaction either because the Offshore Fund is not a party in interest or because there is an alternative exemption available. Accordingly, Wellington requests that the last sentence in Footnote 3 be limited to situations in which the investment is made ''pursuant to this exemption.'' In addition, Wellington requests that the Department clarify by adding the words ''pursuant to this exemption'' to such footnote so that the sentence will only apply when this exemption is being utilized.

In response to this comment, the Department has noted Wellington's clarification to Footnote 3 of the Summary of Facts and Representations.

2. *Representation 5.* Representation 5 of the Summary of Facts and Representations contains a detailed discussion of the fact that the Offshore Corporations are not ''highly leveraged'' relative to the universe of hedge funds. Although Wellington agrees with this factual statement, as a general matter, Wellington states that certain of the details included in Representation 5 and accompanying Footnote 6 are not entirely accurate because they are based on historical facts rather than future events. For example, Wellington explains that Footnote 6 states that the long exposure number for the WMIB and Archipelago class funds ''never exceeds 150%.'' While this statement was historically true at the time Wellington submitted the information, it was intended to be factual evidence supporting the general proposition that these funds are not highly leveraged, not a representation that this percentage would never exceed 150%. Accordingly, Wellington states that the details of Representation 6 are intended to reflect the specific historical information submitted by Wellington and are subject to change over time as long as the Offshore Corporations remain not highly leveraged on a relative basis. Also, on a related point, to be consistent with its submissions, Wellington indicates that the word ''generally'' should be inserted immediately before the word ''subject'' in the third line, and immediately before the word ''limited'' in the eighth line, of the second paragraph of Representation 5.

In response to this comment, the Department acknowledges Wellington's clarifications to Representation 5 of the Summary of Facts and Representations.

3. *Representation 6.* The last sentence of the first paragraph of Representation 6 of the Summary of Facts and Representations states that no Client Plans are currently invested in Shares. Wellington represents that this statement is not entirely accurate because a Client Plan may have acquired shares in reliance on PTE 96–23 (61 FR 15975, April 10, 1996), the class exemption for In-House Asset Managers or another exemption. In any event, Wellington explains that this statement is not material. Accordingly, Wellington requests that the words ''but not by any Client Plans'' be deleted from Representation 6.

In response to this comment, the Department notes this clarification to Representation 6 of the Summary of Facts and Representations.

4. *Representation 8.* The last sentence of Representation 8 of the Summary of Facts and Representations states that various offshore Wellington affiliates will consent to the jurisdiction of certain U.S. courts and appoint Wellington as their agent for service of process. Wellington wishes to clarify that this will occur when a Client Plan invests in an Offshore Corporation pursuant to this exemption.

In response to this comment, the Department notes Wellington's clarification to Representation 8 of the Summary of Facts and Representations.

5. *Representation 11.* In the Summary of Facts and Representations, the fourth sentence of the first paragraph of Representation 11 (and a similar reference in the third parargraph of this representation) states that Wellington Global Administrator provides services to Client Plans. Wellington points out that this entity provides services to the Offshore Funds and the Offshore Corporations, which are not plan asset vehicles. Accordingly, Wellington explains that Wellington Management would not be considered a party in the interest by reason of its ownership of Wellington Global Administrator. However, Wellington explains that Wellington Management is (or may become) a party in the interest with respect to the Client Plans by reason of its being a service provider to such plans. In this regard, Wellington states that Wellington Global Administrator would be a party in interest because it is a corporation that is more than fifty percent owned by Wellington Management, itself a fiduciary and service provider.

In response to this comment, the Department acknowledges Wellington's modification to Representation 11 of the Summary of Facts and Representations.

6. *Representation 13.* The last sentence of Representation 13 of the Summary of Facts and Representations, states that no more than five percent of the securities that are not readily marketable will be subject to Wellington's fair value pricing practices. Wellington explains that this statement is incorrect in several respects. First, Wellington indicates in its submission that not more than five percent of the aggregate securities held by the Offshore Fund had been subject to its fair value pricing practices. Second, Wellington explains that this statement had been submitted as a historical fact rather than a representation as to future events. Wellington further explains that the first paragraph of Representation 2 of the Summary of Facts and Representations correctly states that not more than 15% of the assets of any Offshore Fund may be invested in securities that are not readily marketable.

In response to this comment, the Department notes Wellington's clarification to Representation 13 of the Summary of Facts and Representations.

Accordingly, after giving full consideration to the entire record, including the comment, the Department has determined to grant the exemption as modified or clarified above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11343) the Department is maintaining in this case. The complete application file, as well as the comment and all supplemental

submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on October 26, 2007 at 72 FR 60891.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

GE Asset Management Incorporated Located in Stamford, Connecticut

[Prohibited Transaction Exemption 2008–04; Exemption Application No. D–11389]

Exemption

Section I—Exemption for In-Kind Redemption of Assets

The restrictions in sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply,[2] effective March 1, 2006, to certain in-kind redemptions (the Redemption(s)), by plans sponsored by the General Electric Company (GE) or an affiliate (the Plan(s)), of shares (the Shares) of certain proprietary mutual funds for which GE Asset Management Incorporated (GEAM) provides investment advisory and other services (the Mutual Fund(s)), provided that the following conditions are satisfied:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than GEAM and any affiliates thereof (GEAM Affiliates));

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities, as such term is defined in section II, below;

(C) With certain exceptions described below, the Plan receives in any Redemption its pro rata portion of the securities that, when added to the cash received, is equal in value to the number of Shares redeemed, as determined in a single valuation performed in the same manner and as of 4 p.m. (local time for the New York Stock Exchange) on the same day, in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (the 1940 Act), and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates). Notwithstanding the foregoing, Transferable Securities that are odd lot securities, fractional shares, and accruals on such securities may be distributed in cash;

(D) Neither GEAM, nor any affiliate thereof, receives any direct or indirect compensation, or any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, GEAM provides in writing to an independent fiduciary, as such term is defined in section II (Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to GEAM, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan;

(G) Before authorizing a Redemption, based on the disclosures provided by GEAM to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the Plan, and comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interests of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the Mutual Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The total number of Shares of the Mutual Fund and the percentage held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held);

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates);

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share, when added to the cash received, equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, within 180 days of the date of such Redemption, the Independent Fiduciary performs a post-transaction review that will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with the Mutual Funds, the investment advisers to the Mutual Funds, the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) GEAM will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) this record-keeping condition shall not be violated if, due to circumstances beyond the control of GEAM, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than GEAM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (M) below;

(M) (1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of GEAM or the Mutual Funds, or commercial or financial information that is privileged or confidential; and

(3) Should GEAM or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, GEAM shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(A) The term ''affiliate'' means:

(1) Any person (including a corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) Independent of and unrelated to GEAM and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to, or for the benefit of, the Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to GEAM if: (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with GEAM, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption (except that an independent fiduciary may receive compensation from GEAM in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (iii) an amount equal to more than two percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid to such fiduciary by GEAM and its affiliates in such fiduciary's current tax year.

(E) The term ''Transferable Securities'' means securities that are traded on public securities markets or for which quoted bid and asked prices are available from persons independent of GEAM and would not include the following types of securities or assets: (a) Securities that would have to be registered under the Securities Act of 1933, as amended; (b) securities issued by entities in countries that restrict the holdings of securities by non-nationals, including investment vehicles such as the Mutual Funds, or otherwise limit the ability to transfer the security other than through a local securities exchange transaction; and (c) certain portfolio assets (such as forward currency contracts, futures and option contracts, swap transactions, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or may be traded only with the counterparty to the transactions in order to effect a change in beneficial ownership.

(F) The term ''relative'' means a ''relative'' as such term is defined in section 3(15) of the Act (or a ''member of the family,'' as such term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Effective Date: This exemption is effective as of March 1, 2006.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 26, 2007 at 72 FR 60899.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Toeruna Widge IRA (the IRA)

Located in Mertztown, Pennsylvania

Prohibited Transaction Exemption 2008–05; Exemption Application No. D–11421

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of approximately 59.99 acres of unimproved real property located at Fredericksville Road and Sweitzer Road, Rockland Township, Berks County, Pennsylvania (the Property) by the IRA to Dr. Toeruna Widge (the Applicant), a disqualified person with respect to the IRA,[3] provided that the following conditions are satisfied:

(A) All terms and conditions of the Sale are at least as favorable to the IRA as those which the IRA could obtain in an arm's-length transaction with an unrelated party;

(B) The Sales price will be the greater of $390,000 or the fair market value of the Property as of the date of the Sale;

(C) The fair market value of the Property has been determined by a qualified, independent appraiser;

(D) The Sale is a one-time transaction for cash; and

(E) The IRA will not pay any commissions, costs or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to notice of proposed exemption published on January 17, 2008 at 73 FR 3281.

FOR FURTHER INFORMATION CONTACT: Anh-Viet Ly of the Department, telephone (202) 693–8648 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

[3] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 7th day of March 2008.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–4982 Filed 3–12–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11416, et al.]

Proposed Exemption Involving; Wholesale Electronic Supply Employees Profit Sharing Plan and Trust

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No._____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or Fax. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by fax to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in an application filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Wholesale Electronic Supply Employees Profit Sharing Plan and Trust (the Plan) Located in Dallas, TX

[Application No. D–11416]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (c)(1)(D) through (E) of the Code, shall not apply to the sale of a note (the Note) by the Plan to Levco Enterprises, Inc., a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Plan receives $45,750.00, the outstanding principal balance of the Note;

(c) The sale is a one-time transaction for cash; and

(d) The Plan pays no commissions, costs, nor other expenses in connection with the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan. As of June 30, 2006, the Plan had 21 participants and beneficiaries. As of the same date, the Plan had total assets of $426,213, which are held by Merrill Lynch. Resolutions approving and authorizing the complete freeze and termination of the Plan, effective February 21, 2007, were adopted by the Board of Directors of Wholesale Electronic Supply, Inc., the Plan sponsor. In connection with the termination of the Plan, an application has been filed with the Internal Revenue Service (the Service) for a favorable determination regarding the Plan's status as a qualified plan under section 401(a) of the Code. Only after the Plan obtains such a determination from the Service and the requested exemption from the Department with respect to the Note is granted will the Plan's trust be liquidated and all account balances distributed.

2. On February 24, 1987, the Plan sold a 6,315 sq. ft. tract of unimproved land

in Dallas (the Flora Street Property), Texas to Savoy Properties Co. (Savoy), an unrelated third party, in exchange for (i) a 5,400 sq. ft. tract of unimproved land in Dallas, Texas, and (ii) the Note, secured by the Deed of Trust for the sold property.[1] The Note bears no interest and is due and payable upon the earlier of (a) the commencement of the development of the Flora Street Property, or (b) the sale of the Flora Street Property by Savoy. The full face amount of the Note remains outstanding and represents approximately 11 percent of the Plan's assets. The trustee of the Plan, John N. Leedom, proposes the sale of the Note to Levco Enterprises, Inc. (Levco); the Plan sponsor owns 86% of the total value of shares of all classes of stock of Levco, and both are located in Dallas, Texas. Mr. Leedom is also the CEO of both the Plan sponsor and of Levco.

The applicant represents that, prior to the 1987 exchange, the Savoy 5,400 sq. ft. tract was between two other tracts already owned by the Plan, and the Plan owned a third separate 6,315 sq. ft. tract in the vicinity. In order to enhance the value of the first two tracts by joining them together as one contiguous property, the Plan trustee approached Savoy about acquiring its 5,400 sq. ft. tract. Because the transaction was sought by the Plan and because the Savoy tract had special value to the Plan, Savoy was not a motivated seller and was reluctant to pay an additional amount of cash in the exchange of its property for the larger tract owned by the Plan. The Plan trustee, however, determined that it was in the best interests of the Plan to acquire the Savoy tract and agreed to the exchange, plus the receipt of additional consideration in the form of the Note. According to the applicant, the adjacency premium commanded by the Savoy tract was due to the Plan's subsequent assemblage of a larger, contiguous piece of property whose increase in value exceeded any risk associated with holding the non-interest-bearing Note. According to the applicant, this consolidated property was the sole real estate asset held by the Plan and was sold in 2005 to an unrelated third party.

3. The Note was appraised by a qualified, independent appraiser Stephen M. LaGrasta, MAI, with Yates-LaGrasta, Inc., located in Houston, Texas. It is represented that Yates-LaGrasta, Inc. regularly performs appraisals for institutional clients, including banks, regulatory agencies, insurance companies, trusts, and state and federal courts. Using a discounting process, Mr. LaGrasta opined that the fair market value for the real estate lien Note was $5,623, as of February 20, 2007. The principal balance outstanding under the Note is $45,750.00.

4. Levco will pay a purchase price of $45,750.00 for the Note. The sale of the Note to Levco will be a one-time transaction for cash and will provide the liquidity necessary to make final distributions to the Plan's participants and beneficiaries. Levco is bearing the costs of the exemption application and of notifying interested persons.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The terms and conditions of the sale will be at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Plan will receive $45,750.00, the outstanding principal balance of the Note;

(c) The sale will be a one-time transaction for cash; and

(d) The Plan will pay no commissions, costs, nor other expenses in connection with the sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons by first-class mail within 10 days of the publication of this notice in the **Federal Register**. Notice to interested persons shall include a copy of this published **Federal Register** notice and inform them of their right to comment. Comments with respect to the proposed exemption are due within 40 days of the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of March, 2008.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–4981 Filed 3–12–08; 8:45 am]

BILLING CODE 4510–29–P

[1] The Department expresses no opinion herein as to whether the acquisition and holding of the Note by the Plan as part of the consideration in the 1987 exchange violated any of the provisions of Part 4 of Title I in the Act.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (08–021)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction

Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The LIST System form is used primarily to support services at GSFC dependent upon accurate locator type information. The Personal Identifiable Information (PII) is maintained, protected, and used for mandatory security functions. The system also serves as a tool for performing short and long-term institutional planning.

II. Method of Collection

Approximately 46% of the data is collected electronically by means of the data entry screen that duplicates the Goddard Space Flight Center form GSFC 24–27 in the LISTS system. The remaining data is keyed into the system from hardcopy version of form GSFC 24–27.

III. Data

Title: Locator and Information Services Tracking System (LISTS) Form.

OMB Number: 2700–0064.

Type of review: Extension of currently approved collection.

Affected Public: Federal government, individuals or households, and business or other for-profit.

Responses Per Respondent: 1.

Annual Responses: 8,455.

Hours Per Request: 0.08 hours/5 minutes.

Annual Burden Hours: 702.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Associate CIO for Policy and Investments (Acting), Office of the CIO.

[FR Doc. E8–4991 Filed 3–12–08; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–017]

Dominion Nuclear Power, LLC; North Anna Power Station Combined License Application; Notice of Intent To Prepare an Environmental; Impact Statement and Conduct Scoping Process

Dominion Nuclear Power, LLC (Dominion), has submitted an application for a combined license (COL) for its North Anna Power Station (NAPS or North Anna) site to build Unit 3, located in Louisa County, Virginia, approximately 40 miles north northwest of Richmond. The application for the COL was submitted by letter dated November 26, 2007, pursuant to the requirements of Title 10, Part 52. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on December 12, 2007 (72 FR 70616). A notice of acceptance for docketing of the application for the COL was published in the **Federal Register** on February 4, 2008 (73 FR 6528). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the COL application and to provide the public an opportunity to participate in the environmental scoping process, as described in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with The National Environmental Policy Act'' the NRC staff intends to use the process and documentation required for the preparation of an EIS to the comply with section 106 of the National Historic Preservation Act, in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 10 CFR 51.50, Dominion submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at: *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for the ER is ML073321238. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209 or 301–415–4737, or by sending an e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at: *http://www.nrc.gov/reactors/new-licensing/col/north-anna.html*. In addition, the Jefferson-Madison Regional Library in Mineral, Virginia; Hanover Branch Library in Hanover, Virginia; Orange County Library in Orange, Virginia; Salem Church Library in Fredericksburg, Virginia; and C. Melvin Snow Memorial Branch Library in Spotsylvania, Virginia have agreed to make the ER available for public inspection.

The following key reference documents related to the COL application and the NRC staff's review process are available through the NRC's Web site at: *http://www.nrc.gov:*

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants,

c. 10 CFR Part 100, Reactor Site Criteria,

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants,

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process,

f. Fact Sheet on Nuclear Power Plant Licensing Process,

g. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations,

h. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants, and

i. NRR Office Instruction LIC–203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues.

The regulations, NUREG-series documents, regulatory guides, and fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC Web page. Finally, Office Instruction LIC–203 can be found in ADAMS in two parts under accession numbers ML011710073 (main text) and ML011780314 (charts and figures).

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS in support of the review of the application for the COL at the North Anna COL site. Possible alternatives to the proposed action (issuance of the COL at the NAPS COL site) include no action and consideration of alternative sites.

The NRC is required by 10 CFR 51.20(b)(2) to prepare an EIS in connection with the issuance of a COL. This notice is being published in accordance with the National Environmental Policy Act of 1969 (NEPA) and NRC regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the EIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Dominion;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold a public scoping meeting for the EIS regarding the North Anna COL application on Wednesday, April 16, 2008, at the Louisa County High School, 757 Davis Highway, Mineral, Virginia.

The meeting will convene at 7 p.m. and will continue until approximately 10 p.m. The meeting will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, the proposed review schedule, and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host an informal discussion one hour before the start of the meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussion open house. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Ms. Alicia Williamson or Ms. Laura Quinn at 1–800–368–5642, extension 1878 or 2220, respectively. In addition, persons can register via e-mail to the NRC at: *NORTHANNA.COLAEIS@nrc.gov*, no later than April 10, 2008.

Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. Ms. Williamson or Ms. Quinn will need to be contacted no later than April 7, 2008, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the North Anna COL environmental review to the Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m., during Federal workdays. To be considered in the scoping process, comments should be received by the end of the scoping comment period, which is May 16, 2008. Written comments should be postmarked by date May 16, 2008. Electronic comments may be sent via the Internet to the NRC at *NORTHANNA.COLAEIS@nrc.gov*.

Submissions should be sent no later than May 16, 2008, to be considered in the scoping process. Comments will be available in the meeting summary report electronically and accessible through the NRC's ERR link at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing regarding the application for a COL will be the subject of a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the NRC's ERR link. The staff will then prepare and issue for comment the draft EIS, which will be the subject of separate **Federal Register** notices and a separate public meeting. A copy of the draft EIS will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC staff will prepare a

final EIS, (which will also be available for public inspection). Information about the proposed EIS and the scoping process may be obtained from Ms. Alicia Williamson, Environmental Project Manager, 301–415–1878.

Dated at Rockville, Maryland, this 7th day of March 2008.

For the Nuclear Regulatory Commission.

James E. Lyons,

Division Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E8–5009 Filed 3–12–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

FY 2007 Pilot Program for Alternative Approaches to Performance and Accountability Reporting Open Forum

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of date change for open forum.

SUMMARY: The open forum on the FY 2007 Performance and Accountability Report (PAR) pilot previously scheduled for April 14, 2008 will now be held at the National Academy of Public Administration (NAPA) on April 10, 2008 from 10 a.m. to 1 p.m. Those interested in participating should respond to the questions listed below by Email to either Regina Kearney at *rkearney@omb.eop.gov,* or Pat Harris at *pharris@omb.eop.gov* by close of business March 28, 2008.

- Do the PAR pilot component documents (Annual Financial Report, Annual Performance Report, and Highlights):
  - ○ Provide an enhanced presentation of the financial and performance information in a more transparent way (i.e. information is presented in a manner that is user friendly and easy enough for a novice reader to understand)?
  - ○ Report financial and performance information more meaningful (i.e. financial and performance data is reliable, relevant, and include measurable results linked to strategic goals)?
  - ○ Tailor financial and performance information to meet stakeholder needs?
  - ○ Report performance and financial results candidly and clearly articulate remedies to performance or financial shortfalls?
- Are the PAR pilot component documents easily accessible via the web and are they easy to use?
- Did the development of the PAR pilot component documents:
  - ○ Improve internal and external communications?
  - ○ Increase/decrease the burden on preparers?
- What are individuals' recommendations for improving performance and financial reporting?

For additional background information regarding the open forum and the PAR pilot, please see OMB's pilot notice of January 30, 2008 (73 FR 5600).

DATES: April 10, 2008 from 10 a.m. to 1 p.m.

ADDRESSES: The forum will be held in the National Academy of Public Administration (NAPA) building located at 900 7th Street, NW., Suite 600, Washington, DC 20001.

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the forum date. Electronic mail comments may be submitted to: *rkearney@omb.eop.gov* or *pharris@omb.eop.gov.* Please include ''PAR Pilot Open Forum'' in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted by mail at 725 17th St., NW., Room 6025, Washington, DC 20503. Please advise also if you will require any special accommodations in order to participate in the forum.

FOR FURTHER INFORMATION CONTACT: Regina Kearney, OMB Office of Federal Financial Management, 202–395–3993 or e-mail: *rkearney@omb.eop.gov.* Pat Harris OMB, Office of Performance and Personnel Management, at 202–395–5018 or *pharris@omb.eop.gov.*

Dustin Brown,

Deputy Assistant Director for Management.

[FR Doc. 08–1019 Filed 3–12–08; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57451; File No. SR–Amex–2007–131]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Index Multiple Fund Shares and Index Inverse Fund Shares

March 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2007, the American Stock Exchange LLC (''Amex'' 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. On February 29, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to revise Rule 1000A–AEMI and add new Commentary .01 to Rule 1002A to include generic listing standards for series of Index Multiple Exchange Traded Fund Shares (''Multiple Fund Shares'') and Index Inverse Exchange Traded Fund Shares (''Inverse Fund Shares'') (collectively, the ''Fund Shares'').

The text of the rule proposal is available at Amex, the Commission's Public Reference Room, and *http://www.amex.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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of ''Index Fund Share'' set forth in Amex Rule 1000A–AEMI(b)(2) for the purpose of properly reflecting the fact that domestic equity, international or global equity, or fixed income securities indexes or a combination thereof may be used as the underlying performance benchmark for Multiple Fund Shares and Inverse Fund Shares. In addition, the Exchange proposes to revise Commentaries .02, .03 and .04 to Amex Rule 1000A–AEMI and add new Commentary .01 to Amex Rule 1002A to permit the listing and trading of Multiple Fund Shares and certain Inverse Fund Shares pursuant to the Exchange's generic listing standards for Index Fund Shares (''IFSs'').[3] Specifically, the investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, by a specified multiple (Multiple Fund Shares) or inversely up to −200% (Inverse Fund Shares) of the underlying performance benchmark domestic equity, international or global equity and/or fixed income indexes, as applicable.

Background

Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign, domestic or fixed income securities index. Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign, domestic or fixed income securities index by a specified multiple. Multiple Fund Shares and Index Fund Shares differ from traditional exchange-traded fund (''ETF'') shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance. Current Multiple Fund Shares trading on the Exchange include the ProShares Ultra Funds and Rydex Leveraged Funds while the Inverse Fund Shares include the ProShares Short Funds, ProShares UltraShort Funds, Rydex Inverse Funds and Rydex Leveraged Inverse Funds.[4]

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Multiple Fund Shares or Inverse Fund Shares may hold a combination of financial instruments, including, but not limited to: stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the ''Financial Instruments''). Normally, 100% of the value of the underlying portfolios for the Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the ''Money Market Instruments''). The underlying portfolios for Multiple Fund Shares may consist of a combination of securities, Financial Instruments and Money Market Instruments.

Generic Listing Standards

Amex Rules 1000A–AEMI and Rules 1001A through 1005A provide standards for listing IFSs which are securities issued by an open-end management investment company (open-end mutual fund) based on a portfolio of securities that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic securities index or fixed income index. Pursuant to Amex Rule 1000A–AEMI and Amex Rules 1001A through 1005A, IFSs 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, IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined NAV. Consistent with Amex Rule 1002A, the NAV is calculated once a day after the close of the regular trading day.

Recent amendments adopting Amex Rule 1000A–AEMI(b)(2) contemplate the listing and trading of Multiple Fund Shares and Inverse Fund Shares, subject to Commission approval.[5] The proposed revisions to Commentaries .02, .03 and .04 to Amex Rule 1000A–AEMI would allow the listing and trading of Multiple Fund Shares and Inverse Fund Shares that sought to provide investment results, before fees and expenses, in an amount not exceeding −200% of the underlying benchmark index pursuant to Rule 19b–4(e) under the Act,[6] where the other applicable generic listing standards for IFSs are satisfied. In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[7] In particular, Amex Rule 1000A–AEMI(b)(2)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds –200% of the underlying benchmark index, from being approved by the Exchange for listing and trading

[3] Accordingly, this proposal will enable the Exchange to list and trade Multiple Fund Shares and Inverse Fund Shares pursuant to Rule 19b–4(e) of the Act, 17 CFR 240.19b–4(e), if each of the conditions set forth in Commentaries .02, .03, .04 and .05 to Amex Rule 1000A–AEMI, as applicable, are satisfied. *See* Commentaries .02(a)(A) to Amex Rule 1000A–AEMI (Domestic Equity); .02(a)(B) to Amex Rule 1000A–AEMI (International Equity); .02(a)(C) to Amex Rule 1000A–AEMI (Prior Approved Indexes); .03 to Amex Rule 1000A–AEMI (Fixed Income); and .04 to Amex Rule 1000A–AEMI (Combination Indexes of Domestic Equity, International Equity and/or Fixed Income).

[4] *See* Securities Exchange Act Release Nos. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR–Amex–2007–74) (approving the listing and trading of Rydex Leveraged Funds, Inverse Funds and Leveraged Inverse Funds); 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of the ProShares Ultra Funds and Short Funds); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of the ProShares UltraShort Funds); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of Ultra, Short and UltraShort Funds based on various indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on various international indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR–Amex–2007–104) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on several fixed income indexes, among others). The ProShares Ultra Funds and Rydex Leveraged Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The ProShares Short Funds and Rydex Inverse Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of an underlying benchmark index. Lastly, the ProShares UltraShort Funds and Rydex Leveraged Inverse Funds are expected to achieve investment results, before fees and expenses that correspond to twice the inverse or opposite of the daily performance (−200%) of the underlying benchmark index.

[5] Commentaries .02, .03 and .04 to Amex Rule 1000A–AEMI, as applicable, specifically require the Exchange to obtain Commission approval to list and trade Multiple Funds and Inverse Funds based on domestic equity, international or global equity and fixed income securities indexes.

[6] 17 CFR 240.19b–4(e).

[7] 15 U.S.C. 78s(b)(2).

pursuant to Rule 19b–4(e) under the Act.[8]

Current Amex Rule 1000A–AEMI(b)(2)(i), in pertinent part, defines the term ''Index Fund Share'' as based on a specified *foreign or domestic stock index*. In conjunction with the current proposal, the Exchange proposes to amend this definition to include domestic equity, international or global equity, or fixed income securities indexes and combinations thereof as permissible underlying performance benchmarks. The Exchange states that the proposed revision is consistent with Commentary .04 to Amex Rule 1000A–AEMI reflecting the fact that domestic equity, international or global equity, or fixed income securities indexes or a combination thereof may be used as the underlying performance benchmark for IFSs, including Multiple Fund Shares and Inverse Fund Shares.

The Exchange believes that adopting generic listing and trading standards for Multiple Fund Shares and Inverse Fund Shares based on domestic equity, international or global equity and/or fixed income securities indexes and applying Rule 19b–4(e) should fulfill the intended objective of that Rule by allowing those IFSs that satisfy the proposed standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the time frame for bringing Multiple Fund Shares and Inverse Fund Shares to market, thereby reducing the burdens on issuers and other market participants.[9]

The Commission has approved generic standards providing for the listing and trading of derivative products pursuant to Rule 19b–4(e) based on indexes previously approved by the Commission under Section 19(b)(2) of the Act.[10] The Exchange notes that the generic listing standards in Commentaries .02, .03 and .04 to Amex Rule 1000A–AEMI, provide for indexes that have been approved by the Commission in connection with the listing of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities. The Exchange believes that the application of that standard to Multiple Fund Shares and Inverse Fund Shares is appropriate because the underlying securities index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.[11]

The Exchange notes that existing Amex Rule 1002A provides continued listing standards for all IFSs. For example, where the value of the underlying index or portfolio of securities on which the IFS is based is no longer calculated or available, or in the event that the IFS chooses to substitute a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Rule 1000A–AEMI. If an IFS chose to substitute an index that did not meet any of the generic listing standards for listing of IFSs pursuant to Rule 19b–4(e) of the Act,[12] then for continued listing and trading, approval by the Commission of a separate filing pursuant to Section 19(b)(2) of the Act[13] to list and trade that IFS is required. In addition, the Exchange further notes that existing Amex Rule 1002A(a)(ii) provides that, prior to approving an IFS for listing, the Exchange will obtain a representation from the issuer that the NAV per share will be calculated daily and made available to all market participants at the same time.

The Exchange proposes to add new Commentary .01 to Amex Rule 1002A to provide for the halt of trading for Multiple Fund Shares and Inverse Fund Shares if the Exchange becomes aware that the open-end investment company fails to properly disseminate the appropriate NAV to market participants at the same time. In addition, the proposed Commentary would also require a halt to trading if the open-end investment company issuing the Fund Shares failed to provide daily public Web site disclosure of its portfolio holdings. In particular, proposed Commentary .01 to Amex Rule 1002A provides that the Exchange will halt trading in a series of Multiple Fund Shares and/or Inverse Fund Shares if the Exchange becomes aware that the open-end investment company issuing the Fund Shares fails to disseminate the appropriate NAV to all market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings.

Limitation on Leverage

Proposed Commentary .01 to Amex Rule 1002A provides that Multiple Fund Shares and Inverse Fund Shares may be listed pursuant to the generic listing standards set forth in Amex Rule 1000A–AEMI and the related Commentaries with the limitation that for Inverse Fund Shares, the underlying registered management investment company or fund must seek to provide investment results, before fees and expenses, that correspond inversely up to −200% of the percentage performance on given day of a particular domestic equity, international equity or global or fixed income securities indexes or a combination thereof. In connection with Multiple Fund Shares, proposed Commentary .01 to Amex Rule 1002A does not provide a similar limitation on leverage. Instead, the proposal would permit the underlying registered management investment company or fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on given day of a particular domestic equity, international or global equity, or fixed income securities indexes or a combination thereof.

Availability of Information about Fund Shares and Underlying Indexes

Proposed new Commentary .01 to Amex Rule 1002A provides that the portfolio composition of a Fund will be disclosed on a public Web site. Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of a series of Multiple Fund Shares or Inverse Fund Shares will be made daily and will include, as applicable, the identity and number of shares held of each specific equity security, the identity and amount held of each fixed income security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of a Fund. This public Web site disclosure of the portfolio composition of a Fund, that will form the basis for the calculation of the net asset value, will coincide with the disclosure of the ''IIV

[8] 17 CFR 240.19b–4(e).

[9] The Exchange submits that the failure of a particular Multiple Fund Share or Inverse Fund Share portfolio to comply with the proposed generic listing and trading 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 Multiple Fund Share or Inverse Fund Share.

[10] 15 U.S.C. 78s(b)(2). *See* Securities Exchange Act Release Nos. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR–Amex–2005–001) (Index-Linked Securities) and 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR–Amex–2007–45) (Commodity-Linked and Currency-Linked Securities).

[11] *See* Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR–Amex–2006–78) (International Generic Listing Standards); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (SR–Amex–2000–14) (US Generic Listing Standards) and 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR–Amex–2006–118) (Fixed Income Generic Listing Standards).

[12] 17 CFR 240.19b–4(e).

[13] 15 U.S.C. 78s(b)(2).

File'' [14] and the ''PCF File.'' [15] Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File and PCF File provided to ''Authorized Participants.'' [16] The format of the public Web site disclosure and the IIV File and PCF File may differ because the public Web site will list all portfolio holdings that will form the basis for the calculation of the net asset value while the IIV File and PCF File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit. Accordingly, investors will have access to the current portfolio composition of a Fund through the Fund's Web site and/or at the Exchange's Web site at *http://www.amex.com.*

Trading Halts

Existing trading halt requirements for IFSs will apply to Multiple Fund Shares and Inverse Fund Shares. In particular, Amex Rule 1002A(b)(ii) provides if the Intraday Indicative Value or the index value applicable to that series of IFSs is not being disseminated as required, 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 will halt trading no later than the beginning of the trading day following the interruption.[17]

As set forth above, the Exchange is also proposing to adopt Commentary .01 to Amex Rule 1002A to provide additional circumstances for a halt in trading of the Fund Shares. Proposed Commentary .01 to Amex Rule 1002A would require the Exchange to halt trading in a series of Multiple Fund Shares and/or Inverse Fund Shares if the Exchange becomes aware that the open-end investment company issuing the Fund Shares fails to disseminate the NAV to all market participants at the same time. Similarly, the proposed Commentary also provides for the halt of trading in the Fund Shares if the Exchange becomes aware that daily public Web site disclosure of portfolio holdings by the open-end investment company issuing the Fund Shares does not occur. Pursuant to the proposed Commentary, the Exchange may resume trading in the Fund Shares only when the NAV is disseminated to all market participants at the same time or daily public Web site disclosure of portfolio holding is properly resumed, as appropriate.

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Multiple and/or Inverse Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Multiple or Inverse Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the investment adviser will be made by phone, facsimile or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares. Trading in Multiple and/or Inverse Fund Shares will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Fund Shares and highlighting the special risks and characteristics of Multiple and Inverse Funds Shares as well as applicable Exchange rules.

This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act [19] that the rules of an 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the ability to list and trade Multiple and Inverse Fund

[14] Because the NSCC's system for the receipt and dissemination to its participants of the portfolio composition file ''PCF'' is not currently capable of processing information with respect to Financial Instruments, an ''IIV File'' has been developed which is used to disclose a Funds' holdings of Financial Instruments. The IIV File is posted to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange have access to a password and the Web site containing the IIV File.

[15] The portfolio composition file or ''PCF'' for a Fund includes the list of names and the required number of shares of each deposit security as well as any cash information to be included in the next trading day's Creation Unit. The information in the PCF will be available to all participants in the NSCC system.

[16] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC.

[17] If an IFS is traded on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading if the primary listing market halts trading in such IFS because the Intraday Indicative Value and/or the index value is not being disseminated. *See* Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR–Amex–2006–109).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

Shares pursuant to the existing generic listing standards applicable to IFSs that do not have a multiple or inverse component would promote and facilitate transactions in these securities, while at the same time protecting investors and the public interest. In addition, the Exchange submits that the proposal further seeks to facilitate transactions in securities by easing unnecessary administrative and regulatory burdens that do not exist for ETFs based on the same underlying indexes or portfolios.

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 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 neither solicited nor received comments on the proposal.

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 Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–131 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Amex–2007–131. 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–Amex–2007–131 and should be submitted on or before April 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57447; File No. SR–NASDAQ–2007–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify the Allocation of the Maximum Time an Adjudicatory Body May Grant a Company To Regain Compliance with the Listing Requirements without Modifying the Maximum Time Available Under Nasdaq Rule 4802

March 6, 2008.

I. Introduction

On December 4, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' 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 modify the allocation of the maximum time an adjudicatory body may grant an issuer to regain compliance with the listing requirements. The proposed rule change was published for comment in the **Federal Register** on February 1, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq Rule 4800 Series sets forth the procedures for review of a Nasdaq listing determination. Rule 4802(b) provides that an issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series at any time during the pendency of a proceeding under the Rule 4800 Series and sets forth the time periods that an adjudicatory body may grant an issuer to regain compliance with the listing requirements (''Exception Period'') before they are delisted. Under the current rules, the Listing Qualifications Panel (''Panel'') can grant a maximum Exception Period that is the lesser of 180 days from the date that Nasdaq staff sends a delisting letter (''Staff Determination'') or 90 days from the date of the Panel's decision in the matter. Similarly, the Nasdaq Listing and Hearing Review Council (''Listing Council''), when reviewing a Panel decision, can grant a maximum Exception Period that is the lesser of 180 days from the date of the Panel decision on review or 60 days from the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57214 (January 28, 2008), 73 FR 6228.

date of the Listing Council's decision in the matter. As a result, while the maximum cumulative exception these bodies can grant under these provisions is 360 days from the date of the Staff Determination, Nasdaq notes in its filing that the actual amount of time can vary from issuer to issuer based on how quickly the issuer is scheduled for a hearing and the speed with which the Panel and Listing Council decisions are prepared. The Exchange believes that this variability may create uncertainty for Nasdaq-listed companies and their investors regarding the maximum amount of time available under an exception.

Nasdaq therefore proposes to modify the computation of the maximum Exception Period permitted under Rule 4802(b). The proposed rule change would not, however, increase the maximum time available under the process. The Exchange proposes that the maximum Exception Period that a Panel could provide would be 180 days from the date of the Staff Determination, and the maximum Exception Period that the Listing Council could provide would be 360 days from the date of the Staff Determination. As under the current rules, these adjudicatory bodies would continue to be able to grant an issuer a shorter Exception Period, or no Exception Period at all, based on their analysis of the applicable facts and circumstances.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[4] which requires, among other things, 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 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.[5] The Commission also finds that the proposal is consistent with Section 6(b)(7) of the Act,[6] in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange.

The Commission believes that it is essential for a national securities exchange to have an efficient and fair delisting process for issuers that are not in compliance with Exchange rules and/or the Act. The Commission believes that the proposed rule change has the effect of providing for a maximum Exception Period that is consistent for all issuers and not dependent on the timing of the adjudicatory decision, while at the same time does not extend the overall maximum time allotted for a non-compliant issuer to go through the Nasdaq's current delisting process. Specifically, under the proposal, rather than being dependent on variable events, such as how quickly an issuer is scheduled for a hearing and how promptly the Panel and Listing Counsel issue their decisions, the maximum allowable Exception Period will, in all cases, be based on the date of the Staff Determination.

The Commission recognizes that certain individual issuers that have already gone through the Exchange delisting process might have been granted a longer Exception Period had they gone through the process under the proposed new rules. Nevertheless, the Commission emphasizes that the proposed rules do not in any way increase the maximum time that could potentially be available to issuers under Nasdaq's existing delisting process. Further, the Commission believes the proposed rule change should help to ensure fair application of the rule to all issuers, consistent with Section 6(b)(7) of the Act,[7] and should eliminate some uncertainty for issuers regarding the maximum time that may be available under an Exception Period.

Finally, the Commission notes that the new rules provide that the Panel and Listing Counsel can allow an Exception Period not to exceed 180 days or 360 days from the Staff Determination, respectively. Thus, there may still be variation in the Exception Periods that are granted to issuers, because the Panel and Listing Counsel retain the authority to grant an issuer a shorter Exception Period than the maximum allowable period or no Exception Period at all. In this regard, the Commission expects the Panel and Listing Counsel to only grant an Exception Period to those issuers who are likely to regain compliance within the time frame allotted and notes that there is no particular right under Nasdaq rules for issuers to be allotted any particular Exception Period. The Commission expects Nasdaq to continue to delist issuers, who are not meeting Nasdaq continued listing standards, or complying with Nasdaq rules and/or the Act, in a prompt, efficient and fair manner in furtherance of Sections 6(b)(5) and 6(b)(7) of the Act.[8]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASDAQ–2007–096) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4966 Filed 3–12–08; 8:45 am]

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[4] 15 U.S.C. 78f(b)(5).

[5] 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).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78f(b)(5), 78f(b)(7).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57452; File No. SR–NASDAQ–2008–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Related to Supplemental Market Participant Identifiers

March 7, 2008.

I. Introduction

On January 9, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' 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 make permanent the pilot program that allows market makers and Electronic Communication Networks (''ECNs'') to obtain supplemental market participant identifiers (''MPIDs''). In addition, Nasdaq proposes to remove any restrictions on the number of MPIDs a market participant may request for displaying attributable quotes or orders. The proposed rule change was published for comment in the **Federal Register** on February 1, 2008.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

Nasdaq proposes to make permanent the pilot program incorporated in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57212 (January 28, 2008), 73 FR 6229 (''Notice'').

Nasdaq Rule 4613(a)(2) that allows market makers and ECNs to obtain supplemental MPIDs. The rule has operated as a temporary pilot since it was first adopted in June 2003 and since that time, Nasdaq continued to apply the procedures set forth in the rule and the related interpretive material.[4] In accordance with the pilot program, market makers and ECNs can be issued a maximum of nine supplemental MPIDs. Nasdaq proposes to remove the current restriction that limits the number of supplemental MPIDs that market makers and ECNs can request for displaying attributable quotes or orders. In addition, Nasdaq proposes to remove IM–4613, which sets forth the procedures for allocating supplemental MPIDs.

Nasdaq's proposal will prohibit market makers and ECNs from using a supplemental MPID to violate Exchange or Commission rules.[5] If it is determined that a supplemental MPID is being used improperly, Nasdaq will withdraw its grant of the supplemental MPID for all purposes for all securities. In addition, if a market maker or ECN fails to fulfill the conditions appurtenant to its primary MPID (*e.g.*, by being placed into an unexcused withdrawal), it will not be permitted to use any supplemental MPID for any purpose in that security.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to make permanent the pilot program that allows market makers and ECNs to obtain supplemental MPIDs is consistent with the Act. The proposal should provide market participants with flexibility to organize diverse order flows from customers and to route orders from different trading desks and units within their organizations.

The Exchange also proposes to remove any restrictions on the number of MPIDs a market participant may request for displaying attributable quotes or orders. According to Nasdaq, this restriction was adopted due to technological limitations. The Exchange has represented that this technological limitation no longer exists.[8] In addition, Nasdaq proposes to remove IM–4613, which sets forth the procedures for allocating supplemental MPIDs. This method of allocating supplemental MPIDs was necessary due to the limited number of available MPIDs. The removal of Nasdaq's technological limitation on the number of MPIDs for a given security makes the procedures unnecessary.

The Commission notes that Nasdaq represents that a supplemental MPID would be withdrawn for all purposes and for all securities if it were to be determined that such supplemental MPID was being used improperly.[9] In addition, Nasdaq represents that a market maker or ECN will be prohibited from using any supplemental MPID for any purpose in a security, if it fails to fulfill the conditions appurtenant to its primary MPID for such security.[10] In the Commission's view, these procedures should ensure that market makers and ECNs utilize MPIDs in accordance with Exchange rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASDAQ–2008–004) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4984 Filed 3–12–08; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003). *See also* IM–4613—Procedures for Allocation of Second Displayable MPIDs. According to Nasdaq, the pilot inadvertently was permitted to lapse on November 30, 2006.

[5] Members will be prohibited from using a supplemental MPID to avoid their Manning obligations under IM–2110–2, best execution obligations under Nasdaq Rule 2320, or their obligations under the Commission's Order Handling Rules. Members will be required to continue to comply with the firm quote rule, the OATS rules, and the Commission's order routing and execution quality disclosure rules. *See* Notice, *supra* note 3, at 6229–30.

[6] In approving this rule, 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).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Notice, *supra* note 3, at 6229.

[9] *See* Notice, *supra* note 3, at 6230.

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57448; File No. SR–NSX–2008–05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Consolidating into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

March 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2008, the National Stock Exchange, Inc. (''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 6, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the 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 its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges (''UTP'') that have been established in various new products proposals previously approved by the Commission. The text of the proposed rule change is available at the Exchange's principal office, on the Exchange's Web site (*http://www.nsx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 amend its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges (''UTP'') that have been established in various new products proposals previously approved by the Commission. The Exchange proposes to amend NSX Rule 15.9 to set forth rules regarding the extension of UTP to a security that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to equity securities, unless otherwise noted. The Exchange will file with the Commission a Form 19b–4(e) with respect to any such security that is a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act.[3] In addition, any new derivative securities product traded on the Exchange pursuant to proposed NSX Rule 15.9 will be subject to the following criteria.

Proposed NSX Rule 15.9B(2) provides that the Exchange will distribute an information circular prior to the commencement of trading in such new derivative securities product which generally will include the same information as the information circular provided by the listing exchange, including: (1) The special risks of trading the new derivative securities product, including NSX Rule 3.7;[4] (2) the Exchange's rules that will apply to the new derivative securities product, including the suitability rule; (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risk of trading during irregular trading hours due to the lack of calculation or dissemination of the intraday indicative value (''Intraday Indicative Value'') or a similar value.[5]

Proposed NSX Rule 15.9(B)(3) reminds ETP Holders[6] that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (''Securities Act''), unless the new derivative securities product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'') and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. The Exchange will inform its ETP Holders regarding the application of the provisions of this subparagraph to a particular series of exchange-traded funds governed by the 1940 Act by means of an information circular. This section also includes a definition of the term exchange-traded fund.

Proposed NSX Rule 15.9B(4) addresses trading halts in the new derivative securities products traded on the Exchange pursuant to UTP. Proposed NSX Rule 15.9B(4) provides that the Exchange, upon notification by the listing market of a halt due to a temporary interruption in the calculation or wide dissemination of the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument, will immediately halt trading in that product on the Exchange. If the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument continues not to be calculated or widely available as of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product that day. If an interruption in the calculation or wide dissemination of the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market.[7]

Additionally, pursuant to NSX Rule 15.9B(4)(b), the Exchange will immediately halt trading in any new derivative securities product if the listing exchange notifies the Exchange that the net asset value is not being disseminated to all market participants at the same time. The Exchange will resume trading in the new derivative securities product only when the net asset value is disseminated to all market participants at the same time or trading in the new derivative securities product resumes on the listing market.

Lastly, NSX represents that the Exchange's surveillance procedures for new derivative securities products traded on the Exchange pursuant to UTP will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance systems. The Exchange will closely monitor activity in new derivative securities products traded on the Exchange pursuant to UTP and deter any potential improper trading activity. The proposed rule change also provides that the Exchange will enter into a comprehensive surveillance sharing agreement (''CSSA'') with a market trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange's rules require the listing market to enter into a CSSA with such market.[8]

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[9] in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms 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 proposed rule change does 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,

[3] 17 CFR 240.19b–4(e).

[4] NSX Rule 3.7 requires the ETP Holder to have reasonable grounds to believe that a recommendation made by the ETP Holder is suitable for the customer.

[5] NSX's pre-market session is from 8 a.m. until 9:29:59 a.m. Eastern Time and NSX's post-market session is from 4:00:01 p.m. to 6:30 p.m. Eastern Time.

[6] An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit (''ETP'') by NSX.

[7] The Exchange also has authority to suspend or halt trading under NSX Rules 11.20, 12.11, and 15.7.

[8] Although NSX's rules have provisions that relate to the activities of market makers, the Exchange currently has no market makers and is not approving any ETP Holder's registration as a market maker in any security. If NSX decides to provide for market makers, it will seek to amend NSX Rule 15.9 to provide for certain restrictions on the activities of such market makers to facilitate surveillance.

[9] 15 U.S.C. 78f(b)(5).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2008–05 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.

All submissions should refer to File Number SR–NSX–2008–05. 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 NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2008–05 and should be submitted on or before April 3, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act 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.

This proposal would consolidate into a single rule various provisions related to UTP that have been established in other new products proposals previously approved by the Commission. In addition, proposed NSX Rule 15.9 is closely modeled on a similar rule of another exchange, changes to which were recently approved by the Commission.[10] The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. NSX's proposal does not raise any novel issues, and accelerated approval thereof will expedite the trading of additional products by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change, as amended (SR–NSX–2008–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4969 Filed 3–12–08; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR–ISE–2007–99).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57456; File No. SR–NYSEArca–2007–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Six iShares® S&P GSCI™ Commodity-Indexed Trusts

March 7, 2008.

On August 30, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the following trusts pursuant to NYSE Arca Equities Rule 8.203: iShares® S&P GSCI™ Energy Commodity-Indexed Trust; iShares® S&P GSCI™ Natural Gas Commodity-Indexed Trust; iShares® S&P GSCI™ Industrial Metals Commodity-Indexed Trust; iShares® S&P GSCI™ Light Energy Commodity-Indexed Trust; iShares® S&P GSCI™ Livestock Commodity-Indexed Trust; and iShares® S&P GSCI™ Non-Energy Commodity-Indexed Trust (collectively, the ''Trusts'').[3] On February 11, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 20, 2008, for a 15-day comment period.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposal

NYSE Arca proposes to list and trade Shares, which are units of beneficial interest representing fractional undivided beneficial interests in the net assets of the Trusts.[5] The objective of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] iShares® is a registered trademark of Barclays Global Investors, N.A. ''S&P GSCI'' is a trademark of Standard & Poor's (''S&P''), a division of The McGraw-Hill Companies, Inc.

[4] *See* Securities Exchange Act Release No. 57318 (February 12, 2008), 73 FR 9381 (''Notice'').

[5] The Commission approved for listing on the New York Stock Exchange LLC (''NYSE'') shares of the iShares GS Commodity Light Energy Indexed Trust, shares of the iShares GS Commodity Industrial Metals Indexed Trust, shares of the

Continued

each Trust is for the performance of the Shares to correspond generally to the performance of the Total Return Indexes.[6] To achieve this goal, the Trusts will hold interests in certain commodity pools, which in turn will hold long positions in futures contracts on the Excess Return Indexes.

The Notice contains a more detailed description of the Trusts (including information about their management and operation, holdings, fees, and expenses), the Total Return Indexes, the Excess Return Indexes, procedures and payment requirements for creating and redeeming Shares, and reports to be distributed to beneficial owners of the Shares.

II. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires that the Exchange have rules that are 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. As noted above, the Commission previously approved the listing and trading of shares of four of the Trusts on NYSE.[9]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[10] 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. For each Trust, one or more major market data vendors will disseminate between 9:30 a.m. and 4:15 p.m. New York Time (''NYT'') an IIV on a per Share basis, which will be updated at least every 15 seconds.[11] Additionally, the Trusts' Web site (*http://www.ishares.com*), which will be publicly accessible at no charge, will contain the following information for each Trust: (a) The prior Business Day's NAV on a per Share basis and the reported closing price; (b) the Bid-Ask Price; (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the prospectus; (f) the holdings of the Trusts; (g) the Basket Amount; and (h) other applicable quantitative information. The Exchange's Web site (*http://www.nyse.com*) will include a hyperlink to the Trusts' Web site at *http://www.ishares.com*. Further, NYSE Arca represented that: (1) Futures quotes and last-sale information for the commodities underlying the applicable indexes are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters; (2) complete real-time data for such futures is available by subscription from Reuters and Bloomberg; (3) the futures exchanges on which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news, generally free of charge, on their respective Web sites; and (4) the specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. These may include: (1) The extent to which trading is not occurring in CERFs or the futures contracts included in the applicable Index or Indexes; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading may be halted because of extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[12] If the value of the Total Return Index associated with a Trust's Shares or the applicable IIV is not being disseminated on at least a 15 second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Index value occurs. If the interruption to the dissemination of the IIV or the Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Additionally, if the Exchange becomes aware that the NAV is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares will be

iShares GS Commodity Livestock Indexed Trust, and shares of the iShares GS Commodity Non-Energy Indexed Trust. *See* Securities Exchange Act Release No. 55585 (April 5, 2007), 72 FR 18500 (April 12, 2007) (SR–NYSE–2006–75). Subsequently, S&P acquired the S&P GSCI (formerly known as the ''Goldman Sachs Commodity Index''), the S&P GSCI–ER and the Total Return Indexes from Goldman Sachs & Co., the prior Index Sponsor, effective May 2007. According to the Registration Statements, S&P has represented that it will not modify the determination methodology for the S&P GSCI Total Return Indexes from that existing on the date of transfer (May 9, 2007) for at least one year. Thereafter, there can be no assurance as to whether the methodology will be changed. To date, the Registration Statements for iShares GS Commodity Light Energy Indexed Trust and iShares GS Commodity Livestock Indexed Trust have not been updated to reflect S&P's index acquisitions from Goldman Sachs. The Sponsor of the Trusts, Barclays Global Investors International, Inc., has represented that the Registration Statements for iShares GS Commodity Light Energy Indexed Trust and iShares GS Commodity Livestock Indexed Trust will be updated to reflect S&P's acquisitions prior to commencement of secondary market trading of Shares of such Trusts. None of the Trusts commenced trading on the NYSE. Pursuant to this proposed rule change, the Shares will be listed on NYSE Arca rather than on NYSE, and will not trade on NYSE.

[6] Terms not otherwise defined herein have the same meaning as the meaning given in the Notice, *supra* at note 4.

[7] In approving this proposed 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).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* at note 5.

[10] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[11] During the NYSE Arca Core Trading Session (9:30 a.m. to 4:15 p.m., NYT) for the Trusts, one or more major market data vendors will also disseminate information with respect to recent NAV and Shares outstanding on a daily basis.

[12] *See* NYSE ARCA Equities Rule 7.12.

traded on the Exchange similar to other equity securities.[13]

In support of this proposal, the Exchange has made the following representations:

(1) It has obtained from the Sponsor a representation that the Trustee will make the NAV per Share available to all market participants at the same time.

(2) The Exchange will utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYM, the Kansas City Board of Trade, ICE and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the ISG, and the Exchange therefore has access to all relevant trading information with respect to those contracts without any additional action being required on the part of the Exchange.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated IIV is not calculated and disseminated, and suitability recommendation requirements.[14]

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that it has previously approved the listing on NYSE of four of the proposed products and that no comments were received during the 15-day comment period. The Commission believes that the proposed rule change, as modified by Amendment No. 1, does not raise any novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSEArca–2007–91), 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.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5034 Filed 3–12–08; 8:45 am]

BILLING CODE 8011–01–P

[13] The Commission notes that NYSE Arca Equities Rules 8.203(g)—(i) set forth certain restrictions on ETP Holders acting as registered Market Makers in Commodity Index Trust Shares to facilitate surveillance. NYSE Arca Equities Rule 8.203(h) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable physical commodities included in, or options, futures or options on futures on, the applicable Index or any other derivatives based on the Index. NYSE Arca Equities Rule 8.203(i) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable physical commodities included in, or options, futures or options on futures on, the Index or any other derivatives based on the Index (including the Shares). In addition, as stated above, NYSE Arca Equities Rule 8.203(g) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable physical commodities included in, or options, futures or options on futures on, the Index or any other derivatives based on the Index unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

[14] The Notice describes in greater detail the information that will be included in the Information Bulletin.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0016]

Supplemental Security Income, Youth Transition Demonstration

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Extension and Modification of the Youth Transition Demonstration.

SUMMARY: On October 7, 2003, the Commissioner of Social Security published a Notice in the **Federal Register** (68 FR 57950) announcing the beginning of a demonstration project designed primarily to test the effectiveness of altering certain Supplemental Security Income (SSI) and other program rules as an incentive to encourage individuals with disabilities or blindness to work or increase their work activity and earnings. In order to complete a more thorough evaluation of this project, we are extending the duration of the altered program rules in three of the seven original project locations and adding three new project locations that will also offer the alternative program rules.

The Commissioner of Social Security is publishing this notice in accordance with 20 CFR 416.250(e) and conducting the project pursuant to authority in sections 234 and 1110 of the Social Security Act.

Background

In October 2003, at the start of the Youth Transition Demonstration (we have slightly altered the project name from the original Notice), we announced the award of seven cooperative agreements in six states for the development and implementation of demonstration programs intended to help youth with disabilities maximize their economic self-sufficiency as they transition from school to work. These seven programs (one each in California, Colorado, Iowa, Maryland, and Mississippi, and two in New York) worked with transition-aged youth (mostly between the ages of 14 and 25) who either receive SSI, Social Security Disability Insurance (SSDI), or Childhood Disability Benefits (CDB) or are at risk of receiving such benefits, including those who have a progressive disability, who have a prognosis for decreased functioning, or who have existing disabling conditions prior to age 18 that would render them eligible except for deemed parental income. The projects were designed to help Federal, State, and local agencies develop and implement sustainable improvements in the delivery of transition services and supports. They also tested ways to remove other barriers to employment and economic self-sufficiency. The October 2003 Notice stated that SSA would fund the projects on a yearly basis for up to five years, through September 2008, subject to the continued availability of funds and satisfactory progress.

Currently, five of the original seven YTD projects remain fully operational. Two ended because of difficulty they had reaching the goals stated in their cooperative agreements. Two more will end in September 2008, when their original cooperative agreements expire, because they have not agreed to the type of methodology, random assignment (RA), that we are now requiring in the demonstration. The three remaining original projects (two in New York and one in Colorado) will continue with the YTD beyond 2008. However, all seven of the original projects will be included

in our overall evaluation, specifically the process and implementation portion of the analysis.

In the fall of 2006, in an effort to identify three additional programs for the YTD, we awarded funding to five candidate programs. In the five candidate programs, individuals were provided with additional services, but no SSI program rules were altered. Ultimately, we chose the three programs located in Florida, Maryland and West Virginia to take part in the YTD beginning in 2008. Each of the newly selected programs will receive funding for up to four years, ending in 2012, and will participate in all aspects of the YTD. Going forward, therefore, we will conduct the YTD with six programs: the three remaining original programs (one in Colorado and two in New York) and three new ones (Florida, Maryland and West Virginia).

Evaluation Status

As noted above, three of the seven original programs and three new programs will be participating in the extended YTD and using RA methodology. Once the YTD is explained to potential participants and written consent is obtained stating that they want to participate in the study, the youth are placed either into a control group or a treatment group through a random process. Youth placed in the treatment group receive the enhanced YTD services and are subject to the alternative program rules, while youth in the control group receive only those rules and services that would have been available in the absence of the YTD project. Each treatment and control group will include at least 400 participants. The three original programs are already in the process of enrollment using RA and are scheduled to complete enrollment no later than January 2009. The three new programs are scheduled to begin enrollment using RA in spring 2008 and to end enrollment in spring 2010. We will fund the six programs using RA on a yearly basis for up to four years, ending in 2012, subject to the continued availability of funding.

The Extended YTD Evaluation Includes Four Data Collection and Research Activities

1. The collection of administrative data and survey data on treatment and control group members at the time of RA and for four years after RA;
2. A study of the implementation of all the YTD projects;
3. A study of the impacts of the projects on youth outcomes, such as employment and earnings, receipt of disability benefits, and educational attainment;
4. An analysis of the benefits and costs of the YTD projects.

The YTD will end no later than September 30, 2013. An extended evaluation is being conducted over eight years. The evaluation began in September 2005 and will end in September 2013, with an additional year to prepare reports and findings. The first year of the evaluation was devoted to developing program models, providing technical assistance to existing YTD programs, and visiting locations to choose additional sites for the YTD. During the second year, the prospective locations operated pilot projects so that we could choose three new programs to fully participate in the YTD. We, and the evaluation contractor, will provide technical assistance to the project locations and will monitor them through repeated visits, as well as through the evaluation's web-based case-management system. The evaluation contractor will collect and analyze administrative and survey data. Ultimately, the contractor will prepare reports on the evaluation findings.

Dates

Because participants enroll in the programs at different times and at different ages, the alternative rules could be available to participants for lengths of time that vary by up to two years. To avoid this variation and thus to strengthen the YTD evaluation, the alternative program rules will apply as follows:

- Individuals participating in the YTD at the two original programs that are still operational, but are not continuing with the YTD after their original cooperative agreements end (California and Mississippi) will continue to receive alternative program rules as provided for in 68 FR 57950 until September 2008.
- For participants randomly assigned to a treatment group in one of the six YTD programs using RA, the alternative program rules will apply for a fixed period of four years or until the participant attains age 22, whichever occurs later. (In no instance will the alternative rules apply after September 30, 2013.)

FOR FURTHER INFORMATION CONTACT: Leola Brooks, Social Security Administration, Office of Program Development and Research, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024; Phone (202) 358–6294 or through e-mail to *leola.brooks@ssa.gov.*

SUPPLEMENTARY INFORMATION:

Alternative SSI Program Rules That Apply to Participants in the YTD

The alternative program rules that we are testing under the demonstration project consist of the following five elements. Element 1 applies to SSI, SSDI and CDB beneficiaries. Elements 2 through 5 apply to SSI-only recipients.

1. Despite the finding of a continuing disability review conducted in accordance with section 221(i) or section 1614(a)(3)(H) of the Social Security Act (the Act) or an age-18 medical redetermination conducted in accordance with section 1614(a)(3)(I) of the Act that an individual is no longer eligible for benefits, SSA will continue paying benefits for as long as the individual continues to be a YTD participant.
2. The student earned-income exclusion (section 1612(b)(1) of the Act), which normally applies only to students who are age 21 or younger, will apply to all participants who meet school attendance requirements, without regard to their age.
3. The general earned-income exclusion (section 1612(b)(4) of the Act) normally permits the exclusion of $65 plus half of what an individual earns in excess of $65. For the YTD, SSA will exclude the first $65 plus three-fourths of any additional earnings.
4. SSA will extend the SSI program's treatment of Federally supported Individual Development Accounts (IDAs) (section 404(h) of the Act) to IDAs that do not involve Federal funds.

An IDA is a trust-like savings account. Except for certain emergencies, funds in a Federally-supported IDA can be used only for going to college, buying a first home, or starting a business. The individual makes deposits from his or her earned income. The individual's contributions are matched, at rates that can vary from 1:1 to 8:1, usually depending on the availability of funding.

Social Security excludes Federally-supported IDAs when it determines whether someone's resources exceed the SSI limit. It also excludes matching contributions when it determines countable income. Further, Social Security deducts the beneficiary's own deposits from countable income, so that SSI benefits replace the amount deposited. As a result, an SSI beneficiary does not have to divert scarce resources from living expenses in order to save.

Non-federally-supported IDA or ''IDA-like'' programs have emerged in a number of States. These programs usually permit an individual to save for one or more purposes in addition to the

three mentioned above, such as transportation and/or assistive technology. The exclusions that apply to Federally-supported IDAs normally do not extend to these programs.

5. Ordinarily, a plan for achieving self-support (PASS) must specify an employment goal (section 1633(d) of the Act), which refers to getting a particular kind of job or starting a particular business. For the YTD, SSA will approve an otherwise satisfactory PASS that has either career exploration or postsecondary education as its goal. If the goal is postsecondary education, the PASS must provide for developing a work goal at least one year prior to completion of the degree requirements.

Income that an individual uses for PASS expenses does not count when SSA determines SSI eligibility and payment amount. Assets that an individual uses for PASS expenses do not count as resources when SSA determines SSI eligibility.

Extended Impact Evaluation Locations

Colorado

Title: Colorado Youth Work Incentive Network of Supports (WINS).

Lead Organization: University of Colorado Health Sciences Center.

Summary: Colorado's Youth WINS provides benefits counseling, consumer navigation, career counseling, and individualized job development and placement. Services are provided by a three-person team housed in local workforce centers.

Project Sites: Boulder, Larimer, El Paso/Teller, Pikes Peak and Pueblo Counties.

New York

Title: Transition WORKS.

Lead Organization: Erie 1 Board of Cooperative Educational Services (BOCES).

Summary: New York's Transition WORKS emphasizes self-advocacy and person-centered planning for youth and families located in Erie County. Transition Works provides job placement, work experience, intensive case management, transition planning, career exploration, and benefits counseling.

Project Site: Erie County.

Title: CUNY's Youth Transition Demonstration Project.

Lead Organization: City University of New York (CUNY).

Summary: New York's CUNY Youth Transition Demonstration Project provides person-centered planning, benefits counseling, vocational skills development, recreational activities, self-determination sessions, and parent-peer mentoring in Saturday group workshops located on CUNY campuses, along with the opportunity to participate in summer work experiences.

Project Site: Bronx County.

Florida

Title: Broadened Horizons Brighter Futures Program.

Lead Organization: Abilities, Inc.

Summary: Program services include paid work experience and customized job development and placement, self determination curriculum, and a focus on asset building and individual development accounts.

Project Site: Miami-Dade County.

Maryland

Title: Career Transition Program (CTP).

Lead Organization: St. Luke's House.

Summary: CTP will forge links with school systems and other systems to support employment and effective mental health treatment. The program targets youth with emotional disabilities, and includes a population of SSI and those at risk of becoming SSI recipients.

Project Site: Montgomery County, MD.

West Virginia

Title: West Virginia Youth Works—Youth Transition Project.

Lead Organization: Human Resources Development Foundation (HRDF).

Summary: In addition to paid and unpaid work experiences, youth will be provided benefits counseling, mentoring, counseling and guidance, case management, and service links. HRDF will partner with the West Virginia University Center for Excellence in Disabilities (WVU CED).

Project Sites: Barbour, Harrison, Jackson, Lewis, Marion, Monongalia, Preston, Taylor, Upshur, Wood, Cabell, Fayette, Kanawha, Mason, Mercer, Putnam, Raleigh, and Wayne Counties.

Dated: March 5, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–5036 Filed 3–12–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6131]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: English Language Teaching (ELT) Materials Development Project and English Language Educators Summer Institute

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/L–08–02.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: May 13, 2008.

Executive Summary: The Office of English Language Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the English Language Teaching (ELT) Materials Development Project and English Language Educators Summer Institute in July 2009. U.S. public and private universities, colleges, community colleges and other organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide the following: (1) The development of English language materials suitable to Office of English Language Programs' goals and (2) the design and administration of a three-week professional development program for assessing English language teaching materials for possible adoption into English language teaching programs overseas. For the ELT Materials Development Project, the recipient will develop English Language Teaching materials (print, audio, and online) to become part of the collection of the Office of English Language Programs for use overseas. These should reflect current academic best practices and educational priorities. More detailed information about the ELT materials to be developed under this cooperative agreement is detailed in the Project Objectives, Goals, and Implementation (POGI).

For the English Language Educators Summer Institute to take place in 2009, the recipient will design and administer a three-week professional development program for experienced secondary school and university English language teachers drawn from countries served by U.S. Department of State Regional English Language Officers based overseas.

The focus of the English Language Educators Summer Institute is to familiarize participants with the newly authored materials (created as part of this cooperative agreement), selected

Office of English Language Program publications, U.S. student-centered teaching methods, various materials illustrating U.S. society, culture and diversity, and the role of materials in the language classroom. The exchange experience should also give participants an in-depth experience of American life and culture and contribute to mutual understanding between participants' countries and the United States. The program should include both a theoretical component, provided through professional development seminars in an academic setting, and a practical component, provided through hands on experience assessing and working with selected titles from the Office of English Language Programs. Participants should also create or adapt English language teaching materials suitable for their local context. Applicant organizations should have a demonstrated ability to conduct a substantive academic program, develop English language materials, and manage logistical and administrative aspects of the program.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The purpose of this cooperative agreement is two-fold: 1) development of English language materials appropriate to the Office of English Language Programs' goals and 2) design and administration of a three-week English Language Educators Summer Institute with a focus on materials assessment and techniques for participants on how to incorporate Office of English Language Programs' materials into English language teaching programs in their home countries.

The English Language Teaching Materials Development Project for the Office of English Language Programs will allow U.S. missions and programs overseas to provide low-cost, high-quality English language teaching (ELT) materials that demonstrate current best practices in the field appropriate for global audiences.

The follow-on English Language Educators Summer Institute in 2009 will bring approximately twenty-six in-service teachers of English from public institutions (secondary schools and universities) from regions overseas to the U.S. to learn about the role of materials in the language learning classroom—specifically: selecting, assessing, using, and supplementing materials with available resources (internet, realia, articles etc.), as well as incorporating these materials into U.S.-style student-centered teaching methods. Following their program, the participants will return to their home institutions.

This program is designed to assist educators in their classroom pedagogy and to provide these educators with an in-depth exchange experience in the United States. It is intended that this experience will provide a basis for participants' continuing contact with American counterparts in order to promote mutual understanding.

Guidelines

The English Language Teaching Materials Development Project component of the cooperative agreement will focus on publications relevant and appropriate to ECA/A/L's ongoing English language programming efforts around the world. The effort should focus on updating existing materials and creating supplemental materials (print, audio, and online use) for our current titles. Selection of titles to expand will be made by the Office of English Language Programs in consultation with the recipient.

The Department of State will retain full foreign ownership to the text that is prepared including the right to print, publish, repurpose, and distribute the text in all media including electronic media, and in all languages and editions.

The follow-on English Language Educators Summer Institute should provide participants with thorough exposure to the new materials, their use in the classroom, and student-centered teaching approaches as well as a substantive cultural/educational exchange experience in the United States. The participants will be selected by the Office of English Language Programs in consultation with Regional English Language Offers (RELOs) and Public Affairs Officers (PAOs) at U.S. embassies.

The recipient should provide substantive information for the pre-departure briefing materials about the program, the program's goals, and expectations of participants. This information should be conveyed electronically via email or fax for optimum efficiency. The recipient should also design a framework for integrating the professional development component and its objectives to reflect the participants' previous education and experience, and promote strategies for participants to share their knowledge with professional counterparts and with students in their classrooms. To help in the design of this framework, organizers should seek participants' input about the needs of local educators in pre- and in-service positions with regards to materials, curricula, and teaching practices.

It is anticipated that the cooperative agreement will begin on or about July 1, 2008, and the recipient should complete all exchange activities by December 31, 2009. The exchange program will take place in July 2009. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

II. Award Information:

Type of Award: Cooperative Agreement.

ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2008.

Approximate Total Funding: $500,000.

Approximate Number of Awards: 1.

Approximate Average Award: $500,000.

Anticipated Award Date: July 1, 2008.

Anticipated Project Completion Date: December 31, 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again. Pending availability of funds in future fiscal years, the size of the award may increase.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by U.S. public and private universities, colleges, community colleges and other organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum

percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved cooperative agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one cooperative agreement, in an amount up to $500,000 to support program and administrative costs required to implement the ELT Materials Development Project and English Language Educators Summer Institute. Amount available for program and administration of English Language Educators Summer Institute estimated at $200,000. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information:

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact Maria Snarski of the Office of English Language Programs, ECA/A/L, Room 304, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 453–8841, fax: (202) 453–8858, e-mail: *SnarskiME@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/L–08–02 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Maria Snarski, telephone: (202) 453–8841, and refer to the Funding Opportunity Number ECA/A/l–08–02 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to the Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program

administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The cooperative agreement recipient will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3.d.4. Describe your plans for staffing: Please provide a staffing plan which outlines the responsibilities of each staff person and explains which staff member will be accountable for each program responsibility. The Office of English Programs requests that at least one member of the staff should be well versed in current methodology of teaching English as a foreign language preferably holding an advanced degree in Teaching English as a Foreign Language (TEFL), applied linguistics or a related field. In depth knowledge of best practices in the English language teaching (ELT) field is preferable. Wherever possible please streamline administrative processes.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The budget should not exceed $300,000 for both the ELT Materials Development Project and $200,000 for the English Language Educators Summer Institute program and administrative costs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets for host campus and foreign teacher involvement in the program. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The summary and detailed administrative and program budgets should be accompanied by a narrative which provides a brief rationale for each line item including a methodology for estimating appropriate average maintenance allowance levels and tuition costs (as applicable) for the participants, and the number that can be accommodated at the levels proposed. The total administrative costs funded by the Bureau must be reasonable and appropriate.

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: May 13, 2008.

Reference Number: ECA/A/L–08–02.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS,

Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–07–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section and Fulbright Commission overseas. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal narrative should exhibit originality, substance, precision, and relevance to the Bureau's mission as well as the objectives of the ELT Materials Development Project and English Language Educators Summer Institute. It should include an effective, feasible plan and clearly demonstrate how the institution will meet the program's objectives.

2. *Multiplier effect/impact:* The proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity and Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The successful proposal will demonstrate the organization's experience in international educational exchange and intensive programs, and an understanding of international differences of culture, religion, and system of education. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Follow-on and Alumni Activities:* ECA's office of Alumni Affairs is the leading agency for alumni activities and as such, all suggested alumni activity for participants should dovetail with Alumni Affairs' initiatives. Proposals should provide a plan for continued follow-on activity ensuring that the English Language Educators Summer Institute is not an isolated event. Activities should include tracking and maintaining updated lists of all alumni. These lists should be available for the Office of Alumni Affairs.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original cooperative agreement proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award; and

(2) Quarterly program and financial reports.

The recipient will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final Federal Assistance Award.

VII. Agency Contacts

For questions about this announcement, contact: Maria Snarski, Office of English Language Programs, ECA/A/L, Room 304, ECA/A/L–08–02, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8841, fax 202–453–8858, *SnarskiME@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/L–08–02. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 4, 2008.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

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DEPARTMENT OF STATE

[Public Notice 6132]

Bureau of Educational and Cultural Affairs (ECA)

Request for Grant Proposals: Teacher Exchange Program

Announcement Type: New Cooperative Agreement

Funding Opportunity Number: ECA/A/E–09–01

Catalog of Federal Domestic Assistance Number: 19.408

Key Dates:

Application Deadline: May 23, 2008.

Executive Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State, announces an open competition for three assistance awards to administer components of the Office's Teacher Exchange Program in Fiscal Year 2009. Public and private non-profit organizations or consortia of eligible organizations meeting the provisions described in Internal Revenue Code section 501(c)(3) may submit proposals to cooperate with the Bureau in the administration of the teacher exchange programs as categorized below. To facilitate effective communication between ECA's Teacher Exchange Branch (ECA/A/S/X) and the organization(s) cooperating on these programs, applicant organizations should have offices and staffs located in Washington, DC at the time of application.

In recent years, the Bureau has expanded and diversified its programming for teachers consistent

with the Bureau's emphasis on younger and disadvantaged, non-elite populations and with the influence teachers can have on these populations in school classrooms in the U.S. and around the world. This Request for Grant Proposals is part of an effort to add synergies to the Bureau's engagement with primary and secondary school educators and to present a range of teacher program opportunities to potential applicant organizations, which may submit proposals to administer and implement one, two, or all three pairs of the following FY 2009 Teacher Exchange Programs as outlined below:

Pair A: the Fulbright Classroom Teacher Exchanges and the Distinguished Fulbright Awards in Teaching; Pair B: the International Leaders in Education Program and the Teaching Excellence Awards Program; and/or Pair C: the Educational Seminars and the Teachers of Critical Languages Program. Details about these program components are provided under the Funding Opportunity Description section of this document and in the Project Objectives, Goals, and Implementation (POGI) document associated with this solicitation. Proposals should reflect a vision for the program, interpreting the goals of the Fulbright-Hays Act and the Teacher Exchange Program with creativity, as well as providing innovative ideas and recommendations.

The cooperating organization(s) will have responsibility for program administration, which includes the following broad categories: program planning and management; placement; orientation; enrichment activities; participant supervision and support services; fiscal management and budgeting; and program reporting and evaluation. Proposals should include schedules and timelines for notifying ECA, overseas partners, and grantees of placements, travel arrangements and cross-cultural and school information in a timely manner. Programs must comply with J–1 visa regulations. Teacher exchange participants in the U.S. and abroad should be identified through open, merit-based competitions.

Although the amount that will be available to support these programs in FY 2009 has not yet been determined, for planning purposes the total amount of funding that may be available to cover administrative and program costs of these programs will be up to $13,875,000. The amounts listed for each program are provided to enable applicant organizations to prepare budgets for planning purposes, and are subject to change. More specific information for each program is provided below and in the Project Objectives, Goals, and Implementation (POGI) document. All awards are pending availability of FY 2009 funds.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations...and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

To improve mutual understanding among teachers, school administrators, and their schools and communities in the U.S. and abroad through professional development and exchange. Teacher exchanges support the internationalization and increased quality of schools and classrooms, increase the knowledge of students and communities about global issues and cultures, and improve knowledge of foreign languages. Teacher exchanges also encourage the professional development of teachers by broadening their familiarity with and increasing their understanding of approaches to their subjects and pedagogical methods.

The Presidentially appointed J. William Fulbright Foreign Scholarship Board is responsible for two of the programs described below (those in Pair A), and has issued overall policy guidelines and selection criteria which are available at the following Web site: *http://exchanges.state.gov/education/fulbright.* The Fulbright Foreign Scholarship Board is responsible for the final selection of Fulbright candidates. Organizations cooperating with the Bureau must ensure full and proper identification of the Fulbright Program with the U.S. government and the Department of State.

Applicant organizations may propose to administer and implement one, two, or all three pairs of the following teacher exchange programs.

Pair A

1. In Fulbright Classroom Teacher Exchanges, a teacher from the U.S. and a teacher from a participating foreign country exchange teaching positions and professional duties for a semester or a year. In FY 2009, approximately 60 exchanges are anticipated. Countries currently anticipated for participation are France, Hungary, India, Mexico, South Africa, Switzerland, Turkey, and the United Kingdom, although additional countries may be added, depending on Bureau priorities. Applicant organizations must demonstrate flexibility in working in countries which may not be identified at the present time. In this program model, U.S. teachers apply to participate in the program through the cooperating organization; international counterparts apply through a Fulbright Commission or U.S. Embassy overseas (in the case of Switzerland and the United Kingdom, the CH Youth Exchange and the British Council, respectively). Recruitment of U.S. participants for the FY 2009 program (academic year 2009–2010) is being conducted by the organization currently administering this program component with FY 2008 resources; FY 2009 proposals should include the costs of recruitment for grants to be funded with FY 2010 resources for academic year 2010–2011. In consultation with the Bureau, the U.S. cooperating organization and the nominating entity overseas will facilitate the matching of U.S. and international teacher applicants with one another for the consideration of relevant supervising school administrators. The cooperating U.S. organization will provide an orientation program for all participants and will monitor and support their programs in consultation with overseas counterparts. Amount available for program and administration estimated at up to approximately $2,950,000.

2. New for FY 2009, the Distinguished Fulbright Awards in Teaching will recognize and encourage excellence in teaching in the U.S. and selected countries abroad. Countries participating in the program in FY 2009 may include Argentina, the Czech Republic, Finland, Ghana, Greece, Japan, Mexico, Senegal, Singapore, and South Africa, although additional countries may be added, depending on Bureau priorities. Applicant organizations must demonstrate flexibility in working in countries which may not be identified at the present time. These awards will provide a rich professional growth opportunity

to the Distinguished Fulbright Teachers while enhancing mutual understanding among international and U.S. teachers, administrators, their students, and host communities. U.S. teachers will apply to the U.S. cooperating organization to pursue individual projects for a semester or a summer in the participating countries, and teachers from participating countries will apply through the U.S. Embassy or Fulbright Commission to pursue projects in the U.S. The Distinguished Fulbright Teachers will conduct research, take courses for professional development, and lead master classes or seminars for teachers and students in the countries of exchange. Based on proposals submitted by U.S. teachers to conduct these activities in specific eligible countries, the U.S. Embassy, Fulbright Commission, or other organization as applicable in each participating country will facilitate a relevant academic or professional affiliation in consultation with each U.S. Distinguished Teacher. The U.S. cooperating organization will identify one U.S. university to provide the international Distinguished Teachers with broad-ranging access to faculty resources, schools, and other educational opportunities. In FY 2009, a pilot program for approximately twelve U.S. teachers and twelve international teachers is anticipated. Amount available for program and administration estimated at up to approximately $900,000.

Pair B

3. The International Leaders in Education Program will bring approximately 86 international secondary school teachers to U.S. universities for a semester to develop their teaching skills, to increase their subject-matter expertise, and to pursue coursework and practical teaching experiences in American high schools. Fulbright Commissions and U.S. Embassies will be responsible for recruiting applicants and nominating candidates. The cooperating U.S. organization will be responsible for convening independent committees to select candidates for approval by ECA for participation in the program. This organization will also be responsible for identifying approximately five appropriate host universities through a national competition, for organizing a three-day orientation session and a three-day end-of-program review in Washington, DC, and for actively monitoring program implementation in the host universities and schools. In cohorts of approximately 15–20 participants at each host university, the participants will audit university-level courses relevant to their teaching field and expertise, attend professional development seminars, workshops, and conferences on education-related and pedagogical topics, and teach or team-teach for eight weeks in U.S. secondary schools in cooperation with experienced U.S. partner teachers. The universities and schools should also provide opportunities for participants to share information about their home countries with U.S. audiences, and to prepare training workshops for colleagues after returning to their home countries. A limited number of American host teachers will also be selected to travel to some of the international teachers' home schools for two- to three-week programs. Administrative and program costs are estimated at up to approximately $2,500,000.

4. Under the Teaching Excellence and Achievement program component, groups of educators from a variety of countries will participate in three six-week programs in FY 2009. Based in clusters of 20 participants at approximately five different U.S. universities, a total of approximately 180 international educators will participate in seminars, share pedagogical practices, and engage in classroom teaching, observation, and curriculum development in the fields of English, English as a Foreign Language, math, science, social studies and civics. Under this program, U.S. Embassies and Fulbright Commissions will recruit and select international participants. The U.S. cooperating organization will identify, through a national competition, U.S. universities with access to appropriate faculty and community resources to administer the three-week seminars and to arrange for participants to teach or job-shadow in U.S. secondary schools for approximately three weeks under the guidance of experienced mentor teachers or administrators. The universities and schools should also provide opportunities for participants to share information about their home countries with U.S. audiences and to prepare workshops for colleagues after returning to their countries. The U.S. cooperating organization will administer a three-day orientation session in Washington, DC and a three-day end-of-program review. The U.S. cooperating organization will also organize a competition to identify approximately 105 U.S. educators to make reciprocal visits in two groups (a summer cohort and a fall cohort) to the international teachers' home countries to gain a deeper understanding of the educational systems and cultures of these countries, and to establish or strengthen cooperation with schools in the participating countries. Amount available for program and administration estimated at up to approximately $3,750,000.

Pair C

5. Educational Seminars

(a) We anticipate that approximately 100 teachers and other educators will travel to the U.S. in country-specific groups to learn about the U.S. educational system in seminars of two to three weeks, and through visits to U.S. secondary schools. Currently anticipated for participation in the seminars are Argentina, Brazil, Jordan, Mexico, Thailand and Uruguay, although additional countries may be added, depending on Bureau priorities. Applicant organizations must demonstrate flexibility in working in countries which may not be identified at the present time. These seminars will provide an introduction to the U.S. educational system and to U.S. society and culture. Fulbright Commissions, U.S. Embassies, or other educational organizations in these countries will recruit and select international educators for the seminars, while the U.S. cooperating agency will be responsible for recruiting and selecting U.S. candidates, for implementing a three-day orientation in Washington, DC, for arranging visits of participants in groups to geographically and socially diverse U.S. schools with an interest in hosting the international educators, and for overseeing an end-of-program review. Some seminars will require translation as noted in the POGI. Approximately 45 selected U.S. educators from the host schools will make reciprocal exchange visits to these countries in programs to be organized by Fulbright Commissions (except in Jordan, where there is not a reciprocal component).

(b.) Approximately 20 U.S. secondary school teachers of Greek, Latin, and the classics will attend intensive summer courses lasting from six to eight weeks to be organized by the Fulbright Commissions and U.S. non-profit partner organizations in Greece and Italy. The U.S. cooperating organization will be responsible for notifying participants of their selection, helping arrange their transportation, and providing them with a maintenance allowance during the seminar. The non-profit organizations will arrange orientation meetings for the participants upon their arrival in Greece and Italy.

(c.) Approximately 6 U.S. teachers will travel to India for a four-week summer program with Indian teachers

and schoolchildren. The U.S. cooperating organization will be responsible for administering an open competition to select the participants, and for administering their awards. The Fulbright Commission in India will organize a program of visits to Indian schools for discussions and observation of best practices with Indian counterpart teachers.

Recruitment of U.S. participants for the FY 2009 Educational Seminars is being undertaken by an incumbent organization with FY 2008 resources; under this competition, proposals should include the costs of recruitment for the 2010 seminars, for which grants to participants will be provided in FY 2010 (except Jordan which does not have a program for U.S. educators). Amount available for program and administration of the seminars estimated at up to approximately $1,550,000.

6. Approximately 38 Teachers of Critical Languages will come from China and the Middle East to teach Chinese and Arabic at U.S. elementary and secondary schools for an academic year. In FY 2009, we may also request applicants to administer pilot initiatives for two teachers from Russia and two from Japan to teach their native languages at K–12 schools for an academic year. Applicant organizations must demonstrate flexibility in working in countries which may not be identified at the present time. This activity is a component of the National Security Language Initiative announced by President George W. Bush in January 2006 to encourage the study and teaching of critical languages in the United States. The cooperating U.S. organization will recruit U.S. host schools, oversee the placement of Chinese and Arabic (and possibly Russian, Japanese, and other) teachers, provide an in-depth two-week orientation session on relevant U.S. pedagogical, educational, and social issues, and monitor and support the teachers and their engagement with the U.S. host schools throughout the program. International teachers will be recruited and selected by U.S. embassies or partner organizations in the participating countries. Amount available for program and administration estimated at up to approximately $2,225,000.

Program Administration

Bureau activities and responsibilities for all 6 teacher exchange program components (3 pairs) include:

(1) Participation in the design and direction of program activities;

(2) Approval of key personnel;

(3) Approval and input on program timelines, agendas and administrative procedures;

(4) Guidance in execution of all program components;

(5) Review and approval of all program publicity and recruitment materials;

(6) Approval of participating teachers and administrators, in cooperation with Fulbright commissions, U.S. embassies, and international non-governmental organizations, (Fulbright program candidates are also subject to final selection by the Fulbright Board);

(7) Approval of decisions related to special circumstances or problems throughout the duration of program;

(8) Assistance with non-immigration status and other SEVIS-related issues;

(9) Assistance with participant emergencies;

(10) Liaison with relevant U.S. embassies, Fulbright commissions and country desk officers at the State Department.

Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package which includes the Request for Grant Proposals (RFGP), the Project Objectives, Goals and Implementation (POGI) and the Proposal Submission Instructions (PSI).

Cooperating Agency Responsibilities

The cooperating agency or agencies is/are responsible for various aspects of outreach, recruitment, and screening of applicants; SEVIS duties and preparation of form DS–2019 under a G Program Number under the Bureau's responsibility on behalf of the Teacher Exchange Branch; orientation programs, professional in-service meetings, and debriefings; placement and, as required for the classroom teacher exchanges, matching U.S. teachers with international counterparts; monitoring, supervision, and support of participants; administering sub-award competitions as necessary; and fiscal management, evaluation, and follow-on and alumni activities for the program components described above. Please see the POGI for details pertaining to these activities for each program component. The Bureau's program office and the cooperating agency or agencies will meet regularly regarding program implementation. The Bureau's program office and the cooperating agency or agencies will also maintain regular telephone, e-mail, and fax communications with each other.

Additional Guidelines

Applicant organizations should submit separate proposals with budgets and narratives outlining a comprehensive strategy for the administration and implementation of each pair of program components for which they are applying: (Pair A: Fulbright Classroom Teacher Exchanges/Distinguished Fulbright Awards in Teaching; Pair B: International Leaders in Education/ Teaching Excellence and Achievement; Pair C: Educational Seminars/Teachers of Critical Languages). Organizations may apply for more than one pair of components, but may not apply to administer program components except in the combinations prescribed. Proposals should reflect a vision for the programs, interpreting the goals of the Fulbright-Hays Act and the Teacher Exchange Program with creativity, as well as providing innovative ideas and recommendations. The Bureau places a priority on ensuring that the positive impact of the Teacher Exchange Program is visible to the public in U.S. and host school communities. Applicant organizations should outline a plan to work with the media and other organizations, in close consultation with the Bureau, to ensure that the program and its awards and achievements receive appropriate publicity.

The narrative portion of the proposal for each *pair* of program components should not exceed 20 pages. Proposals may utilize appendices to illustrate elements of the narrative.

Applicants must also provide a separate administrative and program budget for each program pair. Where possible, proposals should reflect economies of scale and should demonstrate administrative efficiencies.

Please refer to the Solicitation Package for further information.

II. Award Information

Type of Award: Cooperative Agreement(s). ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2009.

Approximate Total Funding: $13,875,000 pending availability of funds.

Approximate Number of Awards: 3 awards.

Anticipated Award Date: Pending availability of funds, October 1, 2008.

Anticipated Project Completion Date: September 30, 2011.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew the grants for a period of two additional fiscal years, before openly competing the programs again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations or consortia of institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

Consortia of eligible organizations applying for grants should designate one organization to be the recipient of the cooperative agreement award. Proposals from consortia should provide a detailed description of the responsibilities of each partner organization.

Organizations with primary responsibility for any of the six program components must have a staff based in Washington, DC at the time of application.

III.2. Cost Sharing or Matching Funds: The Bureau anticipates that proposals will include significant amounts of cost-sharing in support of the Teacher Exchange Program, and encourages applicants to provide maximum levels of funding in support of this initiative.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one or more cooperative agreement awards in (an) amount(s) over $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact Ms. Pat Mosley in the Teacher Exchange Branch, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, e-mail: *mosleypm@state.gov*, telephone: (202) 453–8897 and fax number: (202) 453–8890, to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–09–01 when making your request.

Alternatively, an electronic application package may be obtained from *http://www.grants.gov*. Please see section IV.3f. for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via the Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call (1–866) 705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, a proposal narrative, and a budget for each program within the program pair(s) for which the applicant applies. The proposal narrative for each program pair should not exceed twenty (20) pages in length.

Please Refer to the Solicitation Package. The mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document contain additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, *Fax:* (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the

Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other instrument plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will be able to respond to key evaluation questions, including participant satisfaction with the program, learning as a result of the program, and anticipated changes in behavior as a result of the program. The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

We encourage you to assess the following three levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Anticipated Participant behavior, anticipated actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Grantees will be required to submit ''success stories'' for Bureau reporting purposes as well as outreach. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: overall program management, staffing, coordination with ECA and with U.S. and international educational institutions, Fulbright commissions and PAS of U.S. embassies. Provide a staffing plan which outlines the responsibilities of each staff person and explains which staff members will be accountable for each program responsibility. Whenever possible, streamline administrative processes.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive line item administrative budget for each program within the program pairs which they are applying to administer. It is anticipated that funding for the cooperative agreement awards for program administration of the three pairs of teacher exchange programs described here will be approximately $13,875,000.

IV.3e.2. Allowable costs and additional budget guidance are outlined in detail in the POGI document. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: May 23, 2008.

Reference Number: ECA/A/S/X–09–01.

Methods of Submission:

Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–09–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2. Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete

solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support.

Contact Center Phone: (800) 518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

V.2. Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should demonstrate a commitment to excellence and creativity in the implementation and management of this program in its various formats, including the recruitment, matching, and placement of U.S. and international teachers and administrators, quality of professional and pre-academic workshops, and effectiveness of program design.

2. *Program planning:* Proposals should respond precisely to the planning requirements outlined in the RFGP and POGI. Planning should demonstrate substantive rigor. Detailed agendas and relevant work plans, including timelines, should demonstrate feasibility and the applicant's logistical capacity to implement the programs.

3. *Ability to achieve program objectives:* Proposals should demonstrate clearly how the applicant will fulfill the programs' objectives and implement plans, while demonstrating innovation and a commitment to academic excellence and programmatic impact. Proposals should demonstrate a capacity for flexibility in the management of the programs.

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve program goals. Applicants should demonstrate established links to secondary schools and institutions of higher education in the U.S. and knowledge of the overseas educational environment, particularly an awareness of conditions in societies and educational institutions outside the United States as they apply to academic exchange programs. Applicants should demonstrate prior experience or the capacity to negotiate significant cost savings for international teachers from American institutions. Applicants should also demonstrate their capacity to provide an information management/database system that meets program requirements, is compatible with the Bureau's systems, and provides for electronic applications, electronic data storage, and electronic payment of maintenance allowances. In its review of proposals, the Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (recruitment and selection of participants, placements, and program evaluation) and program content (orientation programs, professional meetings, debriefings). Proposals should articulate a diversity plan, not just a statement of compliance.

6. *Project Evaluation:* Proposals should include a plan to evaluate the programs' success, both as the activities unfold and at the end of the programs. The Bureau recommends that proposals include a draft survey questionnaire or other instrument plus description of a methodology to use to link outcomes to original objectives.

7. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries, should be kept as low as possible while adequate and appropriate to provide the required services. Proposals should document plans to realize innovative cost-sharing, cost-savings and other efficiencies through use of technology, administrative streamlining, and other management techniques.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*.

VI.3. Reporting Requirements:

You must provide ECA with a hard copy original plus two copies of the following reports:

A final program and financial report no more than 90 days after the expiration of the award; quarterly financial reports, and ad hoc program and financial reports as requested by the Teacher Exchange Branch.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Mr. Michael Kuban, Fulbright Teacher Exchange Branch, ECA/A/S/X, Room 349, ECA/A/S/X–09–01, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, e-mail: *Kubanmm@state.gov*, phone: (202) 453–8897, and fax: (202) 453–8890.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–09–01.

Please read the complete announcement before sending inquiries or submitting proposals. All inquiries about the RFGP or any aspect of the Teacher Exchange Program should be submitted in writing via e-mail to Mr. Kuban. Any questions or requests for information from overseas Fulbright commissions or Public Affairs Sections of U.S. embassies should be submitted in writing via e-mail to Ms. Mosley for transmission to those overseas offices. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 4, 2008.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–5041 Filed 3–12–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Joaquin County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent, to prepare an Environmental Impact Statement (EIS) for the proposed South Stockton Six-Lane Project, on State Route 99, in San Joaquin County, California will be withdrawn; and an Environmental Assessment (EA) in lieu of an EIS is being prepared for this proposed highway project.

FOR FURTHER INFORMATION CONTACT: Dominic Hoang, Highway Engineer, FHWA, California Division, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814–4708; weekdays 7 a.m.–4 p.m. (Pacific time); telephone: (916) 498–5002; e-mail: *dominic.hoang@fhwa.dot.gov.* Gail Miller, Senior Environmental Planner, Caltrans, 2015 E. Shields Avenue, #100, Fresno, CA 93726; weekdays 8 a.m.–5 p.m. (Pacific time); telephone: (916) 243–8274; e-mail: *gail_miller@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Caltrans, conducted studies of the potential environmental impacts associated with the proposed highway project to widen a three-mile stretch of State Route 99 from four lanes to six lanes, from 0.4 mile north of the Arch Road Interchange to 0.1 mile south of State Route 4 West in Stockton, San Joaquin County, California. During the course of conducting these studies, it was identified that many of the potential costly environmental impacts that led to issuing the Notice of Intent could be avoided by adding the additional lanes to the existing median, instead of to the outside of the existing freeway where residents and businesses are built up close to the roadway. Additional design changes were identified to avoid or minimize potential impacts by further reducing the amount of right-of-way needed to construct the project. Therefore, the FHWA has determined that an EA would be the appropriate environmental document for the project, and that the Notice of Intent previously issued on January 29, 2002 on the **Federal Register**, should be withdrawn.

The EA will be available for public inspection prior to a public hearing, anticipated to be held in the Spring of 2008. Comments or questions concerning this proposed action and the determination that an EA is the proper environmental document should be directed to the FHWA or Caltrans at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: March 6, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–5010 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed U.S. Highway Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). These actions relate to the proposed highway project which would widen Highway 101 for approximately 12.3 km (7.6 mi) from its current four lanes to six lanes by adding one HOV lane in each direction from just north of Steele Lane in Santa Rosa to Windsor River Road-Old Redwood Highway in the Town Windsor in Sonoma County in the State of California. The project also would provide auxiliary lanes, interchange modifications and ramp improvements.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the project will be barred unless the claim is filed on or before September 9, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Melanie Brent, Chief, Office of Environmental Analysis, 510–286–5231, *melanie.brent@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans prepared an Environmental Assessment on a proposal for a highway high occupancy vehicle (HOV) lanes and improvements project in Sonoma County, California.

The Sonoma 101 HOV Lanes Widening (North) Improvements Project would alleviate traffic congestion and delays and improve safety and operations in Sonoma County, California. This would be accomplished by providing an HOV lane in both the north and south directions.

The anticipated permits include: Section 7 Incidental Take Statement for the California tiger salamander (from the U.S. Fish and Wildlife Service) under the Federal Endangered Species Act) 401 Water Quality Certification (from the Regional Water Quality Control Board) under Section 401 of the Clean Water Act) and a 404 Individual Permit (from the U.S. Army Corps of Engineers) under Section 404 of the Clean Water Act).

A public meeting was held at the Town of Windsor Council of Chambers on January 9, 2007. The Environmental Assessment, Finding of No Significant Impact, which was approved on October 24, 2007 and other documents are available for public and agency review at the Caltrans 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.)

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

Land: Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 219].

Air: Clean Air Act 42 U.S.C. 7401–7671(q).

Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712]. Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, as amended.

Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.]

Authority: 23 U.S.C. 139(l)(1).

Issued on: March 6, 2008.

Nancy E. Bobb,

Director, State Programs.

[FR Doc. E8–5012 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed U.S. Highway Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). These actions relate to the proposed highway project to its current four lanes to six lanes by adding one HOV lane in each direction from the Old Redwood Highway Interchange, KP 12.1 (postmile 7.5), to the Rohnert Park Expressway Interchange at KP 22.4 (postmile 13.9) on the Sonoma 101 Highway in Sonoma County in the State of California.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139 (l)(1). A claim seeking judicial review of the Federal agency actions on the project will be barred unless the claim is filed on or before September 9, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Melanie Brent, Chief, Office of Environmental Analysis, 510–286–5231, *melanie.brent@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans prepared an Environmental Assessment on a proposal for a highway high occupancy vehicle (HOV) lanes and improvements project in Sonoma County, California.

The Sonoma 101 HOV Lanes Widening (Central) Improvements Project would alleviate traffic congestion and delays and improve safety and operations in Sonoma County, California. This would be accomplished by providing an HOV lane in both the north and south directions.

The anticipated permits include: Section 7 Incidental Take Statement for the California tiger salamander (from the U.S. Fish and Wildlife Service) under the Federal Endangered Species Act) 401 Water Quality Certification (from the Regional Water Quality Control Board) under Section 401 of the Clean Water Act) and a 404 Individual Permit (from the U.S. Army Corps of Engineers) under Section 404 of the Clean Water Act).

A public meeting was held at Cotati City Hall on August 8, 2006. The Environmental Assessment, Finding of No Significant Impact, which was approved on August 30, 2007 and other documents are available for public and agency review at the Caltrans 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.)

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

Land: Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 219].

Air: Clean Air Act 42 U.S.C. 7401–7671(q).

Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712]. Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, as amended.

Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.]

Authority: 23 U.S.C. 139(l)(1).

Issued on: March 6, 2008

Nancy E. Bobb,

Director, State Programs.

[FR Doc. E8–5020 Filed 3–12–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Date: March 5, 2008.

John L. Harrington,

International Tax Counsel (Tax Policy).

[FR Doc. E8–4900 Filed 3–12–08; 8:45 am]

BILLING CODE 4810–25–UM

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held April 29–30, 2008, at the Hilton Palm Beach Airport, 150 Australian Avenue, West Palm Beach, Florida. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs

on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits.

On April 29, the meeting will begin at 8 a.m. and conclude at 4 p.m. The Committee will receive briefings and updates on National Cemetery Administration issues. On April 30, the Committee will tour the South Florida VA National Cemetery and then reconvene at the hotel for a business session (beginning at 1 p.m.) which will include discussions of Committee recommendations, future meeting sites, and potential agenda topics at future meetings. That session will be adjourned at 4 p.m.

Time will not be allocated for receiving oral presentations from the public. Any member of the public wishing to attend the meeting should contact Mr. Michael Nacincik, Designated Federal Officer at (202) 461–6240. The Committee will accept written comments. Comments may be transmitted electronically to the Committee at *Michael.n@va.gov* or mailed to the National Cemetery Administration (41C2), 810 Vermont Avenue, NW., Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: March 5, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–4764 Filed 3–12–08; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on April 9–10, 2008, in Room 430, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. On April 9, the session will begin at 8:30 a.m. and end at 5 p.m. On April 10, the session will begin at 8 a.m. and end at noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology by assessing the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older veterans and by evaluating VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussion on VA's aging research activities, update on VA's geriatric workforce (to include training, recruitment and retention approaches, Veterans Health Administration (VHA) Primary Care and Geriatric Primary Care) recent VHA efforts regarding dementia and delirium, and performance oversight of the VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee not less than ten days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney, Program Analyst, at (202) 461–6769.

Dated: March 6, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–4875 Filed 3–12–08; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans Rural Health Advisory Committee; Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Veterans Rural Health Advisory Committee. The Secretary of Veterans Affairs had determined that establishing the Committee is both necessary and in the public interest.

The Veterans Rural Health Advisory Committee will advise the Secretary of Veterans Affairs on healthcare issues affecting veterans residing in rural areas. The Committee will evaluate current VA rural health program activities and identify existing barriers to rural health services. It will also recommend strategies to improve those services for veterans.

Committee members will be selected by the Secretary. The Committee's membership is expected to include academic experts in rural health care delivery, state and federal government professionals who focus on rural health issues, veterans affairs officials at the state level, and veterans service organization members.

Dated: March 5, 2008.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. E8–4876 Filed 3–12–08; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
March 13, 2008

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EE–2006–STD–0131]

RIN 1904–AA92

Energy Conservation Program: Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act authorizes the Department of Energy (DOE) to establish energy conservation standards for various consumer products and commercial and industrial equipment, including general service fluorescent lamps and incandescent reflector lamps, for which DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. In this advance notice of proposed rulemaking (ANOPR), DOE is considering amendment of existing energy conservation standards for general service fluorescent lamps and incandescent reflector lamps, and it is also considering whether standards should apply to additional general service fluorescent lamps. In addition, this ANOPR considers various amendments to lighting-related definitions DOE previously developed and incorporated into the CFR.

DATES: DOE held a public meeting in Washington, DC, that began on March 10, 2008. The agenda for the public meeting covered first the concurrent test procedure rulemaking for general service fluorescent, incandescent reflector, and general service incandescent lamps (see proposal in today's **Federal Register**), and then this energy conservation standards rulemaking for these lighting products.

DOE began accepting comments, data, and information regarding the ANOPR at the public meeting and will continue to accept comments until, but no later than April 14, 2008. See section V, ''Public Participation,'' of this ANOPR for details.

ADDRESSES: The public meeting was held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Any comments submitted must identify the ANOPR for Lighting Standards, and provide the docket number EE–2006–STD–0131 and/or Regulatory Information Number (RIN) 1904–AA92. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: fluorescent_and_incandescent_lamps.rulemaking@ee.doe.gov.* Include the docket number EE–2006–STD–0131 and/or RIN number 1904–AA92 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–1851. E-mail: *Linda.Graves@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov or Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

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Acronyms and Abbreviations

AEO Annual Energy Outlook
ANOPR advance notice of proposed rulemaking
ANSI American National Standards Institute
BEF ballast efficacy factor
BF ballast factor
BR bulged reflector (reflector lamp shape)
CBECS Commercial Buildings Energy Consumption Survey
CCT correlated color temperature
CEC California Energy Commission
CEE Consortium for Energy Efficiency
CFR Code of Federal Regulations
CFL compact fluorescent lamp
CIE International Commission on Illumination
CO_2 carbon dioxide
CRI color rendering index
CSL candidate standard level
DOE U.S. Department of Energy
E26 Medium screw-base (incandescent lamp base type)
EIA Energy Information Administration
EISA 2007 Energy Independence and Security Act of 2007
EPACT 1992 Energy Policy Act of 1992
EPACT 2005 Energy Policy Act of 2005
EPCA Energy Policy and Conservation Act
ER elliptical reflector (reflector lamp shape)
FEMP Federal Energy Management Program
FR **Federal Register**
FTC Federal Trade Commission
GE General Electric Lighting and Industrial
GRIM Government Regulatory Impact Model
GSFL general service fluorescent lamp
GSIL general service incandescent lamp
HIR halogen infrared reflector
HO high output
HVAC Heating, Ventilating and Air-Conditioning
IESNA Illuminating Engineering Society of North America
ImSET Impact of Sector Energy Technologies
I–O input-output
IR Infrared
IRL incandescent reflector lamp
K degrees Kelvin
LCC life-cycle cost
Lm lumens
LMC U.S. Lighting Market Characterization Volume I
Lm/W lumens per watt
MECS Manufacturer Energy Consumption Survey (MECS)
MIA Manufacturer Impact Analysis
NAICS North American Industry Classification System
NEEP Northeast Energy Efficiency Partnership
NEMA National Electrical Manufacturers Association
NEMS National Energy Modeling System
NES national energy savings
NIA National Impact Analysis
NOPR notice of proposed rulemaking
NO_X nitrogen oxides
NPV net present value
OIRA Office of Information and Regulatory Affairs
OMB U.S. Office of Management and Budget
PAR parabolic aluminized reflector (reflector lamp shape)
PBP payback period
PG&E Pacific Gas and Electric
R reflector (reflector lamp shape)
RECS Residential Energy Consumption Survey
SBA Small Business Administration
SO_2 sulfur dioxide
T5, T8, T10, T12 tubular fluorescent lamps, diameters of 0.625, 1, 1.25 or 1.5 inches, respectively
TSD technical support document
TSL trial standard level
U.S.C. United States Code
UV ultraviolet
V volts
W watts

I. Introduction

This advance notice of proposed rulemaking (ANOPR) serves two

primary purposes: (1) Providing a preliminary determination regarding additional general service fluorescent lamps (GSFL) that DOE is considering for coverage and standards; and (2) initiating rulemaking to consider amending DOE's energy conservation standards related to coverage of GSFL and incandescent reflector lamps (IRL). The ANOPR is intended to help DOE satisfy two statutory directives, namely to make a preliminary determination representing the Secretary's initial assessment of additional GSFL to consider for energy conservation standards under section 325(i)(5) of the Energy Policy and Conservation Act (hereinafter ''EPCA'') (42 U.S.C. 6295(i)(5)), and to conduct an energy conservation standards rulemaking for general service fluorescent lamps and incandescent reflector lamps under Section 325(i)(3) of EPCA (42 U.S.C. 6295(i)(3)). Because the preliminary determination for certain additional lamps is positive, DOE is including such lamps in the ANOPR analyses for standard-setting purposes.

DOE welcomes comment on any relevant issue related to this ANOPR. However, throughout this **Federal Register** notice, DOE identifies specific areas and issues on which it specifically invites comment. These critical issues are summarized in section V.E of this notice.

A. Purpose of the Advance Notice of Proposed Rulemaking

The purpose of the ANOPR is to provide interested parties with an opportunity to comment on:

1. The preliminary determination of additional GSFL being considered for energy conservation standards;

2. The product classes DOE is planning to analyze in this rulemaking;

3. The analytical framework, methodology, inputs, and models (e.g., life-cycle cost (LCC) and national impact analysis (NIA) spreadsheets) that DOE developed to evaluate energy conservation standards for GSFL and IRL (collectively referred to in this ANOPR as the ''two categories of lamps'');

4. The analyses conducted for the ANOPR, including the preliminary results for the engineering analysis, product price determination, LCC and payback period (PBP) analysis, and NIA. These analyses are summarized in this ANOPR and presented in detail in the ANOPR technical support document (TSD), Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps,[1] published in tandem with this ANOPR; and

5. The candidate standard levels (CSLs) that DOE developed for the ANOPR.

B. Authority

Title III of EPCA (42 U.S.C. 6291 et seq.) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which includes major household appliances. Subsequent amendments expanded Title III of EPCA to include additional consumer products and certain commercial and industrial equipment, including certain fluorescent and incandescent lamps—the products that are the focus of this document. In particular, amendments to EPCA in the Energy Policy Act of 1992 (EPACT 1992), P.L. 102–486, established energy conservation standards for certain classes of GSFL and IRL, and authorized DOE to amend these standards if such amendments were warranted. (42 U.S.C. 6291(1), 6295(i)(1) and (3)–(4)) The same EPACT 1992 amendments to EPCA also authorized DOE to adopt standards for additional GSFL and general service incandescent lamps (GSIL), if such additional standards were warranted. (42 U.S.C. 6295(i)(5)) Subsequent amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA 2007), P.L. 110–140, amended the existing energy conservation standards for IRL and removed DOE's authority under 42 U.S.C. 6295(i)(5) to adopt standards for additional GSIL.

Before DOE establishes any new or amended energy conservation standards, it must first solicit public comments on a proposed standard. EPCA, as amended, specifies that any new or amended energy conservation standard that DOE prescribes for consumer products shall be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary [of Energy] determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)) Moreover, EPCA states that the Secretary of Energy (the Secretary) may not establish an amended standard if such standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the product subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered product that are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings (or, as applicable, water savings) likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered product likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i))

C. Summary of Proposed Coverage for Lamps

DOE's regulations currently set energy efficiency standards for certain classes of general service fluorescent lamps and incandescent reflector lamps. 10 CFR 430.32(n). However, section 325(i)(5) of EPCA directs the Secretary of Energy to consider whether the standards in effect for GSFL should be amended so as to apply to ''additional general service fluorescent lamps.'' (42 U.S.C. 6295(i)(5)). Accordingly, in section II of this notice, DOE presents its preliminary determination regarding additional lamps that may be considered as part of the standards rulemaking. Section II provides a summary of DOE's authority under EPCA to consider additional lamps for coverage. In addition, because the preliminary determination was positive, section II also presents, by lamp type, the additional lamps for which DOE intends to consider setting standards.

[1] To view the technical support document for this rulemaking, visit DOE's website at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

D. Overview of the Analyses Performed

As noted above, EPCA authorizes DOE to consider establishing or amending energy conservation standards for various consumer products and commercial and industrial equipment, including the two categories of lamps that are the subject of this ANOPR. For each of these products, DOE conducted key technical analyses for this ANOPR in the following areas: (1) Engineering; (2) energy-use characterization; (3) product price determination; (4) LCC and PBP analyses; and (5) NIA. DOE performed a separate set of the requisite analyses for each of the two categories of lamps examined in this rulemaking. This ANOPR presents the methodology and results of each of these analyses (first an overview, followed by a more in-depth discussion).

For each type of analysis, Table I.1 identifies the sections in this document that summarize the methodologies, key inputs, and assumptions for the analysis. In addition, DOE conducted several other analyses that either support the five analyses discussed above or are preliminary analyses that will be expanded upon during the NOPR stage of this rulemaking. These analyses include the market and technology assessment, a screening analysis which contributes to the engineering analysis, and the shipments analysis which contributes to the national impacts analysis. In addition to these analyses, DOE has begun some preliminary work on the life-cycle cost subgroup analysis, manufacturer impact analysis, utility impact analysis, employment impact analysis, environmental assessment analysis, and the regulatory impact analysis for the ANOPR. These analyses will be expanded upon during the NOPR stage of this rulemaking.

DOE consulted with interested parties as part of its process for conducting all of the analyses for the ANOPR and invites further input from the public on these topics. While obtaining such input is the primary purpose of this stage of the rulemaking, this notice also contains a synopsis of the preliminary analytical results. (The TSD contains a complete set of results.) The purpose of publishing these preliminary results in this notice is to: (1) Facilitate public comment on DOE's analytical methodology; (2) illustrate the level of detail found in the TSD; and (3) invite comment on the structure and the presentation of those results. The preliminary analytical results presented in the ANOPR are subject to revision following review and input from the public.

TABLE I.—1 KEY TECHNICAL ANALYSES CONDUCTED FOR THE ANOPR

Analysis area	Methodology	Key inputs [2]	Key assumptions	ANOPR section and TSD chapter
Engineering Analysis	Design option analysis to establish lamp and lamp-and-ballast designs at each CSL.	Published catalog data on performance values such as operating life, rated power, efficacy, and light output.	Analysis can be extended to product classes and efficiency levels for which DOE did not conduct analysis; ballast system power varies linearly by ballast factor.	Section III.C and TSD Chapter 5.
Energy-Use Characterization.	Multiply lamp power, or lamp-and-ballast system power, by annual operating hours.	Annual operating hours by lamp type; lamp, or lamp and ballast, energy consumption. Energy Information Administration (EIA) 2001, 2002, and 2003 survey data and 2002 U.S. Lighting Market Characterization Study Vol. I.	Data sources are indicative of current lighting use.	Section III.D and TSD Chapter 6.
Product Price Determination.	Mark up manufacturer price schedules to develop low, medium, and high end-user retail prices.	Manufacturer price schedules. Publicly available discount schedules from State procurement contracts and other users.	Future pricing for more efficacious products will reflect discounts used with today's commodity products.	Section III.E and TSD Chapter 7.
Life-cycle Cost and Payback Period Analyses.	Use Monte Carlo simulation in combination with inputs that are characterized with probability distributions to establish a distribution of consumer economic impacts (i.e., LCC savings and PBP); capture variability in annual energy use; correlate electricity prices with building samples to capture regional and sector-specific variability; use residual value to account for any remaining life of a lamp at the end of the analysis period; report LCC savings by event type and CSL.	Lamp and ballast installation costs; annual energy consumption; electricity prices and future trends; product lifetimes; discount rates; consumer "lamp purchasing events" that cause purchase of a new lamp / system; building samples based on the EIA's Commercial Building Energy Consumption Survey (CBECS), EIA's Residential Energy Consumption Survey (RECS), and EIA's Manufacturing Energy Consumption Survey (MECS) and the U.S. Lighting Market Characterization Vol. I (LMC).	AEO 2007 basis for energy price forecasts and EIA 2005 basis for distribution of electricity prices; average discount rate is 5.6% for the residential sector, 6.2% for the commercial sector, and 7.5% for the industrial sector.	Section III.G and TSD Chapter 8.

TABLE I.—1 KEY TECHNICAL ANALYSES CONDUCTED FOR THE ANOPR—Continued

Analysis area	Methodology	Key inputs [2]	Key assumptions	ANOPR section and TSD chapter
National Impact Analysis and Shipment Analysis.	Forecasts of national GSFL and IRL costs and energy consumption; forecast shipments through the use of a stock accounting model. DOE used the lamp purchase events to divide the market into segments—new construction, replacements, and early retrofit (only for GSFL); use multiple scenarios to forecast the technology mix of lamps (and ballasts) sold at each CSL.	Historical and forecasted annual shipments; lamp stock; total installed product costs; unit annual energy consumptions; AEO2007 energy price forecasts; site-to-source conversion factors for electricity; discount rate; HVAC interaction, and rebound effect.	Annual shipments; forecasted base-case and standards-case efficacy improvements based on market-share matrices and historical trends; AEO2007 basis for site-to-source conversion factors; discount rates are 3 percent and 7 percent real; future costs discounted to present year (2007).	Sections III.H and III.I; TSD Chapters 9 and 10.

1. Engineering Analysis and Product Price Determination

DOE uses the engineering analysis and product price determination together to characterize the relationship between the end-user (consumer) price and the efficiency of the product DOE evaluates for standards. The relationship between the efficiency of a product and the price of that product is essential in determining the relative cost of a more efficient product over its lifetime (i.e., the purchase price of the product plus maintenance and operating costs) as compared to a less efficient product. This calculation is necessary to determine whether individual consumers and the nation will benefit under an efficiency standard. DOE's approach to these analyses is explained briefly below.

The engineering analysis identifies the representative baseline lamps, or lamp-and-ballast combinations, that DOE will evaluate in the engineering analysis. The term ''baseline'' refers to a lamp (or lamp-and-ballast system) that has features and technologies typically found in equipment currently offered for sale and is representative of the characteristics of products in a given product class; for products which are already subject to an energy efficiency standard, the baseline unit is typically one which just meets the current regulatory requirement.

DOE based the product price determination for lamps and ballasts on marked-up manufacturer price schedules, developing low, medium, and high end-user retail prices. Section III.C and Chapter 5 of the TSD discuss the engineering analysis, and section III.E and Chapter 7 of the TSD discuss the product price determination in further detail.

2. Energy-Use Characterization

The energy-use characterization provides estimates of annual energy use for the two categories of lamps which are the subject of the present rulemaking. DOE uses these estimates in the LCC and PBP analyses, as well as the NIA. To develop annual energy use estimates, DOE multiplied annual usage (in hours per year) by the system power estimates (in watts). In order to obtain the inputs for these calculations, DOE took the following steps. DOE developed the system power estimates in the engineering analysis. To derive annual energy usage, DOE used data published in the U.S. Lighting Market Characterization: Volume I (LMC) [3], the Residential Energy Consumption Survey (RECS) [4], the Commercial Building Energy Consumption Survey (CBECS) [5], and the Manufacturer Energy Consumption Survey (MECS) [6]. More detail on the calculation of operating hours is available in section III.D.1 of this notice, and Chapter 6 of the TSD.

3. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product (i.e., purchase price plus maintenance and operating costs). The LCC analysis compares the LCC of products and equipment designed to meet possible energy conservation standards with the LCC of the products and equipment likely to be installed in the absence of standards.

The PBP represents the number of years required to recover the increase in purchase price (including installation cost) of a more-efficient product through savings in the operating cost of the product. The PBP is calculated by dividing the change in total installed cost due to increased efficacy by the change in annual operating cost from increased efficacy. More detail on the calculation of LCC and PBP is available in section III.G of this notice and Chapter 8 of the TSD.

4. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total customer costs and savings expected to result to the nation from new standards at specific efficiency levels. Stated another way, in the NIA, DOE calculates NES and NPV for any given potential standard level for each of the two categories of lamps as the difference between a base-case forecast (i.e., without new standards) and the standards-case forecast (i.e., with new standards). To start, DOE determines national annual energy consumption by multiplying the

[2] The data sources cited in this table were the most current available at the time DOE prepared this ANOPR. In the future, should more up-to-date sources become available, DOE will incorporate those more up-to-date sources into its analysis.

[3] U.S. Department of Energy. Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Final Report: U.S. Lighting Market Characterization, Volume I: National Lighting Inventory and Energy Consumption Estimate (2002). Available at: *www.eere.energy.gov/buildings/info/documents/pdfs/lmc_vol1_final.pdf.*

[4] U.S. Department of Energy. Energy Information Agency, Residential Energy Consumption Survey: File 1: Housing Unit Characteristic (2006). Available at: *http://www.eia.doe.gov/emeu/recs/recs2001/publicuse2001.html.*

[5] U.S. Department of Energy. Energy Information Agency, Commercial Building Energy Consumption Survey: Micro-level data, file 2 Building Activities, Special Measures of Size, and Multi-building Facilities (2003). Available at: *http://www.eia.doe.gov/emeu/cbecs/public_use.html.*

[6] U.S. Department of Energy. Energy Information Agency, Manufacturing Energy Consumption Survey, Table 1.4: Number of Establishments by First Use of Energy for All Purposes (Fuel and Nonfuel) (2002). Available at: *http://www.eia.doe.gov/emeu/mecs/mecs2002/data02/shelltables.html.*

number of units in use which are expected to be purchased after the standard takes effect by their average unit energy consumption. Using that input, the NES is calculated as the sum of the cumulative annual energy savings over the analysis period (2012–2042).[7] The national NPV is then calculated from the discounted net savings each year for the products purchased over that same analysis period. The NPV sums the discounted net savings each year, consisting of the difference between the savings in total operating costs and increases in total installed costs. More detail on the NIA is available in sections III.H and III.I of this notice and Chapters 9 and 10 of the TSD.

E. Background

1. History of Standards Rulemaking for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

As noted above, EPCA established energy conservation standards for GSFL, requiring that certain fluorescent lamps meet prescribed minimum efficacy levels and minimum color rendering index (CRI) levels. EPCA also established efficacy standards for certain IRL. (42 U.S.C. 6295(i)(1)) For both categories of lamps, EPCA requires that DOE conduct two cycles of rulemakings to determine whether the standards should be amended. (42 U.S.C. 6295(i)(3)–(4)) In addition, EPCA provides that within 24 months after U.S. Federal Trade Commission (FTC) labeling requirements become effective for GSFL and GSIL, DOE must initiate a rulemaking to determine if the standards in effect for fluorescent and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent lamps. (42 U.S.C. 6295(i)(5)) Within 18 months of initiating the rulemaking, EPCA further requires DOE to publish a final rule containing such amendment, if any. (42 U.S.C. 6295(i)(5)) The FTC published a final rule establishing labeling requirements for covered lamps on May 13, 1994, with an effective date of May 15, 1995. 59 FR 25176.

In this rulemaking, DOE is addressing two statutory directives under 42 U.S.C. 6295(i). First, DOE is reviewing and deciding whether to amend EPCA's prescribed energy conservation standards for GSFL and IRL. (42 U.S.C. 6295(i)(3)) Second, DOE is reviewing whether energy conservation standards should be made applicable to additional GSFL. (42 U.S.C. 6295(i)(5))

To initiate the current energy conservation standards rulemaking, on May 31, 2006, DOE published on its Web site the Rulemaking Framework Document for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps[8] (''Framework Document''), which describes the procedural and analytical approaches it anticipated using to evaluate potential energy conservation standards for these products.[9] DOE published a notice to announce the availability of the Framework Document, to schedule a public meeting on the planned analytical framework for this rulemaking (hereafter, ''Public Meeting''), and to invite written comments concerning this analytical framework. The title of that **Federal Register** notice published on May 31, 2006 is ''Energy Conservation Standards for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps: Notice of Public Meeting and Availability of the Framework Document,'' [10]—71 FR 30834.

A Public Meeting was held on June 15, 2006, whose purpose was to discuss the analyses and issues identified in various sections of the Framework Document. At the Public Meeting, DOE described the different analyses it would conduct, such as the LCC and PBP analyses, the methods it planned to employ when conducting them, and the relationship among the various analyses.[11] Manufacturers, trade associations, environmental advocates, and other interested parties attended the Public Meeting. Issues discussed included: (1) The rulemaking's scope of coverage and definition of exclusions; (2) the development of product classes; (3) lamp-life variation; (4) selection of representative lamps for analysis and baseline models; (5) appropriate methods and sources for developing end-user price estimates; (6) test procedures; (7) the methodology for developing shipment estimates; (8) the need for systems analysis for GSFL (i.e., analyzing a lamp and a ballast in some scenarios); (9) the impact of higher efficacy lamps on building space conditioning loads; and (10) the use of average electricity rates. Comments submitted during the Framework Document comment period elaborated upon these major issues raised at the June 2006 Public Meeting. DOE worked with its contractors to address these issues in the ANOPR analyses.

Comments received in response to the Framework Document helped identify further issues involved in this rulemaking, and such input contributed to the overall analytical process. This document summarizes the comments DOE has received to date, each with a parenthetical reference at the end citing the location of the item in the docket for this rulemaking (i.e., the public record).

2. Energy Independence and Security Act of 2007

On December 19, 2007, during the ANOPR phase of this rulemaking, the Energy Independence and Security Act of 2007 was signed into law. In relevant parts, EISA 2007 amends various EPCA provisions regarding GSFL, IRL, and GSIL, and considerably changes the scope of this rulemaking and the structure of DOE's ANOPR analyses. Accordingly, DOE has incorporated these changes in both the preliminary determination and energy conservation standards analyses contained in this ANOPR. DOE notes that the relevant amendments in EISA 2007 are effective on the date prescribed by the legislation, not on the effective date of this rulemaking.

As stated earlier, in May 2006 DOE published a Framework Document outlining the procedural and analytical approaches it anticipated using for this rulemaking. In addition, DOE received both written and oral comments in response to the Framework Document. Due to the recent amendments to EPCA in EISA 2007, the scope of coverage and analytical approach presented in this ANOPR by necessity differs from that which was previously outlined in the Framework Document. In addition, given these latest legislative amendments, numerous comments submitted no longer hold relevance to this rulemaking and, therefore, are not addressed in this ANOPR. The following section summarizes various sections of EISA 2007 relevant to this rulemaking and discusses their effect on the preliminary determination and

[7] DOE uses 31 years as the time period of analysis for its NES calculations in many of its rulemakings, in order to enable stakeholders to understand the relative magnitude of energy savings potentials of the various products and standard levels being considered.

[8] A PDF copy of the framework document published in May 2006 is available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/lamps_framework.pdf.*

[9] At the time of publication of the Framework Document, EPCA gave DOE authority to consider energy conservation standards for additional GSIL under 42 U.S.C. 6295(i)(5). However, subsequent amendments to EPCA in EISA 2007 removed that authority.

[10] This rulemaking notice is available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

[11] PDF copies of the slides and other material associated with the public meeting are available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/lamps_meeting_061506.html.*

ANOPR analyses contained in this notice.

a. General Service Fluorescent Lamps

Regarding GSFL, section 316(b) of EISA 2007 amends section 321(30)(B)(viii) of EPCA (42 U.S.C. 6291(30)(B)(viii)) by modifying the definition of ''general service fluorescent lamp'' so as to exclude lamps with a CRI of 87 or greater (as compared to the previous exclusion for lamps with a CRI of 82 or greater). This amendment effectively changes the scope of coverage of energy conservation standards for GSFL to now include additional fluorescent lamps with a CRI rating from 82 up to 87. The ANOPR analyses reflect this change in scope of coverage by analyzing lamp designs with CRI ratings up through 86 and also by accounting for the national impacts due to the regulation of this full range of GSFL.

In addition, section 322(b) of EISA 2007 amends section 325(i) of EPCA (42 U.S.C. 6295(i)) by moving the table of efficacy requirements for fluorescent lamps from section 325(i)(1)(A) to section 325(i)(1)(B). However, every aspect of the table is identical to the previous standard as enacted by EPACT 1992, including the product groupings, and the minimum efficacy and CRI requirements.[12] Therefore, the amendment in section 322(b) of EISA 2007 results in no substantive change in DOE's approach toward GSFL. Furthermore, the legislation does not modify the authority to consider extending coverage to additional GSFL under section 325(i)(5) of EPCA (42 U.S.C. 6295(i)(5)).

b. General Service Incandescent Lamps

Regarding GSIL, section 321(a)(1) of EISA 2007 amends section 321(30) of EPCA (42 U.S.C. 6291(30)) by deleting the existing definition and inserting a new definition for ''general service incandescent lamp.'' In the context of redefining ''general service incandescent lamp,'' this section also introduces new definitions for several lighting-related terms, some of which were previously defined by DOE in the CFR. Definitions contained in section 321(a)(1) of EISA 2007 relevant to this rulemaking include the following terms: (1) ''Modified spectrum;'' (2) ''rough service lamp;'' (3) ''vibration service lamp;'' and (4) ''colored incandescent lamp.'' The effect that the incorporation of these definitions has on this rulemaking will be discussed in section I.E.2.c of this notice.

In addition, section 321(a)(3) amends section 325 of EPCA (42 U.S.C. 6295) by prescribing separate energy conservation standards and minimum rated lifetimes for general service incandescent lamps and modified spectrum general service incandescent lamps, with effective dates ranging from January 1, 2012 to January 1, 2014. In addition, this section also directs DOE to conduct two future standards rulemakings to review and possibly amend the standards. Furthermore, although EPACT 1992 gave DOE authority under 42 U.S.C. 6295(i)(5) to consider additional general service incandescent lamps for energy conservation standards coverage, section 321(a)(3) of EISA 2007 amends section 325(i)(5) of EPCA and removes this provision. Accordingly, DOE has terminated its preliminary determination regarding the expansion of scope to additional GSIL. In addition, as EISA 2007 prescribed energy conservation standards for GSIL, this ANOPR does present any analyses or candidate standard levels related to GSIL.

c. Incandescent Reflector Lamps

Regarding IRL, section 322(a)(1) of EISA 2007 amends section 321(30)(C)(ii) of EPCA (42 U.S.C. 6291(30)(C)(ii)) by modifying the portion of the definition of ''incandescent lamp'' which is applicable to reflector lamps so as to expand that definition to include lamps with a diameter between 2.25 and 2.75 inches, as well as BPAR-, ER-, and BR-shaped lamps. In addition, section 322(a)(2) of EISA 2007 adds new statutory definitions for a BPAR incandescent reflector lamp, a BR incandescent reflector lamp, and an ER incandescent reflector lamp. These new statutory definitions supersede the existing CFR definitions for ''ER incandescent reflector lamp'' and ''BR incandescent reflector lamp'' that were developed by DOE (62 FR 29221 (May 29, 1997)), and thereby remove DOE's authority to amend these definitions.

In addition, section 322(b) of EISA 2007 amends section 325(i) of EPCA (42 U.S.C. 6295(i)) by moving the table of minimum average lamp efficacy requirements for IRL from section 325(i)(1)(A) to section 325(i)(1)(B). However, as noted above for GSFL, every aspect of this table of IRL efficacy requirements is identical to the previous standard as enacted by EPACT 1992. Section 322(b) also amends EPCA to incorporate several new exemptions to the IRL standards in a newly-adopted section 325(i)(1)(C) of EPCA. These exemptions are as follows: (1) Lamps rated at 50 watts or less that are ER30, BR30, BR40, and ER40; (2) lamps rated at 65 watts that are BR30, BR40, or ER40 lamps; and (3) R20 incandescent reflector lamps rated 45 watts or less. DOE notes that the expanded scope of IRL, as presented in EISA 2007, is consistent the proposal contained in a joint comment submitted by the American Council for an Energy Efficient Economy (ACEEE) and the National Electrical Manufacturers Association (NEMA) regarding this rulemaking. (ACEEE and NEMA, No. 14 at pp. 3–8) The effective date of energy conservation standards for BPAR, ER, and BR shaped lamps as prescribed by EISA 2007 is January 1, 2008. The effective date of standards for smaller diameter IRL as prescribed by EISA 2007 (i.e., diameter of more than 2.25 inches, but not more than 2.75 inches) is the later of January 1, 2008 or 180 days after the date of enactment of EISA 2007. Given that EISA 2007 was enacted on December 19, 2007, the effective date of these standards for smaller diameter IRL is June 16, 2008. In both of these cases, the EISA 2007 standards come into effect well before an amended IRL standard (as would be prescribed by this rulemaking) would come into effect. DOE's draft ANOPR analyses were modified to account for this expanded scope of IRL coverage by selecting IRL baselines which DOE expects to be the least efficacious covered lamp design that would comply with the amended standard. In addition, DOE updated its IRL shipment forecasts in response to EISA 2007 to account for both the expansion of scope for Federally-regulated reflector lamps and the exemptions to the standards.

In addition, it is also important to note that, as previously discussed, EISA 2007 introduced statutory definitions for ''rough service lamp,'' ''vibration service lamp,'' and ''colored incandescent lamp,''—lamp types which are explicitly excluded from the definition of ''incandescent reflector lamp,'' as contained in the referenced definition of ''incandescent lamp.'' DOE had previously developed and adopted into the CFR definitions for these three terms in the context of IRL; however, as previously mentioned, these DOE definitions are now superseded by the statutory definitions in EISA 2007. As these terms are used to define that portion of the definition of ''incandescent lamp'' that corresponds to the definition of ''incandescent reflector lamp,'' any amendments to these terms affect the scope of energy

[12] These CRI requirements reflect minimum CRI standards for covered fluorescent lamps. These minimum requirements are not affected by the exclusion in the definition of ''general service fluorescent lamp'' for lamps with a CRI of 87 or greater, as amended by EISA 2007.

conservation standards coverage of IRL. In examining the new definitions for ''rough service lamp'' and ''vibration service lamp,'' DOE recognizes that they differ from the earlier CFR definitions DOE had adopted. In response to the changes to these definitions, DOE attempted to account for these changes in the ANOPR analyses. Similarly, the new EISA 2007 definition for ''colored incandescent lamp'' effectively expands the scope of coverage for IRL. That is, IRL containing five percent or more of neodymium content and plant light IRL are now subject to energy conservation standards. DOE accounts for this expanded coverage of IRL by creating a separate product class for these lamps, termed ''modified spectrum lamps.'' This decision to treat modified spectrum lamps separately is consistent with the approach taken in EISA 2007 with respect to GSIL.

Finally, although EPACT 1992 gave DOE authority under U.S.C. 6295(i)(5) to consider additional general service incandescent lamps (which included IRL) for energy conservation standards coverage, section 321(a)(3) of EISA 2007 has amended section 325(i)(5) of EPCA to remove this provision. Accordingly, DOE has terminated its preliminary determination regarding the expansion of scope to additional GSIL and IRL. However, as discussed above, in the ANOPR analyses, DOE accounts for the new scope of coverage for IRL for purposes that remain relevant to this rulemaking (i.e., considering amended efficacy standards for all covered IRL).

d. Off Mode and Standby Mode Energy Consumption

In addition to the specific relevant actions described above, EISA 2007 also places various requirements on all covered products. Of particular note here, section 310(3) of EISA 2007 amends section 325 of EPCA (42 U.S.C. 6295) by mandating that any final rule establishing or revising a standard for a covered product that is adopted after July 1, 2010 shall incorporate standby mode and off mode energy use into the standard, if feasible. DOE notes that final rule for this energy conservation standards rulemaking on fluorescent and incandescent lamps is scheduled for publication by June 2009. In addition, after careful review, DOE has preliminarily determined that for the GSFL and IRL which are the subjects of this rulemaking, current technologies for these products do not employ a standby mode or off mode, so a determination of the energy consumption of such features is inapplicable. Given EISA 2007's definitions of ''active mode,'' ''off mode,'' and ''standby mode'' [13] applicable to both GSFL and IRL, the lamp must be entirely disconnected from the main power source (i.e., the lamp is switched off) in order not to provide any active mode function (i.e., emit light), thereby meeting the second provision in the definition of ''off mode.'' However, if the lamp is disconnected from the main power source, the lamp clearly does not satisfy the requirements of operating in off mode. In addition, DOE believes that all covered products that meet the definitions of ''GSFL'' and ''IRL'' are single-function products and do not offer any secondary user-oriented or protective functions. Therefore, DOE has tentatively concluded that it is not feasible to incorporate off mode or standby mode energy use into the energy conservation standards for GSFL and IRL. DOE welcomes comment on its understanding of off mode and standby mode energy consumption for the products addressed by this rulemaking.

3. Test Procedures

DOE test procedures outline the method by which manufacturers must determine the efficiency of their products and equipment, and thereby assess and certify compliance with the energy conservation standards adopted pursuant to EPCA. DOE established test procedures for fluorescent and incandescent lamps in a final rule published in the **Federal Register** on May 29, 1997 (hereafter ''1997 Test Procedure Final Rule''). 62 FR 29222 (adopting 10 CFR part 430, Subpart B, Appendix R [14]). In addition, the test procedures incorporate by reference American National Standards Institute (ANSI), Illuminating Engineering Society of North America (IESNA), and International Commission on Illumination (CIE) standards to measure lamp efficacy and CRI. In their totality, the DOE test procedures provide detailed instructions for measuring the performance of GSFL and IRL and certain performance attributes of GSIL.

The National Electrical Manufacturers Association (NEMA) submitted a comment identifying what it perceived to be problems with several of the industry standards incorporated in DOE's test procedures. Specifically, NEMA stated that many of the standards referenced in the test procedures are outdated, have been replaced, or are no longer available. (NEMA, No. 12 at pp. 2–4) [15]

Prompted by the NEMA comment, DOE reviewed the DOE test procedures for GSFL, IRL, and GSIL, and DOE has tentatively concluded that they should be revised because many of industry standards cited in the test procedures are out of date, are not available for purchase, or are no longer maintained. Therefore, DOE has initiated a test procedure rulemaking, in parallel with this energy conservation standards rulemaking, to review and revise the test procedures for these three categories of lamps—GSFL, IRL and GSIL (even though GSIL is no longer part of this ANOPR). To this end, DOE is publishing a notice of proposed rulemaking (NOPR) in today's **Federal Register** that proposes to amend the lighting test procedures. The following briefly summarizes the major points in the test procedures NOPR; however, for a complete discussion on these and other points, please consult the NOPR.

In the test procedure NOPR, DOE is proposing primarily to update the references to outdated industry standards for fluorescent and incandescent lamps. DOE believes this update is necessary in order to ensure that stakeholders and testing laboratories are able to follow DOE's test procedures, which require obtaining and using several industry standards incorporated by reference. DOE believes that the proposed test procedure amendments would not impact the measured efficacy of a lamp.

In the test procedure NOPR, DOE is also proposing a few definitional and procedural modifications to accommodate technological migrations in the GSFL market and approaches DOE is considering in this energy

[13] In amending 42 U.S.C. 6295(gg)(1)(a)(i), (ii), and (iii), EISA 2007 defines ''active mode,'' ''off mode,'' and ''standby mode'' as follows: '' The term 'active mode' means the condition in which an energy-using product—(I) is connected to a main power source; (II) has been activated; and (III) provides 1 or more main functions.'' ''The term 'off mode' means the condition in which an energy-using product—(I) is connected to a main power source; and (II) is not providing any stand-by or active mode function.'' ''The term 'standby mode' means the condition in which an energy-using product—(I) is connected to a main power source; and (II) offers 1 or more of the following user-oriented or protective functions: (aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer. (bb) Continuous functions including information or status displays (including clocks) or sensor-based functions.''

[14] ''Uniform Test Method for Measuring Average Lamp Efficiency (LE) and Color Rendering Index (CRI) of Electric Lamps.''

[15] A notation in the form ''NEMA, No. 12 at pp. 2–4'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment (1) by the National Electrical Manufacturers Association (NEMA), (2) in document number 12 in the docket of this rulemaking, and (3) appearing on pages 2 through 4.

conservation standards rulemaking. Specifically, DOE is proposing to mandate that GSFL testing continue to be conducted on low-frequency ballasts whenever possible. By maintaining fluorescent lamp testing on low-frequency ballasts when possible, DOE's proposed updates to more current ANSI standards would not alter the measured efficacy of fluorescent lamps and maintain consistent testing across manufacturers. In addition, DOE is proposing amendments related to the calculation of ''lamp efficacy'' for GSFL. Presently, manufacturers are directed to report efficacies to differing degrees of accuracy for fluorescent and incandescent lamps. For example, fluorescent lamp efficacies are rounded off to the nearest whole number, while incandescent lamp efficacies are reported to the tenths decimal place. DOE is proposing to revise the reporting requirements for GSFL, such that all covered lamp efficacies are reported with an accuracy to the tenths decimal place. DOE believes that such change would not only promote consistency among the various lamp categories, but also would coincide with the significant digits presented in the EPCA efficacy standard. In addition DOE found that in order to have standard levels for GSFL that are best able to maximize energy savings, it must utilize the tenths decimal place in its energy conservation standards analysis.

DOE is also proposing in the test procedure NOPR to adopt a testing and calculation method for measuring the correlated color temperature (CCT) of fluorescent and incandescent lamps, a provision that is not currently contained in the test procedure. DOE is considering using CCT to differentiate between product classes for GSFL, and DOE notes that the definitions of ''colored fluorescent lamp'' and ''colored incandescent lamp'' both incorporate CCT ranges, which, in part, determine whether lamps are subject to regulation.

The test procedure NOPR also recognizes that DOE is considering the possibility of extending coverage to certain additional GSFL (see section II of this notice). In addition, the test procedure NOPR recognizes and accounts for the fact that EISA 2007 has extended statutorily-prescribed energy conservation standards to specified types of GSIL. Thus, the NOPR informs the public that DOE intends to amend the test procedures to accommodate these additional lamps, and to provide appropriate test methods, should DOE adopt standards for them.

Overall, and as stated in the NOPR, DOE believes that most of the proposed revisions to the test procedures would not significantly change the reported efficacy of covered lamps or result in a significant increase in testing burden. For any that do have an appreciable impact on the reported efficacy, DOE is proposing to delay the effectiveness of such test procedure revision until the effective date of any new energy conservation standard for these products.

DOE held a public meeting to discuss both the test procedure NOPR and energy conservation standards ANOPR for fluorescent and incandescent lamps. DOE intends to issue a final rule for the lamps test procedure prior to issuing the NOPR for the energy conservation standards rulemaking.

II. Consideration Regarding the Scope of Energy Conservation Standards Coverage

A. Introduction

As noted previously, section 325(i)(5) requires DOE to consider whether to adopt energy efficiency standards for additional GSFL beyond those already covered by the statutorily-prescribed standard. (42 U.S.C. 6295(i)(5)) More specifically, EPCA directs that the Secretary ''shall initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps should be amended so that they would be applicable to additional general service fluorescent [lamps] * * * '' *Id.* Pursuant to this mandate and as explained in this section of the notice, DOE has made a preliminary determination that expanded coverage would be appropriate. The public is invited to review and comment on the initial findings and analyses, as set forth below, regarding which additional fluorescent lamps should be evaluated for possible coverage by energy conservation standards.

Furthermore, DOE was urged to make this preliminary determination by comments received at the Public Meeting. For example, the Appliance Standards Awareness Project (ASAP) recommended that DOE should permit the public to comment on consideration of the scope of additional product coverage, and that DOE should define that scope of coverage early in the rulemaking process in order to prevent any scheduling delays. (Public Meeting Transcript, No. 4.5 at pp. 34–36) DOE agrees with the ASAP comment, and consequently, this notice provides the public with the opportunity to submit comments regarding DOE's preliminary determination.

Below, DOE discusses the range of additional lamps that EPCA authorizes DOE to consider. Then, DOE identifies those additional GSFL that it believes warrant further consideration for possible energy conservation standards, and why. DOE requests comment on these subjects. After consideration of these comments, DOE may propose additional lamps to be covered, along with proposed standard levels for these lamps, during the NOPR stage of this standards rulemaking. After further public comment, DOE will publish a final rule which includes its final decision regarding coverage of additional lamps (and applicable standards levels, as appropriate).

In addition, the following sections also discuss modifications of various existing lighting-related definitions DOE developed and incorporated into the CFR. These modifications reflect market migrations or changes in industry standards and often have the effect of increasing or decreasing DOE's scope of energy conservation standards coverage.

B. Additional General Service Fluorescent Lamps Being Considered Under EPCA Section 325(i)(5)

1. Scope

Prior to embarking on a discussion of additional coverage of general service fluorescent lamps, it is first necessary to explain the extent of coverage under the present standard. Section 325(i)(1) of EPCA established energy conservation standards for certain 4-foot medium bipin lamps, 2-foot U-shaped lamps, 8-foot recessed double contact high output lamps, and 8-foot single pin slimline lamps. (42 U.S.C. 6295(i)(1)) The relevant standard levels for the products can be found in DOE's regulations at 10 CFR 430.32(n).

As the next step in this inquiry, DOE notes that section 325(i)(5) of EPCA directs DOE to determine if the standards in effect should be amended so as to apply to ''additional general service fluorescent [lamps] * * *'' (42 U.S.C. 6295(i)(5)) There are currently a wide variety of fluorescent lamps being used in broad, general service lighting applications [16] that are not covered by

[16] A key provision in the statutory definitions of ''general service fluorescent lamp'' is that the lamp must satisfy ''the majority of fluorescent applications.'' (42 U.S.C. 6291(B)) DOE interprets these phrases to mean that these lamps have broad utility in various fluorescent or lighting applications. In general, these lamps will not represent products used solely in niche applications (such as those specifically excluded in the definition of ''general service fluorescent lamp''), but rather will represent products that often fulfill general illumination purposes (casting light over a broad area), such as in the following common locations: Office space, warehouses, call centers, schools, health care, government buildings, residential housing, and retail stores.

existing energy conservation standards. Accordingly, these lamps are potential candidates for expanded coverage pursuant to 42 U.S.C. 6295(i)(5).

In addition, DOE received a joint comment from several stakeholders (hereafter referred to as ''Joint Comment'') concerning the extent of DOE's authority to expand coverage of its energy conservation standard for lighting products. The Joint Comment was submitted by the Alliance to Save Energy, ACEEE, ASAP, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Power and Conservation Council, and PG&E (Pacific Gas and Electric). Given the stakeholders involved, it should be noted that the Joint Comment reflects views of both energy efficiency advocates and utilities.

The Joint Comment asserted that section 325(i)(5) of EPCA authorizes DOE to adopt standards for any fluorescent lamp not currently covered by standards so long as standards for that lamp would be technologically feasible, economically justified, and would achieve significant energy savings. The comment seems to argue that in implementing section 325(i)(5), DOE should interpret its mandate broadly to include any GSFL that meet these statutory criteria. (Joint Comment, No. 9 at pp. 1–2; Public Meeting Transcript, No. 4.5, pp. 38–39, and 45)

Given that EPCA's statutory definitions of ''general service fluorescent lamp'' contains a number of express exclusions for certain categories of fluorescent lamps, DOE finds no basis in the language of EPCA to support commenters' assertions that the agency's authority to act under section 325(i)(5) of EPCA is unlimited. As discussed below, DOE believes section 325(i)(5) covers additional GSFL that are not one of the enumerated specialized products that EPCA excludes from coverage (see 42 U.S.C. 6291(30)(B)). EPCA defines ''general service fluorescent lamp'' as follows:

[F]luorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following non-general lighting applications:

(i) Fluorescent lamps designed to promote plant growth.

(ii) Fluorescent lamps specifically designed for cold temperature installations.

(iii) Colored fluorescent lamps.

(iv) Impact-resistant fluorescent lamps.

(v) Reflectorized or aperture lamps.

(vi) Fluorescent lamps designed for use in reprographic equipment.

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.

(viii) Lamps with a color rendering index of 87 or greater.

(42 U.S.C. 6291(30)(B)) Both key elements of this definition—i.e., that the lamps can satisfy the majority of lighting applications and the exclusion of certain specialized fluorescent lamps—are consistent with the mandate of section 325(i)(5) that DOE consider and adopt standards for GSFL that currently are not covered by standards. That would allow DOE to cover a broad range of additional products used and viewed as general service fluorescent lamps.

In determining which GSFL would be suitable for consideration under 42 U.S.C. 6295(i)(5), DOE limited its inquiry to those fluorescent lamps with generic physical and operational features closely matching the IESNA's widely accepted definition of ''fluorescent lamp,'' as contained in ''The IESNA Lighting Handbook: Reference and Application,'' Ninth Edition, 2000, p. G–14.[17] Because only lamps with these features are commonly understood to be fluorescent or general service fluorescent lamps, DOE would apply standards to only such fluorescent lamps, provided that such lamps are not expressly excluded under 42 U.S.C. 6291(30)(B).

In summary, in considering whether to amend the standards in effect for fluorescent lamps to apply to ''additional'' GSFL under section 325(i)(5) of EPCA, DOE has considered all lamps that meet the general description of a ''fluorescent lamp'' in the introductory language of 42 U.S.C. 6291(30)(A), that can be used to satisfy the majority of fluorescent lighting applications, for which EPCA does not prescribe standards, and that are not within the exclusions specified in 42 U.S.C. 6291(30)(B).

2. Rationale for Coverage

In considering which additional GSFL to cover, DOE considered lamps other than those specifically excluded. Among the lamps considered, DOE used potential energy savings of the lamps as the primary criterion in considering preliminarily which should be covered by the standards program. After selecting the lamps for consideration, DOE then conducted a preliminary assessment of whether a standard on those lamps would have the potential to meet the two remaining criteria for prescribing new or amended standards—i.e., being technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In the ANOPR (as described in section III below) and NOPR, each lamp selected for coverage would then be the subject of a more comprehensive analysis to determine if there is a reasonable likelihood that standards are justified.

DOE assessed the potential to achieve significant energy savings by extending coverage to particular lamps from market-share estimates and from potential incremental energy savings that could result from more-efficacious lamp designs. DOE has quantitative shipment or market share information for certain lamps, such as 8-foot T8 single pin slimline lamps, which it considered and cites in this notice. However, DOE has little to no information on shipments or market share for other lamp types which DOE is considering, such as 8-foot very high output (VHO) fluorescent lamps. In the absence of data, DOE has relied on qualitative assessments of market share (based on discussions with lighting industry experts) to gauge the potential for significant energy savings. DOE invites the public to present further shipment or market share data relevant to consideration of coverage for additional lamps.

In addition, DOE assessed the potential to achieve significant energy savings for particular lamps by considering whether these lamps serve as potential substitutes to other regulated lamps. By leaving potential substitutes unregulated, DOE risks that regulating one lamp shape may lead to rapid increased sales of other, unregulated substitutable shapes. This shift of installed stock towards unregulated lamps may result in decreased energy savings, or even the possibility of increased energy use, from energy conservation standards on regulated lamps. In order to avoid this consequence, DOE plans to consider coverage of GSFL lamps that are potential substitutes for any lamps that have high energy savings potential and are likely to be regulated. Though the shipments of these substitute lamps may not currently be high-volume, DOE believes that if the lamps are left unregulated, the shipments have the potential to grow in market share. As long as efficacy improvements are technologically feasible, coverage of these additional substitute lamps has the potential to not only provide energy

[17] The definition of fluorescent lamp in the IESNA handbook is a ''low-pressure mercury electric-discharge lamp in which a fluorescing coating (phosphor) transforms some of the UV energy generated by the discharge into light.''

savings in their own right, but to also prevent potentially significant losses in energy savings through substitution effect.

In addition to independently conducting its preliminary determination analysis, DOE considered comments on the additional GSFL it should cover. The following subsections provide a discussion of the GSFL being considered and not considered as expanded coverage, a summary of comments relating to the preliminary determination, and DOE's response to these comments. DOE invites comment on the rationale for coverage presented in this preliminary determination. DOE also invites comment on the scope of coverage defined in this preliminary determination.

In addition, the following sections also discuss modifications to various existing lighting-related definitions DOE developed and incorporated into the CFR, which would have the effect of increasing the scope of coverage under applicable energy conservation standards. The new and amended definitions under consideration are discussed and presented in section II.C.

3. Analysis of Individual General Service Fluorescent Lamps

Current DOE regulations set standards for the following types of fluorescent lamps: (1) 4-foot, medium bipin, straight-shaped lamps, rated wattage ≥ 28W; (2) 2-foot, medium bipin, U-shaped lamps, rated wattage of ≥ 28W; (3) 8-foot, recessed double contact, rapid start, high output lamps, 0.800 nominal amperes (as defined in ANSI C78.1–1991); and (4) 8-foot, single pin, instant start, slimline lamps, rated wattage of ≥ 52 (as defined in ANSI C78.3–1991). Based on an investigation of available products in manufacturer catalogs, DOE identified various, currently-unregulated general service fluorescent lamps that could be considered for additional coverage under section 325(i)(5) of EPCA, while maintaining the exclusions specified in the definition of ''general service fluorescent lamp.'' These lamps are as follows:

- 4-foot, medium bipin, straight-shaped lamps, rated wattage of < 28W;
- 2-foot, medium bipin, U-shaped lamps, rated wattage of < 28W;
- Additional 8-foot, recessed double contact, rapid start, high output lamps;
- Additional 8-foot single pin, instant start, slimline lamps;
- Very High Output (VHO) straight-shaped lamps;
- T5 miniature bipin straight-shaped lamps;
- Additional straight-shaped and U-shaped lamps, other than those listed above (e.g., alternate lengths, diameters, or bases); and
- Additional fluorescent lamps with alternate shapes (e.g., circline, pin-based CFL).

The following section discusses DOE's rationale for considering or not considering expansion of coverage to the above-listed lamps. In addition, in section II.C, DOE considers revisions to the definitions of ''rated wattage'' and ''colored fluorescent lamp'' which may further affect DOE's scope of energy conservations standards coverage.

DOE is considering extension of the standard's coverage to certain 4-foot, medium bipin, GSFL to which standards do not currently apply. Presently, DOE's regulations do not cover or set standards for any 4-foot medium bipin lamp with a wattage less than 28W. As part of this preliminary determination, DOE is considering extension of coverage to 4-foot, medium bipin, straight-shaped fluorescent lamps with wattages between 25W and 28W. DOE understands that 25W, 4-foot medium bipin, T12 fluorescent lamps are manufactured and used primarily in the residential sector for general purpose illumination applications, providing additional opportunity for energy savings. Although DOE received no quantitative shipment information on the market share of these wattages of 4-foot medium bipin lamps, DOE has found that manufacturers currently market and sell 25W, 4-foot medium bipin, T8 fluorescent lamps as replacements for higher-wattage, 4-foot medium bipin, T8 fluorescent lamps. As discussed earlier, by expanding standards coverage to substitute lamps of currently regulated lamps, DOE mitigates the risk of 25W lamps becoming a potential loophole (that decreases energy savings) to the current and pending amended standards on 4-foot medium bipin lamps.

For these reasons, DOE believes that 25W 4-foot medium bipin lamps (both T8 and T12) are suitable candidates to be considered for coverage under this rulemaking. In addition, as the technology and incremental costs associated with increased efficiency of 25W lamps are similar to their already regulated 28W counterparts, DOE has tentatively concluded that standards on these lamps have the potential to meet the statutory criteria of being technologically feasible and economically justified. Therefore, in this ANOPR, DOE analyzes these lamps as part of the 4-foot medium bipin product class in the life-cycle cost (LCC) and national impact analysis (NIA) (sections III.G and III.I, respectively). DOE invites comment on this potential expansion of coverage to 4-foot medium bipin lamps with wattages greater than or equal to 25W, including whether T12 lamps (commonly referred to as ''residential straight-shaped lamps'') should be covered.

Similar to 4-foot medium bipin lamps, DOE's current regulations do not cover or set standards for any 2-foot U-shaped lamp with a wattage less than 28W. In its research of available product in manufacturer catalogs, DOE found no commercially-available 2-foot U-shaped GSFL with wattages less than 28W. Therefore, DOE believes that the current standards cover the majority of the U-shaped general service lighting products available in the market today. Consequently, DOE's preliminary assessment is that lowering the minimum wattage threshold of U-shaped lamps will most likely not result in significant additional energy savings. For this reason, DOE is not considering expanded coverage of 2-foot, medium bipin, U-shaped lamps in this preliminary determination.

In this preliminary determination, DOE is considering extension of the standard's coverage to certain 8-foot, recessed double contact, rapid start, high output fluorescent lamps to which energy conservation standards do not currently apply. DOE's definition of ''fluorescent lamp,'' adopted in accordance with EPCA, includes only those 8-foot recessed double contact HO lamps with 0.800 nominal amperes and which are listed in ANSI Standard C78.1–1991. 10 CFR 430.2. Due to the ampere specification in the definition, the current standards applicable to GSFL (10 CFR 430.32(n)(1)), cover only T12, 8-foot recessed double contact HO lamps but none of the T8, 8-foot recessed double contact HO lamps (which usually have 0.400 nominal amperes). ACEEE and Osram Sylvania (hereafter ''Osram'') commented that DOE should cover T8, 8-foot lamps. (Public Meeting Transcript, No. 4.5 at p. 59) According to Osram, T8, 8-foot recessed double contact HO lamps are currently available, and are replacing the older T12 technology. Osram stated its belief that this trend will continue. (Osram, No. 15 at p. 5)

Furthermore, DOE is aware that T8, 8-foot lamps are substitutes for T12, 8-foot lamps. As discussed earlier, by not regulating substitutes (e.g., T8, 8-foot recessed double contact HO lamps) of regulated lamps (e.g., T12, 8-foot recessed double contact HO lamps), DOE risks losing the potential energy savings of the current energy

conservation standards for T12, 8-foot lamps, as well as any revised standard that may be adopted pursuant to this rulemaking. In addition, because T8, 8-foot recessed double contact HO lamps are predicted to replace the T12 market, the shipments of T8 lamps may increase considerably.

For the reasons above, DOE believes that regulating T8, 8-foot recessed double contact HO lamps has the potential to achieve significant energy savings. DOE analyzes these T8 lamps as part of the 8-foot recessed double contact HO product class in the NIA. From this analysis, DOE estimates that the energy savings achieved due to regulation of T8, 8-foot recessed double contact HO lamps could be as high as 0.30 quads over the analysis period. (See section III.I of this notice.)

In addition, in this preliminary determination, DOE tentatively plans to expand its coverage of 8-foot recessed double contact, rapid start, high output fluorescent lamps to those not listed in ANSI Standard C78.1–1991. As discussed in the fluorescent and incandescent lamps test procedure NOPR published in today's **Federal Register**, many of the ANSI standards currently referenced in DOE regulations (e.g., ANSI Standard C78.1–1991) are outdated. DOE understands that as the fluorescent lamp market moves forward and evolves, new 8-foot recessed double contact, rapid start, high output lamps (with 0.800 nominal amperes or other currents) may be introduced into the market. As these lamps would not be listed in the 1991 ANSI standard, they would not be covered under paragraph (3) of the definition of fluorescent lamp, and, therefore, would not be subject to current energy conservation standards. However, DOE understands that though these newly introduced lamps might have different wattages than those listed in ANSI Standard C78.1–1991, they serve as replacements and substitutes for the regulated 8-foot recessed double contact high output lamps. As discussed earlier, by leaving these potential substitute lamps unregulated, DOE risks not achieving the maximum energy savings from its established energy conservation standards.

Given the potential energy savings, in this preliminary determination, DOE is considering extension of coverage to T8, 8-foot recessed double contact HO lamps, thereby adding lamps previously restricted by the 0.800 nominal ampere limitation. In addition, DOE is considering extension of coverage to 8-foot recessed double contact HO lamps not listed in ANSI Standard C78.1–1991. As the technologies of T8, 8-foot recessed double contact HO lamps and the 8-foot recessed double contact HO lamps not listed in ANSI Standard C78.1–1991 are similar to the technologies of their already-regulated T12 counterparts, DOE has tentatively concluded that standards on these lamps have the potential to meet the statutory criterion of being technologically feasible. With regards to the statutory criterion of being economically justified, DOE analyzes T8, 8-foot recessed double contact HO lamps in the LCC analysis and NIA. Preliminary results show that regulation of these lamps would be expected to achieve LCC savings up to $3.15 (discounted at 6.2 percent) per lamp system and net present value (NPV) up to $0.73 billion to the nation (discounted at 3 percent) over the analysis period. Also, 8-foot recessed double contact HO lamps not listed in ANSI Standard C78.1–1991 should incur similar economic effects as their already-covered counterparts. Therefore, for the purpose of this preliminary determination, DOE has tentatively concluded that energy conservation standards on these lamps have the potential of being economically justified.

Similar to 8-foot recessed double contact HO lamps, in this preliminary determination, DOE is considering extension of the standard's coverage to certain 8-foot, single pin, instant start, slimline lamps to which energy conservation standards do not currently apply. DOE's definition of ''fluorescent lamp,'' adopted in accordance with EPCA, includes only those 8-foot, single pin, instant start, slimline lamps, with a rated wattage greater than or equal to 52W and listed in ANSI Standard C78.3–1991. 10 CFR 430.2. Under this definition, because they are not listed in ANSI Standard C78.3–1991, no T8, 8-foot single pin slimline lamps would be subject to energy conservation standards. However, as indicated by their inclusion in the updated ANSI Standard C78.81–2005, DOE understands that since the publication of ANSI Standard C78.3–1991, T8, 8-foot single pin slimline lamps have penetrated the GSFL market. Shipment information submitted by NEMA indicates that T8 lamps comprise approximately 15 percent of the total 8-foot single pin slimline market. (NEMA, No. 12 at p. 2) In addition, ACEEE and Osram commented that DOE should cover T8, 8-foot single pin slimline lamps. (Public Meeting Transcript, No. 4.5 at p. 59) For similar reasons as discussed with regard to T8, 8-foot recessed double contact HO lamps, DOE believes that the regulation of T8, 8-foot single pin slimline lamps has the potential to achieve significant energy savings. DOE analyzes these T8 lamps as part of the 8-foot single pin slimline product class in the NIA. From this analysis, the energy savings achieved due to the regulation of T8, 8-foot single pin slimline lamps would be expected to be as high as 0.25 quads over the analysis period (i.e., from the year 2012 to 2042). (See section III.I of this notice.)

As such, in this preliminary determination, DOE is considering expanding the standards' scope of coverage of 8-foot single pin slimline lamps with a rated wattage greater than or equal to 52W to those not listed in ANSI Standard C78.3–1991. This would include T8 lamps and any additional 8-foot single pin slimline lamps that might be introduced into the fluorescent lamp market in the future. As the technologies of T8, 8-foot single pin slimline lamps and the 8-foot single pin slimline lamps not listed in ANSI Standard C78.3–1991 are similar to the technologies of their already-regulated T12 counterparts, DOE has tentatively concluded that standards on these lamps have the potential to meet the statutory criterion of being technologically feasible. With regards to the statutory criterion of being economically justified, DOE analyzes T8, 8-foot single pin slimline lamps in the LCC analysis and NIA. Preliminary results show that regulation of these lamps has the potential to achieve LCC savings up to $8.27 per lamp system (discounted at 6.2 percent) and NPV of $1.15 billion to the nation (discounted at 3 percent) over the analysis period (i.e., from the year 2012 to 2042). Also, 8-foot single pin slimline lamps not listed in ANSI Standard C78.1–1991 would be expected to incur similar economic effects as their already covered counterparts. Therefore, for the purpose of this preliminary determination, DOE has tentatively concluded that energy conservation standards for these lamps have the potential to be economically justified.

DOE also observed that some 8-foot, single pin, slimline lamps with wattages below 52W are available on the market today. These include 51W and 50W versions. However, DOE notes that published catalogs offered very few models at these wattages. Also, DOE believes that these lower-wattage slimline lamps are used for niche applications and would likely not be used as a substitute for higher-wattage versions. In particular, these lamps offer different lumen packages from their higher-wattage counterparts and are not currently marketed as substitutes. Consequently, DOE believes that the

market share of such lamps is and will remain relatively small, thereby making the potential energy savings that would be achieved from their regulation small as well. Therefore, DOE has tentatively decided not to extend coverage of the energy conservation standards to T8, 8-foot single pin slimline lamps with wattages below 52W. DOE requests comment on this approach.

In this preliminary determination, DOE also considered whether or not to expand coverage to include very high output (VHO) fluorescent lamps. Philips Lighting (hereafter ''Philips'') commented that DOE should set standards for VHO, T12 fluorescent lamps, asserting that these lamps consume a large amount of energy. (Philips, No. 5 at p. 1) DOE research involving review of manufacturer catalog data corroborated the Philips comment, as common VHO fluorescent lamps can have rated wattages ranging from 115W to 215W, while corresponding HO lamps have rated wattages ranging from 60W to 110W. However, in considering the Philips comment, DOE learned from discussions with manufacturers that many VHO lamps are used in outdoor applications, such as parking lot or other area illumination, where high-intensity discharge (HID) lamps are rapidly gaining market share. Research also indicated that shipments of VHO, T12 lamps have been and are continuing to decline rapidly. Overall, DOE understands that these lamps constitute a very low-volume share of the relevant market, and these products will likely further decrease in terms of market share. As such, although these lamps may individually have a per-lamp energy savings potential larger than that of a typical GSFL, DOE believes that the total energy savings from regulating these lamps would be small and decreasing as that these lamps are naturally disappearing from the market in the absence of regulation. Therefore, DOE does not plan to extend coverage of the energy conservation standard to VHO lamps.

DOE also considered whether to include T5 fluorescent lamps in its expansion of energy conservation standards coverage. At the Public Meeting on the Framework Document, ACEEE and PG&E commented that DOE should cover T5 lamps. (Public Meeting Transcript, No. 4.5 at pp. 39 and 59) However, ACEEE and PG&E did not provide a rationale for consideration of these lamps, and DOE did not receive any written comments recommending that it consider T5 lamps for coverage. To further investigate this issue, DOE evaluated the market and typical applications for T5 lamps, and has tentatively decided to not extend coverage to T5 lamps, for the reasons that follow.

DOE found that T5 systems are used in a wide variety of indoor general illumination applications where T8 and T12 systems could also be used. However, DOE understands that T5 systems are always operated with higher-efficiency, high-frequency electronic ballasts (versus lower-efficiency, low-frequency ballasts). In addition, it was found that these lamps tend to have higher efficacies and that the systems tend to have lower energy consumption than the corresponding T8 and T12 lamps and systems. Therefore, DOE believes that the regulation of T5 lamps may not have the potential for significant per-unit energy savings. In addition, DOE understands that the current GSFL market share of T5 lamps is relatively small, representing low total energy savings potential. DOE also notes that T5 systems tend to be higher in cost than T8 or T12 systems. Thus, DOE believes that excluding T5 lamps from this rulemaking would be unlikely to undermine any energy savings that would result from a T12 and T8 standard, even if the standard caused increased sales of T5 systems.[18] To the contrary, not regulating T5 lamps could provide market incentives for and result in energy savings by encouraging greater end-user use of highly efficacious T5 lamps. For the above stated reasons, DOE does not plan to extend the standards' coverage to T5 lamps. DOE solicits further comment on whether it should extend coverage to T5 lamps, as well as the rationale for doing so.

Furthermore, DOE does not intend to extend coverage to fluorescent lamps that have alternate lengths, diameters, bases, or shapes (or a combination thereof) than the lamps discussed in the preceding section. DOE believes that the lamps currently covered and the additional lamps described above that DOE is considering for coverage (i.e., ones which have lengths and bases the same as those currently regulated) represent the significant majority of the market for GSFL, and, thus, the bulk of potential energy savings. Furthermore, DOE believes that there is limited potential for lamps with miscellaneous lengths and bases to grow in market share, given the constraint of fixture lengths and socket compatibility. DOE requests comment on this approach.

In summary, the following list represents the ''additional general service fluorescent lamps'' which DOE is considering for expanded coverage under the energy conservation standards:

- 4-foot, medium bipin lamps with wattages ≥ 25 and < 28;
- 8-foot recessed double contact, rapid start, HO lamps not defined in ANSI Standard C78.1–1991;
- 8-foot recessed double contact, rapid start, HO lamps (other than 0.800 nominal amperes) defined in ANSI Standard C78.1–1991; and
- 8-foot single pin instant start slimline lamps, with a rated wattage ≥ 52, not defined in ANSI Standard C78.3–1991.

C. Amended Definitions

As part of the examination of the scope of coverage of GSFL, DOE is considering amendments to existing DOE-adopted definitions in order to more clearly and accurately define the scope of GSFL and IRL. The following section describes these planned amendments and requests comment.

1. ''Rated Wattage''

One element of EPCA's definitions for ''fluorescent lamp'' and ''incandescent reflector lamp'' is a lamp's ''rated wattage,'' which helps to delineate the lamps for which the statute set prescriptive standards. (42 U.S.C. 6291(30)(A), (C)(ii) and (F)). For example, the definition of ''fluorescent lamp'' includes certain 4-foot medium bipin lamps with ''a rated wattage of 28 or more'' (42 U.S.C. 6291(30)(A)(i)), and EPCA prescribes standards for these particular lamps (42 U.S.C. 6295(i)(1)(B)). In addition, EISA 2007 prescribed energy conservation standards for general service incandescent lamps that require lamps of particular lumen outputs to have certain maximum rated wattages. (section 321(a)(3) of EISA 2007 amending section 325(i) of EPCA) EPCA does not, however, define ''rated wattage.'' Therefore, DOE adopted a definition of ''rated wattage'' for 4-foot medium bipin T8, T10, and T12 fluorescent lamps when it established test procedures for fluorescent and incandescent lamps in 1997. 62 FR 29222 (May 29, 1997). This definition, located in 10 CFR 430.2, references an ANSI guide from 1991, specifically ANSI Standard C78.1–1991, ''for Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics.'' Although EPCA also

[18] At CSLs four and five, some T8 systems are more efficacious than their T5 counterparts. However, DOE notes that the average cost of a T5 system is more expensive than a T8 system. The fact that T5 lamps are less efficacious and more expensive at these standard levels indicates that there is little or no incentive for stakeholders to migrate to T5 lamps from T8 or T12 lamps in an effort to avoid the fluorescent lamp standard.

uses the term ''rated wattage'' when referring to ''2-foot U-shaped lamps'' (42 U.S.C. 6291(30)(A)(ii)), ''8-foot slimline lamps,'' (42 U.S.C. 6291(30)(A)(iv)), and ''incandescent lamps'' (i.e., the portion of that definition pertaining to IRL) (42 U.S.C. 6291(30)(C)), DOE did not define ''rated wattage'' for these lamps in 1997. In this rulemaking, DOE plans to update its existing definition of ''rated wattage'' to cite the current version of ANSI Standard C78.1–1991, and to apply this definition to those lamps where rated wattage is a key characteristic but is not currently defined.

DOE's current definition of ''rated wattage'' for 4-foot medium bipin T8, T10, or T12 lamps, in effect, contains three definitions of ''rated wattage'': One for those lamps listed in the ANSI Standard C78.1–1991 standard; another for residential straight-shaped lamps; and a third for all other lamps. The definition of ''rated wattage'' currently contained in DOE regulations is as follows:

Rated wattage, with respect to 4-foot medium bi-pin T8, T10 or T12 lamps, means:

(1) If the lamp is listed in ANSI C78.1–1991, the nominal wattage of a lamp determined by the lamp designation in Annex A.2 of ANSI C78.1–1991; or

(2) If the lamp is a residential straight-shaped lamp, the wattage a lamp consumes when operated on a reference ballast for which the lamp is designed; or

(3) If the lamp is neither listed in ANSI C78.1–1991 nor a residential straight-shaped lamp, the wattage a lamp consumes when using reference ballast characteristics of 236 volts, 0.43 amps and 439 ohms for T10 or T12 lamps or reference ballast characteristics of 300 volts, 0.265 amps and 910 ohms for T8 lamps. (10 CFR 430.2)

Annex A.2 of ANSI Standard C78.1–1991, referenced in the first part of the definition, discusses how to designate lamps according to industry procedure. It indicates that the lamp abbreviation may include either the rated wattage or nominal wattage for a particular lamp. The most current equivalent industry standard corresponding to ANSI Standard C78.1–1991 is ANSI Standard C78.81–2005, which also includes an equivalent section on lamp abbreviations. However, this equivalent section specifies that lamp abbreviations are to incorporate only the nominal wattage. DOE believes that a different section of ANSI Standard C78.81–2005 more appropriately defines ''rated wattage.'' Specifically, Clause 11.1 of ANSI Standard C78.81–2005 deals more directly with rated wattage when it refers to rated values in the lamp data sheets of Part IV of the standard and notes the margin that manufacturer's average values must maintain from rated values. In relevant part, Clause 11.1 of ANSI Standard C78.81–2005 states: The values of lamp voltage, current and wattage shown on the individual lamp data sheets in Part IV are rated values that apply after the lamps have been aged for 100 hours. These values were chosen by consensus to represent the industry average at the time of publication. No manufacturer's average wattage shall exceed the rated value by more than 5% plus 0.5 watts * * * Therefore, DOE tentatively plans to update the ''rated wattage'' definition's reference to ANSI Standard C78.81–2005 and to reference Clause 11.1 of that ANSI standard in place of Annex A.2 of ANSI Standard C78.1–1991.

The second part of the ''rated wattage'' definition addresses residential straight-shaped lamps. DOE adopted a definition for ''residential straight-shaped lamp'' in 10 CFR 430.2 at the same time it defined ''rated wattage'' and established the applicable test procedures. 62 FR 29222 (May 29, 1997). This definition applies only to 4-foot medium bipin lamps. The provisions on residential straight-shaped lamps reflect DOE's understanding that lamp wattage differs when a lamp operates on a low-power-factor ballast (typically residential applications) versus a high-power-factor ballast (typically commercial applications). (The measured wattage of a residential straight-shaped lamp could be different depending on the ballast on which it is operated.) [19] Thus, these provisions effectively ensure that lamps designed for residential applications are tested on ballasts typically used for residential applications. Defining ''rated wattage'' for these lamps is significant, as it clarifies whether DOE's standards are applicable to them. DOE believes that the clarification is still relevant. However, DOE notes that ANSI Standard C78.81–2005 lists a rated wattage value for a 25-Watt, 4-foot T12 rapid start medium bipin fluorescent lamp, operating on a low-power-factor ballast. Thus, it appears that some lamps which could be classified as a residential straight-shaped lamp have rated wattage values listed in ANSI Standard C78.81–2005. Therefore, DOE intends to update the second portion of the definition to state that if a residential straight-shaped lamp is not listed in ANSI, then rated wattage should be based on the wattage a lamp consumes when operated on a reference ballast for which the lamp is designed.

The third part of the definition for ''rated wattage'' (applicable if neither of the first two parts applies) states that the rated wattage is that which results when the lamp is tested under specified testing conditions. DOE is updating the test procedures for fluorescent and incandescent lamps in a concurrent test procedures rulemaking. The NOPR for that rulemaking is published in today's **Federal Register**. As part of the test procedures rulemaking, DOE is also developing testing methods for lamps not currently listed in ANSI standards which will be included as part of the DOE test procedure. DOE believes that it is preferable to reference these more detailed test procedures, rather than the current approach of specifying testing conditions in the definitions section of 10 CFR 430.2. Therefore, DOE intends to replace the third part of the ''rated wattage'' definition with a reference to the test procedures that will be set forth in 10 CFR Part 430, Subpart B, Appendix R.

EPCA's definition of ''fluorescent lamp'' uses the term ''rated wattage'' not only in describing 4-foot medium bipin lamps, but also in describing 2-foot U-shaped and 8-foot single pin slimline lamps. (42 U.S.C. 6291(30)(A)(ii) and (iv)) To clarify rated wattage for 2-foot U-shaped, and 8-foot single pin slimline lamps, DOE has tentatively decided to utilize the same framework to define ''rated wattage'' as was used for 4-foot medium bipin lamps. In particular, DOE plans to reference ANSI industry standards where they have defined the rated wattage for particular lamps, and to reference DOE's test procedures (as amended) where ANSI has not defined the rated wattage for particular lamps. Thus, DOE intends to modify the current definition of ''rated wattage'' that applies to 4-foot medium bipin lamps and make it applicable to all covered fluorescent lamps. Because ANSI Standard C78.81–2005 does not include ratings for U-shaped lamps, DOE plans to incorporate by reference and to cite to ANSI Standard C78.901–2005, ''for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics'', which does. ANSI Standard C78.901–2005 also contains Clause 11.1, using text similar to that noted above.

The statutory definition for ''incandescent lamp'' also contains the term ''rated wattage,'' and the definition for ''incandescent reflector lamp'' similarly references a portion of the definition of ''incandescent lamp'' which contains that term. In addition,

[19] If a lamp is not listed in ANSI C78.1–1991, its ''rated wattage'' would depend on test measurements.

EISA 2007 set energy conservation standards for general service incandescent lamps which require the lamps to meet a maximum rated wattage for a particular lumen output. For incandescent reflector lamps and general service incandescent lamps, the rated wattage is the same as measured wattage. Therefore, DOE believes that the test procedures outlined in 10 CFR Part 430, Subpart B, Appendix R suffice for determining rated wattage for incandescent lamps.

The following summarizes the modified definition of ''rated wattage'' that DOE intends to consider making applicable to all covered lamps and updated to reference current industry standards:

Rated wattage means:

(1) With respect to fluorescent lamps and general service fluorescent lamps:

(i) If the lamp is listed in ANSI C78.81–2005 or ANSI C78.901–2005, the rated wattage of a lamp determined by the lamp designation of Clause 11.1 of ANSI C78.81–2005 or ANSI C78.901–2005;

(ii) If the lamp is a residential straight-shaped lamp, and not listed in ANSI C78.81–2005, the wattage of a lamp when operated on a reference ballast for which the lamp is designed; or

(iii) If the lamp is neither listed in one of the ANSI guides referenced in (1)(i) nor a residential straight-shaped lamp, the wattage of a lamp when measured according to the test procedures outlined in Appendix R to subpart B of this part.

(2) With respect to general service incandescent lamps and incandescent reflector lamps, the wattage measured according to the test procedures outlined in Appendix R to subpart B of this part.

DOE requests comment on its above-discussed modification of the definition of ''rated wattage,'' applicable to both covered fluorescent and incandescent lamps. DOE recognizes that changes to the definition could affect coverage for fluorescent lamps. However, DOE believes that the modifications would have a relatively minor, if any, impact on the scope of coverage.

2. ''*Colored Fluorescent Lamp*''

With regard to the definition of ''colored fluorescent lamp'' that was codified in the CFR as part of the 1997 Test Procedure Final Rule, DOE is requesting comment on the definition for this type of fluorescent lamp which is excluded from energy conservation standards. The current definition of that term reads as follows:

Colored fluorescent lamp means a fluorescent lamp designated and marketed as a colored lamp, and with either of the following characteristics: A CRI less than 40, as determined according to the method given in CIE Publication 13.2 (see 10 CFR 430.22), or a lamp correlated color temperature less than 2,500K or greater than 6,600K. 10 CFR 430.2.

In its market research, DOE observed that one of the major lamp manufacturers that operates in the European market recently introduced a fluorescent lamp with a correlated color temperature (CCT) of 17,000K. The product literature associated with this new lamp indicates that it is intended for general illumination applications. In the ''Product Application'' section of the literature, it suggests that this lamp be used for ''Indoor working areas (call centers, industry, schools, healthcare etc.), especially where an energizing environment needs to be created.'' [20] Even though DOE is unaware of any general purpose fluorescent lamps like this one being introduced into the U.S. market, there is the potential that the current definition of ''colored fluorescent lamp'' would provide an exclusion for new products being introduced in general illumination lighting applications. Therefore, DOE is considering revising the definition, possibly by adding a phrase such as ''and not designed or marketed for general illumination applications.'' DOE invites comment on this issue.

III. Energy Conservation Standards Analyses for Fluorescent and Incandescent Reflector Lamps

This section addresses the analyses DOE has performed and intends to perform for GSFL and IRL under consideration in this rulemaking and discusses the underlying assumptions applied to the analyses. For both GSFL and IRL, DOE will perform a set of analyses, including: (1) An engineering analysis; (2) a product price determination; (3) an energy-use determination; (4) an LCC and PBP analysis; (5) an NIA; and (6) an MIA. A full description of how these analyses are performed is contained in the TSD.[21] However, this section of the ANOPR provides an overview of these analyses, while focusing on how these analyses are being tailored to this rulemaking and on their underlying assumptions. It also discusses comments received from interested parties since DOE published the lighting products Framework Document.

A. Market and Technology Assessment

The market assessment provides an overall picture of the market for the products concerned, including the nature of the products, the industry structure, and market characteristics for the products. The technology assessment identifies available technologies for these products, which will be considered in the screening analysis. The subjects addressed in the market and technology assessment include product classes, technology options, manufacturers, quantities and types of products sold and offered for sale, retail market trends, and regulatory and non-regulatory programs. DOE considers both quantitative and qualitative information from publicly available sources and stakeholders in this assessment. The information DOE gathers for the market and technology assessment serves as resource material for use throughout the rulemaking.

1. Market Assessment

Issues addressed in the market assessment include: (1) Information about lamp manufacturers; (2) existing regulatory and non-regulatory initiatives; (3) historical shipments and (4) product classes. Each of these topics will be discussed in turn below.

NEMA is the trade association that represents many GSFL and IRL manufacturers. NEMA provides an organization framework for manufacturers of lighting products to work together on projects that affect their industry and business.

The majority of the domestic market share of GSFL and IRL is held by three manufacturers: (1) GE Lighting (General Electric, Inc.); (2) OSRAM Sylvania (Siemens AG); and (3) Philips Lighting (Royal Philips Electronics). In addition to lamps listed under this rulemaking, the lighting divisions of all three companies manufacture other products, such as lamp ballasts, high intensity discharge lamps, LED lighting, GSIL (already regulated by EISA 2007) and compact fluorescent lamps (CFL).

It is noted that DOE is required to consider whether small businesses are likely to be particularly affected by the promulgation of minimum efficacy standards for lamps. (5 U.S.C. 601 et seq.) The Small Business Administration (SBA) defines ''small business'' manufacturing enterprises for manufacturers of GSFL and IRL as ones having 1,000 or fewer employees.[22]

[20] Philips Lighting Product Specification Document, MASTER TL5 ActiViva Active 54W SLV (published June 29, 2007).

[21] Available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

[22] Small Business Administration, Table of Small Business Size Standards: Matched to North

More specifically, SBA lists small business size standards that are matched to industries as they are described in the North American Industry Classification System (NAICS). A small business size standard is the largest that a for-profit entity can be and still qualify as a small business for Federal Government programs. These size standards are generally related to the average annual receipts or the average employment of a firm. For lamp products, the size standard is matched to NAICS code 335110, *Electric Lamp Bulb and Part Manufacturing,* which has a size standard of 1,000 employees. DOE identifies several small business manufacturers of GSFL and IRL in Chapter 3 of the TSD. DOE will study the potential impacts on small businesses in detail during the MIA, which it will conduct as a part of the analyses for the notice of proposed rulemaking.

Furthermore, DOE is aware of several Federal, State, and international regulatory programs that impact the GSFL and IRL markets. Amendments to EPCA in EPACT 1992 established Federal energy conservation standards for residential, commercial, and industrial GSFL and IRL. (42 U.S.C. 6295(i)(1)) In addition to the Federal regulations, the following States have established appliance efficiency regulations for other lamps for which there are no Federal standards (and thus are not preempted): Arizona, California, Connecticut, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington.

DOE also reviewed several voluntary programs promoting the use of energy-efficient GSFL in the United States, including the Federal Energy Management Program's (FEMP) program for energy-efficient lighting, the Consortium for Energy Efficiency (CEE)'s High Performance Commercial Lighting Initiative, the Energy Efficient Commercial Buildings Deduction, and various regional initiatives that work with State utilities to offer rebates for installation of higher efficacy GSFL systems. See Chapter 3 of the TSD for more information regarding regulatory and non-regulatory initiatives.

DOE received historical shipment data from NEMA for the years 2001 to 2005 for the two categories of lamps. (NEMA, No. 12 at pp. 5–6) Overall, NEMA's historical lamp shipment data that was incorporated by DOE into the analytical tools for the ANOPR had three main purposes. First, the shipment data and market trend information contributed to the shipments analysis and base-case forecast for each of the two categories of lamps (see Chapter 9 of the TSD). By using recent shipment data and expert opinion on market trends, DOE believes that the shipments model and base-case forecasts are based on a sound dataset. Second, DOE used the data to select the representative product classes and representative units for analysis. Generally, DOE selected representative product classes and units for analysis to reflect the highest volume, most common lamp types and wattages used in the U.S. today (see Chapter 3 of the TSD). And thirdly, DOE used these data to develop the market-share matrices for the NIA (see Chapter 10 of the TSD). Based on its understanding of trends in the market, DOE estimated how the market would respond to the various CSLs.

Additional detail on the market assessment can be found in Chapter 3 of the TSD.

2. Product Classes

In general, when evaluating and establishing energy conservation standards, DOE divides covered products into classes by the type of energy used, capacity, or other performance-related features that affect efficiency, and factors such as the utility of the product to users. (See 42 U.S.C. 6295(q)) DOE normally establishes different energy conservation standards for different product classes based on these criteria. However, classification of lamps into product classes presents a challenge, because, for example, a fluorescent lamp is a component of a system, and the lamp's performance is directly related to the ballast on which it operates. The following section describes and discusses the product classes of lamps that DOE is considering for this rulemaking.

a. General Service Fluorescent Lamps

EPCA established eight product classes for GSFL based on the four fluorescent lamp types EPCA describes in its definition for ''fluorescent lamp'' and based on nominal lamp wattage. (42 U.S.C. 6295(i)(1)(B)) These product classes are outlined in Table III.1.

TABLE III.1.—EPCA PRODUCT CLASSES FOR GSFL

Lamp type	Nominal lamp wattage *W*	Min. CRI	Min. avg. efficacy *lm/W*
4-ft Medium Bipin	>35W	69	75.0
	≤35W	45	75.0
2-ft U-Shaped	>35W	69	68.0
	≤35W	45	64.0
8-ft Single Pin	>65W	69	80.0
Slimline	≤65W	45	80.0
8-ft High Output	>100W	69	80.0
	≤100W	45	80.0

In the Framework Document for this rulemaking, DOE presented a preliminary discussion of potential revisions to the prescriptive standards established by EPCA. ((42 U.S.C. 6295(i)(1)(B); see 10 CFR 430.32(n)(1)). Specifically, DOE considered subdividing the product categories in EPCA's table of efficacy requirements for fluorescent lamps, nearly doubling the number of product classes by introducing lamp tube diameter as a differentiating variable (i.e., ''>T8'' and ''≤T8''). In presenting this potential modification, DOE used the same wattage divisions and minimum color rendering index (CRI) requirements that EPCA uses for these lamps, with T8 and T12 lamps in the same product class. Several stakeholders provided comment on the draft product classes discussed in

American Industry Classification System Codes. (Feb. 2007). Available at: *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/part121sects/index.html.*

the Framework Document, as discussed below.

For 4-foot medium bipin lamps, Philips suggested combining all lamps with diameters greater than T8 into one category. Philips then suggested creating a category for T8 and smaller diameters with wattages less than or equal to 32W. (Philips, No. 11 at p. 1) GE and Osram both supported DOE's suggestion for lamps with diameters greater than T8, but they suggested that DOE should change the wattage division from 35W to 31W, and include a correlated color temperature (CCT) division for lamps with diameters less than or equal to T8. (GE, No. 13 at pp. 1–2; Osram, No. 15 at pp. 2–3) The Joint Comment recommended that DOE combine the T8 and T12 product classes, because there are few T8 lamps above 35W, and, therefore, the existing wattage bins could be analyzed by maintaining some separation of T8 and T12 lamps. (Joint Comment, No. 9 at p. 8)

For 2-foot U-shaped lamps, Philips suggested modifying the draft product classes by combining wattage ranges, and the commenter also recommended having just two product classes, based upon lamp diameter, that apply to any wattage 2-foot U-shaped lamps. GE and Osram both supported DOE's approach for considering lamps with diameters greater than T8, and these commenters suggested that DOE should change the wattage division from 35W to 31W, and include a CCT division for lamps with diameters less than or equal to T8. (GE, No. 13 at pp. 1–2; Osram, No. 15 at pp. 2–3)

For the 8-foot single pin slimline lamps, Philips suggested combining all lamps with diameters greater than T8 into one product class, and then establishing a separate product class for lamps with T8 and narrower diameters, regardless of wattage. (Philips, No. 11 at pp. 1–2) GE and Osram both suggested keeping the T12 category of high output lamps, and creating a separate class for diameters less than T12. For this new separate class, GE and Osram both proposed dividing it further into two subclasses, one including T12 8-foot single pin slimline lamps with wattages greater than 58W and another including T12 8-foot single pin lamps with wattages less than or equal to 58W. (GE, No. 13 at pp. 1–2; Osram, No. 15 at pp. 2–3)

For the 8-foot high output lamps, Philips suggested combining all lamps with diameters greater than T8 into one product class, and then establishing a separate product class for lamps with T8 and narrower diameters with a nominal lamp wattage of 86W and below. (Philips, No. 11 at pp. 1–2) GE and Osram both suggested keeping the T12 category of high output lamps, and creating a separate class for lamps with diameters less than T12. (GE, No. 13 at pp. 1–2; Osram, No. 15 at pp. 2–3) GE argued that this class of lamps with diameters less than T12 should encompass all wattages, whereas Osram recommended that the class should encompass only lamps greater than 85W. (GE, No. 13 at pp. 1–2; Osram, No. 15 at pp. 2–3)

DOE considered all these comments, and continued to research appropriate product classes for the general service fluorescent lamps being considered for coverage under this rulemaking. DOE identified differential utility and physical attributes of fluorescent lamps around which the development of separate product classes would be based on the statutory criteria. (42 U.S.C. 6295(q)) [23] In this notice, DOE is considering establishing product classes based upon the following three lamp attributes that have differential utility and impact efficacy: (1) Physical constraints of lamps (i.e., lamp shape and lamp length); (2) lumen package (i.e., regular versus high output); and (3) CCT. Following that discussion, this document also analyzes other potential factors that DOE considered as potential product class determinants (i.e., ballast interoperability, lamp wattage, lamp diameter, and color rendering index), but which were not adopted for reasons indicated below.

i. Class Setting Factors

Physical Constraints of Lamps. The physical constraints of the lamp relate to the shape of the lamp (e.g., U-shaped versus linear) and the fact that these lamps could not be substitutes for each other, unless the entire fixture is changed. The lamp shapes provide unique utility because the shapes of these lamps prevent them from being used as replacements, even with a ballast replacement, in a given fixture. However, the shape and geometry of a lamp also impact its efficacy. For example, a 2-foot U-shaped lamp, while having the same overall tube length, is less efficacious than a 4-foot linear lamp due in part to the fact that the electrical arc within the tube has to bend to conform to the shape of the lamp. Similarly, a 4-foot lamp has a different utility than an 8-foot lamp, as these lamps generally require different fixtures. And, efficacy tends to increase with length, such that all else being equal, 8-foot lamps generally have higher efficacy values than 4-foot lamps. Given the impact that geometry has on both utility and efficacy, DOE proposes maintaining the division of product classes by lamp geometry.

Lumen Package. In addition to the physical constraints of a lamp, DOE also recognizes that the lumen package a lamp provides to consumers is another potential differentiating factor for product classes, because it provides utility in the form of a quantity of light per unit lamp length. In this way, lamps that have high lumen output may be installed in certain high-ceiling or outdoor installations, where large quantities of light are needed. Lamps that have standard levels of light output might be installed in lower-ceiling installations such as offices or hospitals, where distance between the light source and the illuminated surfaces is not as large. DOE notes, however, that efficacy decreases as a fluorescent lamp is driven harder to increase its light output. For example, the efficacy of high output 8-foot lamps are approximately 7 to 10 percent lower than that of slimline 8-foot lamps. Because 8-foot lamps are not already subdivided according to physical constraints, DOE plans to further subdivide the 8-foot linear lamps into slimline and high output.

Considering the fluorescent lamps currently covered under EPCA and the additional general service fluorescent lamps discussed in section II which DOE is considering for coverage, DOE is considering establishment of the following four differentiating categories of lamps: (a) 4-foot medium bipin; (b) 2-foot U-shaped; (c) 8-foot single pin slimline; and (d) 8-foot recessed double contact high output. DOE notes that these are the same four categories of lamps that were established by EPCA in section 325(i)(1). (42 U.S.C. 6295(i)(1)(B))

Correlated Color Temperature. Finally, within each of these four categories of fluorescent lamps, DOE

[23] (q) Special rule for certain types or classes of products

(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) Have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

recognizes that the CCT of the fluorescent lamps provides a distinct utility (i.e., the light emitted by the fluorescent lamp has different qualities), which impacts the efficacy of the lamp. The CCT describes, in part, how the white light emitted from a fluorescent lamp is perceived. Lower color temperatures correspond to ''warmer'' light, with more red content in the spectrum, and higher color temperatures correspond to ''cooler'' light, with more blue content. As the spectral emission of the light radiated from the fluorescent lamp is modified to change the CCT, the light emitted may contain more red light (and less blue) or more blue light (and less red). The measured efficacy of these lamps with different CCT will be different, because efficacy is measured in lumens [24] per watt, and light emitted across the visible spectrum is not given equal weighting under this metric. Lumens are determined using the human eye's sensitivity function, and due to the fact that the human eye is less responsive to blue light, those fluorescent lamps that shift their spectral emission profiles to contain more blue light will have lower efficacies. In sum, the metric that DOE will establish as the minimum performance requirement for fluorescent lamps—efficacy, measured in lumens per watt—may need to be adjusted to account for differences in the CCT of light emitted from a fluorescent lamp. Today, lamps with a ''warmer'' CCT (4,100K) represent the majority of the fluorescent lamp market, and therefore this is the CCT of the lamps analyzed in this ANOPR. Fluorescent lamps having a ''cooler'' CCT (e.g., >5,000K) are growing in popularity in the market, perhaps because they have been found to allow for better color discrimination and improved visual performance.[25]

GE and Osram both requested that DOE establish separate product classes for T8 lamps with CCT above and below 4,500K. (GE, No. 13 at pp. 1–2; Osram, No. 15 at p. 1 and p. 3) Osram commented that higher CCT lamps have a lower lumen output because lamps with higher CCT contain more blue light, which causes the lumen measurement to be lower. Osram argued that it is important for DOE to differentiate certain fluorescent lamps by CCT in the analysis to account for this difference in performance. (Osram, No. 15 at p. 1) GE also stated that should DOE decide to regulate lamps with high CCT values (e.g., 5,000K), then these types of lamps would require a different and lower lumen-per-watt threshold, because of the slightly lower lumen rating due to the increased energy in the blue part of the light emission spectrum. (GE, No. 13 at p. 1) Philips commented that if DOE decides to adopt efficacy levels higher than those proposed by Philips, then DOE should place higher CCT lamps in a separate product class because they tend to have slightly lower efficacies. (Philips, No. 11 at p. 2)

In response, DOE believes that for fluorescent lamps, the differences in CCT of the light emission can be sufficiently large that they constitute a performance-related feature that affects the efficacy of the lamp. Therefore, DOE is planning to establish separate product classes for GSFL in part based upon CCT. Related to this preliminary decision are two critical, associated issues—(1) How many groups should be established? and (2) Where should the separator(s) between product classes be set? DOE's initial thoughts on this matter are set forth below.

Presently, EPCA does not cover colored fluorescent lamps (i.e., such lamps are excluded under 42 U.S.C. 6291(30)(B)(iii)) and these lamps are defined, in part by their CCT (both terms defined at 10 CFR 430.2). Lamps with a CCT less than 2,500K or greater than 6,600K are considered ''colored fluorescent lamps'' and are not subject to the minimum efficacy standards (note: See discussion in this section pertaining to a potential revision to coverage of colored fluorescent lamps). DOE is considering dividing GSFL, (with CCTs ranging from 2,500K to 6,000K) into two product classes. DOE believes that establishing two groups does not make the product classification overly complex, and yet such approach acknowledges the primary issue raised about the different utility provided by the cooler lamps. To this end, DOE is considering adoption of a CCT divider at 4,500K, as recommended by industry. (Osram, No. 15 at p. 1, GE, No. 13 at p. 2) The most common CCTs found on the market are 3,500K, 4,100K, 5,000K, and 6,500K. Thus, having a divider at 4,500K will establish separate product classes for those lamps with ''warmer'' CCTs (3,500K and 4,100K) and ''cooler'' CCTs (5,000 and 6,500K). Although in this proceeding, DOE is considering establishing two separate CCT groups for GSFL, if the trend toward much higher CCT lamps continues (discussed in section II.B.3), then DOE may need to establish multiple CCT groups, as the spectral emission (and thus, efficacy) of these general service lamps will vary as the CCT increases.

DOE is requesting comment on all aspects of this potential CCT division, but particularly: (1) Whether there should be a CCT product class divider; (2) how many groupings of CCT are appropriate; and (3) what the CCT divider or dividers should be. In addition, DOE welcomes technical perspectives on how DOE might scale the efficacy level from the representative unit of analysis of 4,100K to higher CCT product classes. In addition, DOE also notes that if comments indicate that the definition of a colored fluorescent lamp warrants some revision such that certain very high CCT lamps would be covered (e.g., over 17,000K), then perhaps it would be appropriate to consider several CCT groupings (which would manifest themselves as minimum efficacy steps). DOE requests further comment on this issue, including technical perspectives.

ii. Other Potential Class-Setting Factors Considered, But Not Adopted

As stated above, DOE did not choose to establish product classes based upon any of the following four factors: (1) Ballast interoperability; (2) lamp wattage; (3) lamp diameter (i.e., T8 vs. T12); and (4) color rendering index (CRI). Each of these factors is discussed below, along with DOE's rationale for not further considering them for class-setting purposes.

Ballast Interoperability. DOE did not consider interoperability of lamps on the same ballast system as a differentiating factor for product classes. DOE acknowledges that there is a difference between lamps and lamp-and-ballast systems, and that certain lamps may have the same form factor but may not operate on the same ballast. However, DOE treats these constraints as an economic issue in its LCC analysis, rather than a utility issue. In other words, in the LCC analysis, DOE considered a T8 lamp as a more-efficacious replacement for a T12 baseline lamp. In its economic analysis, DOE accounts for the need to install a new ballast to operate the T8 lamp by including the installed cost of a new lamp and ballast for the T8 replacement. This consideration of T8 lamps as substitutes for T12 lamps is consistent with DOE's understanding of the market, and with manufacturers' marketing literature. Had DOE elected to differentiate these lamps on ballast interoperability, or indeed, lamp diameter, this direct comparison may not have been made. DOE believes this

[24] A ''lumen'' is a measurement of the radiometric energy emission from a light source weighted by the response function of a human eye, referred to as the ''photopic spectral luminous efficiency function'' (V(λ)).

[25] ''Full Spectrum Q&A,'' *National Lighting Product Information Program,* Vol. 7 Issue 5 (March 2005). Available at: *http://www.lrc.rpi.edu/programs/nlpip/lightingAnswers/fullSpectrum/claims.asp.*

approach is appropriate for this rulemaking, because there is no unique functionality or service rendered by, for example, one T8 lamp and an equivalent T12 lamp.

Lamp Wattage. With respect to lamp wattage, DOE observed in the product literature published by manufacturers that lower-wattage lamps are marketed and promoted as energy-saving versions of the more popular wattages. For example, lamps with 25W, 28W, and 30W are marketed as energy-efficient alternatives to the 32W T8. For this reason, DOE does not believe it is appropriate to establish divisions based upon wattage within the product classes, because wattage does not have utility in and of itself, but rather is a measure of energy use. For example, if a 30W T8 lamp can deliver the same (or very similar) performance as a 32W T8, then there is no reason to establish an arbitrary wattage divide at 31W, forcing these two lamps into separate product classes. If two product classes were set, the 30W T8 lamp could not be considered as an efficient alternative for the 32W T8 lamp, which conflicts with how these lamps are treated by the market. DOE understands that these reduced-wattage lamps are marketed and used by consumers as energy-efficient substitutes, and therefore, should be considered as such when DOE establishes product classes for these lamp types. Therefore, DOE plans to consider eliminating wattage-based dividers, because this attribute by itself does not provide utility. Fluorescent lamps of different wattages are generally capable of being substituted for each other, and provide the same or similar service. DOE also believes that a product classification system that eliminates wattage dividers would be more representative of how these lamps are currently being installed and used in the market.

Lamp Diameter. With respect to lamp diameter, DOE had expressed in the Framework Document its intention to consider lamps with diameters of T8 and smaller in one product class and lamps with diameters greater than T8 in a separate product class. On further consideration, DOE has tentatively decided that the lamp diameter does not provide unique utility to end-users. As an example, a consumer can choose to use a 4-foot medium bipin lamp and be able to obtain similar lumen packages from either a T12 or T8 model. The T8 lamp may need to be operated on a different ballast with a higher ballast factor (BF), but the system can be modified to account for the differences in lamp diameter, so the resultant systems are approximately equivalent. DOE recognizes that the diameter of the lamp will impact the efficacy, but the utility provided to the end-user is comparable and/or equivalent. Therefore, DOE has tentatively decided not to separate product classes by lamp diameter.

However, recognizing that both T12 and T8 lamps operate on different ballasts and in order to consider separately the impact of standards on consumers of both types of lamps, DOE structured the analytical tools (including the LCC and NIA spreadsheets) so that each consumer subgroup could be analyzed separately. Thus, for example, the LCC results are reported separately for T8 and T12 baseline lamps.

Color Rendering Index. The Color Rendering Index (CRI) is the ability of a light source to produce color in objects. The CRI is expressed on a scale from 0–100, where 100 is the best in producing vibrant color in objects. Relatively speaking, a source with a CRI of 80 will produce more vibrant color in the same object than a source with a CRI of 60. Generally, fluorescent lamps with higher efficiency phosphors exhibit both a higher efficacy and higher CRI, although this is not always the case. EPCA establishes an upper and lower bound on the CRI of GSFL. Specifically, EPCA states that lamps with a CRI equal to or greater than 87 are excluded from coverage. (42 U.S.C. 6291(30)(B)(viii)) EPCA also establishes two minimum CRI requirements for each of the four groups of fluorescent lamps, one at 69 CRI and one at 45 CRI. Within one group of fluorescent lamps (e.g., 4-foot medium bipin), EPCA requires that lamps nominally rated at greater than 35W have a minimum CRI of 69 and that lamps nominally rated at 35W or lower have a minimum CRI of 45. (42 U.S.C. 6295(i)(1)(B); see 10 CFR 430.32(n)(1))

Several manufacturers suggested that DOE should make changes to the minimum CRI required for GSFL. (Philips, No. 11 at p. 1; GE, No. 13 at p. 2; Osram, No. 15 at p. 3) These manufacturers recommended that the T8 lamp diameter product classes should have minimum CRI values of 75. Philips also recommended that DOE should adopt minimum CRI values of 75 or greater for all fluorescent lamp product classes, given today's technology. (Philips, No. 11 at p. 1)

DOE considered these comments, but believes it lacks the authority to accommodate this request to adjust minimum CRI values in this way. While 75 CRI may be a reasonable level for fluorescent lamps, DOE's mandate from Congress is to focus on advancing energy efficiency and energy conservation in the marketplace. DOE does not set standards by regulating specific performance attributes of products, such as the CRI rating of a lamp. Furthermore, if DOE were to simply adopt the higher CRI level, it might be eliminating lamps from the market without conducting a rulemaking analysis to determine whether this action was cost-justified or not. For all of these reasons, DOE is not increasing the minimum CRI requirement to 75, but is inviting further comment and rationale on possible approaches to handling the issue of CRI.

DOE recognizes that in removing the wattage distinctions for GSFL product classes, the metric that differentiated by CRI is no longer present. Therefore, some possible solutions would be to: (1) Eliminate the CRI minimum requirement for all regulated fluorescent lamps; (2) adopt the lower of the two CRI minimum requirements (i.e., 45 CRI) as applying to all regulated fluorescent lamps; (3) adopt the higher of the two CRI requirements (i.e., 69 CRI) as applying to all regulated fluorescent lamps; (4) adopt the CRI of the representative lamp that is determined to be cost-justified as the minimum CRI for that product class; and (5) maintain the CRI requirements in EPCA for the product classes established by EPACT 1992 while setting efficacy standards for the product classes established in this notice.

DOE recognizes that each of these approaches for addressing the CRI minimum requirement has its own advantages and disadvantages. The first option, eliminating the CRI requirement, risks the potential for a back-sliding in performance. That said, for the products offered in the market today, the CRI generally increases with the efficacy levels considered in this rulemaking. Thus, the CRI values of future standards-compliant lamps would naturally be higher than the two existing minimum requirements. The second option suggests that DOE simply apply the minimum 45 CRI requirement to all fluorescent lamps. This approach would not eliminate any lamps now covered between 45 and 69 CRI, however as with the first option, carries a certain risk that there may be some backsliding for lamps that previously required to meet would have had to have been 69 CRI, but which now could be as low as 45 CRI.

The third option, to simply require all lamps to have a minimum of 69 CRI, would eliminate certain lamps that are presently manufactured between 45 and 69 CRI. DOE notes that through this

energy conservation standards rulemaking, it may be increasing the efficacy requirements on those lamps anyway, which may have the effect of preventing further use of those phosphors that supply light with a 45 to 69 CRI performance. However, to simply change the CRI requirement without analysis, and thereby eliminate product, appears to be in conflict with DOE's authority under EPCA. The fourth option identified above concerns DOE simply adopting the CRI requirement of the cost-justified lamp considered in the rulemaking analysis. That is to say, if DOE determines that a particular lamp with a certain efficacy is the cost-justified level at which it will set the mandatory standard for that product class, DOE would also adopt the CRI of that lamp as the minimum CRI requirement for all lamps in that product class. Finally, the fifth option maintains the current minimum requirements in EPCA for the product classes established in EPACT 1992 while setting efficacy requirements for the additional product classes established in this notice. Because this option requires no change in the CRI requirement for fluorescent lamps, there is no risk of eliminating product from the marketplace nor does it allow for backsliding in performance.

DOE requests comment on these five alternative approaches or others that would address the issue of the minimum CRI requirement for fluorescent lamps.

iii. Product Class Results

For the reasons discussed above, DOE has tentatively decided to consider the following product classes for GSFL (see Table III.2). These draft product classes are more aggregated than those originally presented in the Framework Document. For each of the eight product classes, DOE anticipates that it would develop a point efficacy value (lumens per watt), which would apply to all the lamps covered within each class.

TABLE III.2.—DOE ANOPR PRODUCT CLASSES FOR GSFL

Lamp type	For CCT ≤ 4,500K, minimum lamp efficacy *lm/W*	For CCT > 4,500K, minimum lamp efficacy *lm/W*
4-foot medium bipin	Product Class #1	Product Class #5.
2-foot U-shaped	Product Class #2	Product Class #6.
8-foot single pin slimline	Product Class #3	Product Class #7.
8-foot recessed double contact HO	Product Class #4	Product Class #8.

b. Incandescent Reflector Lamps

EPCA established minimum efficacy requirements by wattage for IRL, as presented in Table III.3. (42 U.S.C. 6295(i)(1)(B))

TABLE III.3.—EPCA PRODUCT CLASSES AND EFFICACY REQUIREMENTS FOR IRL

Wattage *W*	Min. average efficacy *lm/W*
40–50	10.5
51–66	11.0
67–85	12.5
86–115	14.0
116–155	14.5
156–205	15.0

In its Framework Document, DOE stated its preliminary intention to keep the same six product classes. DOE requested comment on this approach, including whether any modifications to the six product classes was warranted.

Several stakeholders commented that these potential product classes for IRL seemed reasonable and appropriate for this rulemaking. (NEMA, No. 4.5 at p. 75; ACEEE, No. 4.5 at p. 75; PG&E, No. 4.5 at p. 75; EEI, No. 4.5 at p. 76; NEMA, No. 8 at p. 2; Joint Comment, No. 9 at p. 5) DOE's additional research, however, has identified a problem with the potential product classes presented in the Framework Document, particularly as DOE considered standard levels with higher efficacy values. The existing wattage groups are problematic because the wattage rating of the lamp is a property about the lamp that the regulation is working to reduce, and yet it is also being used as the basis of classification. This issue is further complicated by the fact that some consumers (particularly in the residential sector) think of and purchase IRL based on the rated wattage, which is associated with an expected level of light output. The following discussion outlines DOE analyses in determining preliminary product classes for incandescent reflector lamps and the rationale therefore.

i. Class Setting Factors

Modified-Spectrum. As discussed in section I.E.2, EISA 2007 adopted a new definition for ''colored incandescent lamp'' [26] which supersedes DOE's definition previously incorporated at 10 CFR 430.2.[27] This new statutory definition effectively increases the scope of energy conservation standards coverage of IRL to include any IRL that has a lens containing five percent or more neodymium oxide or is a plant light lamp. As both of these types of IRL filter out portions of the emitted spectrum of the lamp, DOE believes that many of these lamps would fall under the definition of ''modified spectrum'' which was also adopted by the new energy legislation. The EISA 2007 definition of ''modified spectrum'' reads as follows:

''The term 'modified spectrum' means, with respect to an incandescent lamp, an incandescent lamp that—

(i) Is not a colored incandescent lamp; and

(ii) When operated at the rated voltage and wattage of the incandescent lamp—

I. Has a color point with (x,y) chromaticity coordinates on the Commission Internationale de l'Eclairage (C.I.E.) 1931 chromaticity diagram that lies below the black-body locus; and

II. has a color point (x,y) chromaticity coordinates on the C.I.E. 1931 chromaticity diagram that lies at least 4

[26] EISA 2007's definition of ''colored incandescent lamp'' reads as follows: ''The term 'colored incandescent lamp' means an incandescent lamp designated and marketed as a colored lamp that has—(i) a color rendering index of less than 50, as determined according to the test method given in CIE publication 13.3–1995; or (ii) a correlated color temperature of less than 2,500K or greater than 4,600K, where correlated temperature is computed according to the Journal of Optical Society of America, Vol. 58, pages 1528–1595 (1986).''

[27] The definition of ''colored incandescent lamp'' adopted by the 1997 Lamps Test Procedure Final Rule 62 FR 29221, 29228 (May 29, 1997) reads as follows: ''Colored incandescent lamp means an incandescent lamp designated and marketed as a colored lamp that has a CRI less than 50, as determined according to the method given in CIE Publication 13.2 (see 10 CFR 430.22); has a correlated color temperature less than 2,500K or greater than 4,600K; has a lens containing 5 percent or more neodymium oxide; or contains a filter to suppress yellow and green portions of the spectrum and is specifically designed, designated and marketed as a plant light.''

MacAdam steps (as referenced in IESNA LM16) distant from the color point of a clear lamp with the same filament and bulb shape, operated at the same rated voltage and wattage.'' (42 U.S.C. 6291(30)(W))

Modified-spectrum lamps provide unique utility to consumers, in that they offer a different spectrum of light from the typical incandescent lamp, much like two fluorescent lamps with different CCT values. These lamps offer the same benefits as fluorescent lamps with ''cooler'' CCTs in that they may ensure better color discrimination and improved visual performance.[28] In addition to providing a unique utility, DOE also understands that the technologies that modify the spectral emission from these lamps also decrease their efficacy (i.e., the ability of the lamp to convert watts of energy into lumens of visible light). This is because a portion of the light emission is absorbed by the coating. Neodymium coatings or other coatings on modified-spectrum lamps absorb some of the visible emission from the incandescent filament (usually red), creating a modified, reduced spectral emission. Since the neodymium or other coatings absorb some of the lumen output from the filament, these coatings decrease the efficacy of the lamp.

DOE is concerned that, given the newly-adopted definition of ''colored incandescent lamp,'' if DOE were to subject modified-spectrum IRL to the same standard as standard-spectrum IRL, then these IRL with modified-spectrum glass or coatings may not be able to achieve the mandatory standard, which could in turn lead to this type of product being lost from the market. Therefore, consistent with EISA 2007's approach on general service incandescent lamp standards, DOE is planning to establish separate product classes for regular IRL (i.e., those without modification to the spectral emission) and modified-spectrum IRL (i.e., ones which have some portion of the spectral emission absorbed). However, to ensure that a suitable standard level is set for these lamps (such that they are neither disadvantaged nor advantaged compared to standard-spectrum lamps), DOE plans to establish an appropriately scaled efficacy requirement for them, based on DOE's analysis of standard-spectrum IRL and then adjusted to account for the portions of the spectrum that are absorbed by the neodymium or spectrally-enhancing coating. DOE discusses how this scaling would be accomplished in the Engineering Analysis (see section III.C.6).

ii. Other Potential Class-Setting Factors Considered, but Not Adopted

Wattage. As DOE started to structure the analytical framework for the IRL analysis, DOE increasingly found that the initial approach of six wattage groups for product classes was not reasonable. Particularly as more-efficacious IRL with equivalent light output were considered, the approach presented in the Framework Document would have resulted in these replacement lamps being placed in a separate product class, and as such, would no longer be considered a ''replacement.'' For example, consider a 75W reflector lamp at 14.0 lm/W and an equivalent, more-efficacious replacement at 60W at 17.5 lm/W. These two lamps are essentially equivalent products, with equal levels of light output, operating lives, and customer utility (e.g., both operate in the same socket). However, under the Framework Document's approach for potential IRL product classes, these lamps would appear in different product classes. (42 U.S.C. 6295(i)(1)(B); see 10 CFR 430.32(n)(2)) Thus, DOE realized that wattage is not a suitable product class divider because it does not provide a unique utility; instead, it merely provides a measure of power consumption.

On further examination and consideration of the standard established by EPCA for reflector lamps, DOE is now interpreting the wattage groups in the existing standard as equivalent to a mathematical step-function equation that applies to all regulated IRL. DOE believes EPCA, in effect, establishes different minimum average lamp efficacies at each ''step'' or range of wattages for a single product class, which encompasses all IRL. This function recognizes that IRL incorporating the same technological feature, like a halogen capsule, are less efficacious at lower wattages than higher wattages. Therefore, lamps at lower wattages are subject to a lower standard than lamps at higher wattages even though lamps at all wattages are in the same product class.

As DOE considers more-efficacious substitute lamps in the analysis for this rulemaking, it must decrease the nominal lamp wattage range in order to keep the light output of the substitute lamps to within ten percent of the light output of the baseline lamp. Thus, as DOE presents the CSLs for the ANOPR, DOE plans to use a mathematical function that would establish the efficacy requirement at any wattage. Like the step function in EPCA, this mathematical function accounts for the fact that lamps at lower wattages are inherently less efficacious than lamps at higher wattages. See TSD Chapter 5 for a detailed discussion on the development of the CSLs for IRL.

Spot Versus Flood Incandescent Reflector Lamps. With respect to the issue of spot versus flood reflector lamps, several stakeholders commented that they did not believe DOE should establish separate product classes on this basis. (NEMA, No. 4.5 at p. 75; ACEEE, No. 4.5 at p. 75; PG&E, No. 4.5 at p. 75; EEI, No. 4.5 at p. 76; NEMA, No. 8 at p. 2) DOE considered these comments and reviewed technical reports on the performance of spot versus flood reflector lamps. Based upon this information, DOE has tentatively concluded that while there might be a differentiating utility afforded to consumers through the light distribution patterns of a spot reflector lamp versus a flood reflector lamp, that differentiating utility would not be expected to impact the efficacy of the lamp. Thus, DOE does not plan on creating separate product classes for spot and flood reflector lamps.

iii. Product Class Results

In sum, as discussed previously, DOE is considering all wattages of reflector lamps to be part of the same product class, with the standard level for any given lamp being a function of lamp wattage. As DOE considers more-efficacious replacement lamps, the rated wattages must decrease in order to maintain consistent levels of light output (i.e., within ten percent of the baseline lamp). Additionally, DOE is planning to consider efficacy standards for full-spectrum IRL separately from modified-spectrum IRL. Table III.4 summarizes the two product classes DOE is considering for the ANOPR. (For ease of commenting on IRL product classes, DOE has continued the product class numbering from where the GSFL classes left off.)

[28] ''Full Spectrum Q&A,'' *National Lighting Product Information Program*, Vol. 7 Issue 5 (March 2005). Available at: *http://www.lrc.rpi.edu/programs/nlpip/lightingAnswers/fullSpectrum/claims.asp.*

TABLE III.4.—DOE ANOPR PRODUCT CLASSES FOR IRL

Lamp type	Standard-spectrum minimum lamp efficacy *lm/W*	Modified-spectrum minimum lamp efficacy *lm/W*
Incandescent Reflector Lamps	Product Class #9	Product Class #10.

3. Technology Assessment

In the technology assessment, DOE identifies technology options that appear to be feasible means of improving product efficacy. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. The following discussion provides an overview of the salient aspects of the technology assessment, including issues on which DOE seeks public comment. For a more complete discussion, Chapter 3 of the TSD provides detailed descriptions of the basic construction and operation of GSFL and IRL, followed by a discussion of technology options to improve the efficacy of that lamp type.

a. General Service Fluorescent Lamps

Table III.5 lists the technology options that DOE has identified for improving the efficacy of GSFL. Table III.5 also provides TSD citations to each of the options listed, in order to enable the public to learn more about what is encompassed under each of the options.

TABLE III.5.—GENERAL SERVICE FLUORESCENT LAMP TECHNOLOGY OPTIONS

Name of technology option	Description	TSD reference
Highly Emissive Electrode Coatings	Improved electrode coatings to increase electron emission.	Chapter 3, Section 3.3.1.1.
Higher Efficiency Lamp Fill Gas Composition	Fill gas compositions to improve cathode thermionic emission or increase mobility of ions and electrons in the lamp plasma.	Chapter 3, Section 3.3.1.2.
Higher Efficiency Phosphors	Techniques to increase the conversion of ultraviolet light into visible light.	Chapter 3, Section 3.3.1.3.
Glass Coatings	Coatings that enable the phosphors to absorb more UV energy, so that they emit more visible light.	Chapter 3, Section 3.3.1.4.
Higher Efficiency Lamp Diameter	Vary the lamp diameter to improve its efficacy	Chapter 3, Section 3.3.1.5.
Multi-Photon Phosphors	Emitting more than one visible photon for each incident UV photon.	Chapter 3, Section 3.3.1.6.

Philips commented that some lamps use an extra thick layer of expensive phosphors to improve efficacy. However, Philips commented that the global supply of these high-quality phosphors is unknown, and there may be some issues associated with higher manufacturing cost if a standard level were set such that it required the use of this technology. (Philips, No. 11 at p. 2) DOE will keep this comment in mind during the manufacturer impact analysis interviews it will conduct at the NOPR stage of this rulemaking.

b. Incandescent Reflector Lamps

Table III.6 lists the technology options DOE has identified to improve the efficacy of IRL. Some of the technology options listed in Table III.6 are incorporated into commercially-available products today. For example, higher-temperature operation is utilized (usually in conjunction with halogen lamps) to improve the efficacy of the tungsten filament. Additionally, coiling of the tungsten filament is currently practiced widely by lamp manufacturers to increase its surface area, thereby improving filament efficacy.

TABLE III.6.—INCANDESCENT REFLECTOR LAMP TECHNOLOGY OPTIONS

Name of technology option	Description	TSD reference
Higher-Temperature Operation	Operating the filament at higher temperatures, the spectral output shifts to lower wavelengths, increasing its overlap with the eye sensitivity curve. This measure may shorten the operating life of the lamp.	Chapter 3, Section 3.3.2.1.
Microcavity Filaments	Texturing, surface perforations, microcavity holes with material fillings.	Chapter 3, Section 3.3.2.2.
Novel Filament Materials	More-efficacious filament alloys	Chapter 3, Section 3.3.2.3.
Thinner Filaments	Thinner filaments to increase operating temperature. This measure may shorten the operating life of the lamp.	Chapter 3, Section 3.3.2.4.
Efficient Filament Coiling	Coiling of the filament to increase surface area	Chapter 3, Section 3.3.2.5.
Crystallite Filament Coatings	Layers of micron or submicron crystallites deposited on the filament surface.	Chapter 3, Section 3.3.2.6.
Efficient Filament Orientation	Positioning the incandescent filament to increase light emission out of the lamp.	Chapter 3, Section 3.3.2.7.
Higher Efficiency Inert Fill Gas	Filling lamps with alternative gases, such as Krypton, to improve efficacy by reducing heat conduction.	Chapter 3, Section 3.3.2.8.

TABLE III.6.—INCANDESCENT REFLECTOR LAMP TECHNOLOGY OPTIONS—Continued

Name of technology option	Description	TSD reference
Luminescent Gas	Gaseous fills that react with certain wavelengths of the filament emission to generate visible light.	Chapter 3, Section 3.3.2.9.
Tungsten-Halogen Lamps	Small diameter fused quartz envelope with a halogen molecule to re-deposit tungsten on the filament. Commonly referred to as a ''halogen'' lamp.	Chapter 3, Section 3.3.2.10.
Higher Pressure Tungsten-Halogen Lamps	Increased pressure of the halogen capsule by increasing the density of halogen elements.	Chapter 3, Section 3.3.2.11.
Non-Tungsten Regenerative Cycles	Novel filament materials that incorporate a regenerative cycle.	Chapter 3, Section 3.3.2.12.
Infrared Glass Coatings	Infrared coatings (both phosphor and thin-film) to reflect some of the radiant energy back onto the filament. When used in conjunction with a halogen capsule, this technology option is referred to as a halogen infrared reflector (HIR) lamp.	Chapter 3, Section 3.3.2.13.
Integrally Ballasted Low Voltage Lamps	The ballast converts the operating voltage of the lamp from line voltage to a lower voltage.	Chapter 3, Section 3.3.2.14.
Higher Efficiency Reflector Coatings	Alternative internal coatings with higher reflectivity	Chapter 3, Section 3.3.2.15.
Trihedral Corner Reflectors	Individual corner reflectors in the cover glass that reflect light directly back in the direction from which it came.	Chapter 3, Section 3.3.2.16.
Efficient Filament Placement	Positioning the filament to increase light emission out of the lamp.	Chapter 3, Section 3.3.2.17.

Additional detail on the technology assessment can be found in Chapter 3 of the TSD.

In summary, DOE invites comments on all of the technology options it considered for GSFL and IRL, including any omissions or revisions necessary to have a more comprehensive technology assessment. In the context of commenting on technology options, DOE also requests information on the feasibility, performance improvement, and cost of the technology options, as well as any recent developments in their technical maturity.

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technology options identified as having the potential to improve the efficiency of a product, to determine which options to consider further and which options to screen out. DOE consults with industry, technical experts, and other interested parties in developing a list of technology options for consideration. Section III.A.3 discusses the lists of identified technology options for the products being considered for coverage under this rulemaking. DOE then applies the following set of screening criteria to determine which design options are unsuitable for further consideration in the rulemaking:

(1) *Technological Feasibility*. DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible.

(2) *Practicability to Manufacture, Install, and Service*. If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE will consider that technology practicable to manufacture, install, and service.

(3) *Adverse Impacts on Product Utility or Product Availability*. If DOE determines a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

(4) *Adverse Impacts on Health or Safety*. If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

10 CFR part 430, Subpart C, Appendix A, (4)(a)(4) and (5)(b).

1. Technology Options Screened Out

Applying the four screening criteria discussed above to the identified technology options for GSFL and IRL, DOE developed the list of technology options shown in Table III.13 that will not be considered further in this rulemaking analysis, because they do not meet one or more of the aforementioned screening criteria. In the text following Table III.13, DOE discusses each of these technology options and provides the rationale for screening them out. Chapter 4 of the TSD provides further information on the Screening Analysis.

TABLE III.7.—SUMMARY OF TECHNOLOGY OPTIONS SCREENED OUT OF DOE'S ANALYSIS

Lamp category	Technology option	Screening criteria failed on
GSFL	Multi-Photon Phosphors	Technological feasibility; Practicability to manufacture, install, and service.
IRL	Microcavity Filaments	Product utility to consumers; Practicability to manufacture, install, and service.
IRL	Novel Filament Materials	Practicability to manufacture, install, and service; Product utility to consumers.
IRL	Crystallite Filament Coatings	Practicability to manufacture, install, and service.
IRL	Luminescent Gas	Technological feasibility.

TABLE III.7.—SUMMARY OF TECHNOLOGY OPTIONS SCREENED OUT OF DOE'S ANALYSIS—Continued

Lamp category	Technology option	Screening criteria failed on
IRL	Non-Tungsten-Halogen Regenerative Cycles.	Practicability to manufacture, install, and service; Product utility to consumers.
IRL	Infrared Phosphor Glass Coating	Practicability to manufacture, install, and service.
IRL	Integrally Ballasted Low Voltage Lamps.	Technological feasibility.
IRL	Trihedral Corner Reflectors	Practicability to manufacture, install, and service.

a. Multi-Photon Phosphors

For GSFL, DOE screened out the use of multi-photon phosphors, even though they have the potential to significantly improve lamp efficacy. By emitting more than one visible photon for each incident ultraviolet photon, a lamp employing this technology would be able to emit more light for the same amount of power. However, development of this technology remains in the research phase, and DOE is unaware of any prototypes or commercialized products that incorporate multi-photon phosphors. Thus, DOE screened out this technology option based on the first criterion, technological feasibility. Additionally, because this technology is still in the research phase, DOE believes that it would not be practicable, or even possible, to manufacture, install, and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. As discussed below in section III.C, DOE based the GSFL engineering analysis on commercially-available lamps, deriving efficacy values for these lamps from manufacturer catalogs and specifications. Therefore, DOE considered the technology options contained in Table III.5 implicitly as incorporated into commercially available lamps at the efficacy levels it evaluated.

b. Microcavity Filaments

DOE also screened out several technologies that could potentially improve the efficacy of IRL. First, DOE screened out the use of microcavity filaments. Microcavity filaments increase an incandescent lamp's efficacy by reducing the amount of energy converted to infrared light emitted by the filament while increasing the amount of energy converted to visible light. The TSD's market and technology assessment (TSD Chapter 3) notes that Sandia National Laboratories researchers examined microcavity resonance in a tungsten photonic lattice, and a literature search revealed multiple patents referencing this technology. Since research prototypes of microcavity filaments do exist, DOE determined that this technology option is technologically feasible. However, research indicates that materials patterned at the submicron level may experience problems with stability. Because such instability could negatively affect lamp function and life, DOE believes that it is not yet practicable to implement this technology in general service lamps. For this reason, DOE screened out this technology option based on the third criterion, impacts on product utility to consumers. Furthermore, DOE is unaware of any commercialized lamps that incorporate microcavity filaments, so we are concerned that mass-manufacturing techniques for this technology would be problematic. For this reason, DOE does not believe that this technology would be practicable to manufacture, install, and service. Therefore, DOE is not considering filaments with microcavities as a design option for improving the efficacy of IRL.

c. Novel Filament Materials

Second, DOE screened out the use of novel filament materials, such as nitrides and carbides, that have the potential to improve lamp efficacy by emitting more light in the visible spectrum at a given temperature than traditional tungsten filaments. Because several patents on such filaments exist, DOE believes that this technology option is technologically feasible. However, DOE is unaware of any lamps available today that use such filaments. Furthermore, DOE understands that technological barriers, such as prohibitive brittleness of the filament, limit implementation of this technology. Finding a practical way to incorporate novel filament materials into commercially-viable incandescent lamps would require further research, as would making such lamps practical for general service applications. Thus, DOE believes this option must be screened out due to its potential negative impacts on consumer utility. Furthermore, DOE believes that it would not be practicable to manufacture this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Therefore, DOE is not considering novel filament materials as a design option for improving the efficacy of IRL.

d. Crystallite Filament Coatings

Third, DOE screened out crystallite filament coatings, which are oxide-covered micron or sub-micron crystallites comprised of thorium, tantalum, or niobium. These coatings can be used to increase the light emissivity of an incandescent lamp's filament. Because several patents on such filament coatings exist, DOE believes that this technology option is technologically feasible. However, DOE was unable to locate any data on the incorporation of crystallite filament coatings into prototypes or commercially available products. Using crystallite filament coatings in incandescent lamps may require additional manufacturing techniques, such as chemical vapor deposition. DOE understands that these techniques are not in use in the mass-production of incandescent lamps. In addition, DOE believes that it would not be practicable to manufacture this technology on the scale necessary to serve the relevant market of incandescent lamps before the effective date of an amended standard. Therefore, DOE is not considering crystallite filament coatings as a design option for improving the efficacy of IRL.

e. Luminescent Gases

Fourth, DOE screened out luminescent gases. These gases, placed inside the envelope of an incandescent lamp, react with certain wavelengths of the filament emission and generate visible light. DOE is unaware of any existing commercially-available products or prototypes of incandescent lamps incorporating luminescent gases. Accordingly, DOE screened out luminescent gases based on the first criterion, technological feasibility. Therefore, DOE is not considering luminescent gas fills as a design option for improving the efficacy of IRL.

f. Non-Tungsten-Halogen Regenerative Cycles

Fifth, DOE screened out non-tungsten-halogen regenerative cycles.

Regenerative cycles allow a filament to burn at a higher temperature (and thus higher efficacy) than conventional incandescent lamps, while maintaining a useful service life. Non-tungsten-halogen regenerative cycles are regenerative cycles that do not employ the use of the tungsten filament or halogen gas fill. DOE understands that regenerative cycles other than tungsten-halogen may be possible for other filament materials. However, as noted above, DOE screened out the use of novel filament materials on the basis of the second and third screening criteria. Due to the fact that use of the non-tungsten-halogen regenerative cycles would depend on the incorporation of a non-tungsten filament (already screened out), DOE is screening out such cycles from consideration based on the same two criteria. DOE believes that it would not be practicable, and maybe not even possible, to manufacture novel filament materials lamps with associated regenerative cycles on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Also, the use of other filament materials, and therefore their associated regenerative cycles, may have an adverse impact on consumer utility. Therefore, DOE is not considering non-tungsten-halogen regenerative cycles as a design option for improving the efficacy of IRL.

g. Infrared Phosphor Glass Coatings

For IRL, DOE screened out infrared phosphor glass coatings. When used as a coating on the bulb surface, infrared phosphors harvest the emitted infrared energy and convert it to visible light, thereby potentially increasing lamp efficacy. Because patents on such infrared phosphor coatings exist, DOE determined that this technology option is technologically feasible. However, DOE does not believe infrared phosphor glass coatings would be practicable to manufacture because making hundreds of millions of incandescent lamps annually with infrared phosphor coatings would require significant changes to current manufacturing processes and DOE has no data to indicate that such manufacturing processes are feasible or could be made ready to serve the relevant market at the time of the effective date of an amended standard. Therefore, DOE is not considering infrared phosphor coatings as a design option for improving the efficacy of IRL.

h. Integrally Ballasted Low Voltage Lamps

Incandescent filaments that are designed to operate at a lower voltage are both shorter in length and thicker in cross-sectional area than incandescent filaments designed to operate at a line voltage from 115 to 130V. Increasing the thickness of the filament can improve its efficacy by allowing the lamp to be operated at higher temperatures. Therefore, using an integral ballast allows one to increase the efficacy of a lamp by operating its filament at a lower voltage (e.g., 12 volts) than standard U.S. household line voltage (i.e., 120 volts). Although this technology is commercially available in Europe [29] and elsewhere in the world where the standard household line voltage is 220–240 volts, DOE is unaware of any commercially-available products or prototypes of this same technology option that operate on U.S. household line voltage of 120 volts. Accordingly, DOE is screening out integrally ballasted low voltage lamps based on the first criterion, technological feasibility. Therefore, DOE is not considering integrally ballasted low voltage lamps as a design option for improving the efficacy of IRL.

i. Trihedral Corner Reflectors

For IRL, DOE screened out trihedral corner reflectors, which could be incorporated into the cover glass of IRL and have the potential to increase lamp efficacy by redirecting infrared radiation back onto the filament. Because patents on trihedral corner reflectors exist, DOE determined that this technology option is technologically feasible. However, manufacturer data have not provided any indication as to the incorporation of this technology into prototypes or commercially-available products. Using trihedral corner reflectors, which entail an additional disc requiring external fabrication and installation in the lamp, is likely to necessitate manufacturing techniques not currently available for mass production. For this reason, DOE believes that it would not be practicable to implement this technology on the scale necessary to serve the relevant IRL market at the time of the effective date of an amended standard. Therefore, DOE is not considering trihedral corner reflectors as a design option for improving the efficacy of IRL.

2. Design Options Considered Further in Analysis

After screening out technologies in accordance with the policies set forth in 10 CFR part 430, Subpart C, Appendix A, (4)(a)(4) and 5(b), DOE is considering the technologies, or ''design options,'' listed in the table below as viable means of improving the efficacy of lamps covered under this ANOPR. The market and technology assessment (TSD Chapter 3) provides a detailed description of these design options.

TABLE III.8.—GSFL AND IRL DESIGN OPTIONS

GSFL design options	IRL design options
Highly Emissive Electrode Coatings	Higher-Temperature Operation.
Higher Efficiency Lamp Fill Gas Composition	Thinner Filaments.
Higher Efficiency Phosphors	Efficient Filament Coiling.
Glass Coatings	Efficient Filament Orientation.
Higher Efficiency Lamp Diameter	Higher Efficiency Inert Fill Gas.
	Tungsten-Halogen Lamps.
	Higher Pressure Tungsten-Halogen Lamps.
	Infrared Glass Coatings (thin-film).
	Higher Efficiency Reflector Coatings.
	Efficient Filament Placement.

The above listed ''design options'' will be considered by DOE in the engineering analysis. As discussed in section III.C, to the greatest extent possible, DOE based its engineering analysis on commercially-available products, which incorporate one or more of the design options listed above. In this way, DOE is better able to apply

[29] Philips Electronics Press Release (2007). Available at: *http://www.lighting.philips.com/gl_en/news/press/product_innovations/archive_2007/press_new_masterclassic_lamp.php*.

these features of more-efficacious lamps in a manner consistent with real world application. To this end, DOE has used catalog data, including price and performance information, where available.

DOE invited comment on DOE's selection of these design options. Previously, manufacturers have expressed some concern about certain technologies impacting the manufacturing of high-volume IRL. DOE understands that infrared reflective coatings require time to deposit on the capsules/lamps. While lamps with this technology option are commercially available today in small production runs, DOE is requesting comment on whether these technologies could be applied in the volumes necessary to meet the market demand for IRL in the three-year compliance period mandated under the law authorizing DOE to conduct this rulemaking. In particular, DOE requests comment on whether this technology (or other technology options listed above) indeed meet DOE's screening criterion related to whether a technology can be ''mass manufactured.''

For more detail on how DOE developed the technology options and on the process DOE used to screen these options, refer to Chapter 3 and Chapter 4 of the TSD.

C. Engineering Analysis

The engineering analysis identifies, for each product class, potential increasing efficiency levels above the level of the baseline model. As key inputs in this process, the engineering analysis considers technologies not eliminated in the screening analysis. DOE considers these technologies either explicitly as design options or implicitly as incorporated into commercially-available lamps at the efficiency levels evaluated. For more information on the technologies used in commercially-available lamps, refer to Chapter 5 of the TSD.

In the engineering analysis for this rulemaking, DOE concentrated its efforts on developing product efficacy levels associated with ''lamps designs,'' based upon commercially-available lamps that incorporate a range of design options. ''Design options'' consist of discrete technologies (e.g., infrared reflective coatings). However, where necessary, DOE supplemented commercially-available product information with an examination of the incremental costs and improved performance of discrete technologies. In this way, DOE's standards development analyses can appropriately assess the technologies identified as candidates for improving lamp efficacy.

In energy conservation standard rulemakings for other products, DOE often develops cost-efficiency relationships in the engineering analysis. However, for this lamps rulemaking, DOE derived efficacy levels in the engineering analysis and end-user prices in the product price determination. By combining the results of the engineering analysis and the product price determination, DOE derived typical inputs for use in the LCC and NIA. Section III.E of this notice discusses the product price determination (see TSD Chapter 7 for further detail).

1. Approach

To the extent possible, DOE based the analysis on commercially-available lamps that incorporate the design options identified by the Technology Assessment and Screening Analysis. For GSFL, all lamp-and-ballast designs are commercially available and have publicly available performance and price information. The majority of the engineering analysis for IRL is also based on commercially-available lamps. However, where needed, DOE supplemented these lamps with additional model lamps which use commercially-available technologies so that a substitute lamp at each CSL was available for each baseline lamp. For both GSFL and IRL, instead of using manufacturer cost data, DOE elected to follow suggestions to derive price information using observed market prices for existing products. For more information on the rationale for this approach, refer to section III.E of this notice.

The engineering analysis follows on the same general approach for both categories of lamps analyzed in this rulemaking. The steps below more fully describe this approach:

Step 1: Select Representative Product Classes. DOE reviewed covered lamps and their associated product classes. DOE identified and selected certain product classes as ''representative'' product classes where DOE would concentrate its analytical effort. DOE chose these representative product classes primarily because of their high market volumes. Section III.C.2 of this notice provides detail on the representative product classes selected for the analysis. Section III.C.6 of this notice provides detail on how DOE extrapolates from the representative product class to other product classes.

Step 2: Select Baseline Lamps. DOE selected baseline lamps from the representative product classes on which it conducted the engineering analysis (and subsequent analyses). These baseline lamps were selected to represent the characteristics of typical lamps in a given product class. Generally, a baseline lamp is one that just meets existing mandatory energy conservation standards or one that represents the typical lamp sold. Specific characteristics such as CCT, operating life, and light output were all selected to characterize the most common lamps purchased by consumers today. For all the representative product classes, DOE selected multiple baseline lamps, in order to ensure consideration of different high-volume lamps and associated consumer economics. Baseline lamps are discussed in section III.C.2 of this notice.

Step 3: Identify Candidate Lamp or Lamp-and-Ballast Designs. DOE selected a series of more-efficacious lamps for each of the baseline lamps considered within each representative product class. DOE considered technologies not eliminated in the screening analysis. DOE considered these technologies either explicitly as design options or implicitly as design options incorporated into commercially-available lamps at the efficiency levels evaluated. In identifying more efficacious lamp or lamp-and-ballast designs, DOE recognizes that the lumen package and performance characteristics of a system are important design criteria for consumers. For example, if consumers do not have the option to purchase substitution lamps or lamp-and-ballast systems with similar lumen packages under an energy conservations standard, consumers would need to renovate the lighting design in a particular building in order to maintain a similar light output. Therefore, lamp and lamp-and-ballast designs for the LCC analysis were established such that potential substitutions maintained light output above a maximum 10 percent decrease from the baseline lamp system's light output. In addition, substitute lamps were chosen to have performance characteristics (e.g., CCT) similar to those of the baseline lamp.

In identifying more-efficacious substitutes for GSFL, DOE utilized a database of commercially-available lamps. For the LCC, DOE developed the engineering analysis based on the two substitution scenarios where a consumer can maintain light output while decreasing energy consumption. In the first scenario, the consumer maintains light output while decreasing energy by replacing the baseline lamp with a more efficacious lower-wattage lamp that operates on the existing

ballast. In the second scenario, the consumer maintains light output while decreasing energy consumption by replacing the lamp-and-ballast system with a more efficacious lamp and a different ballast. For example, a lamp-and-ballast system with a more efficacious same-wattage lamp and lower ballast factor ballast will consume less energy and maintain light output.

For IRL, DOE used some commercially-available lamps, but also developed ''model'' lamps which incorporate design options that may not be commercially available for certain lamp types and wattages but which use commercially-available technologies. For example, DOE developed efficacy estimates for reduced-wattage IRL with an improved halogen infrared (HIR) coating. For the LCC, DOE considered only one substitution scenario. In this scenario, consumers save energy and maintain light output by replacing their lamp with a lower wattage more efficacious lamp. For a more detailed discussion of lamp and ballast designs, see section III.C.3 of this notice.

Step 4: Developed Candidate Standard Levels. Having identified the more-efficacious substitutes for each of the baseline lamps (or lamp-and-ballast systems), DOE developed CSLs based on a consideration of several factors including: (1) The design options associated with the specific lamps being studied (e.g., grades of phosphor for fluorescent lamps, the use of infrared coatings for IRL); (2) the ability of lamps across wattages to comply with the standard level of a given product class; [30] and (3) the maximum technologically-feasible level. For a more detailed discussion of CSL development for each of the representative product classes analyzed, see section III.C.4 of this notice.

A more detailed discussion of the methodology DOE followed to perform the engineering analysis can be found in the engineering analysis chapter of the TSD (Chapter 5).

2. Representative Product Classes and Baseline Lamps

As discussed in section III.A.2, DOE is considering establishing eight product classes across the range of covered GSFL and two product classes for covered IRL. Due to scheduling and resource constraints, DOE was not able to analyze each and every product class. Instead DOE carefully selected certain product classes that it would analyze, and then scale its analytical findings on those representative product classes to other product classes that were not analyzed. The representative product classes are generally selected to encompass the highest volume, most commonly sold lamp types.

Once DOE identifies the representative product classes for analysis, DOE selects the representative units for analysis (i.e., baseline lamps) from within each product class. In the Framework Document, DOE identified some preliminary ideas for representative product classes and units for analysis. This section summarizes the comments received on this topic and the related decisions DOE made in conducting this portion of the ANOPR analysis.

ACEEE provided a cross-cutting comment about representative product classes and units for analysis. ACEEE expressed concern that DOE may over-simplify the analysis by analyzing lamps of a few wattages and then generalizing to lamps of other wattages, in which case the results may not scale well. (ACEEE, No. 4.5 at pp. 67 and 79–80) The Joint Comment expressed this same concern, stating that analyzing too few products risks oversimplifying the analysis and obtaining results that cannot be extended to other products. Because such an approach could result in the sacrifice of potential energy savings, the Joint Commenters urged DOE to analyze multiple lamp wattages. (Joint Comment, No. 9 at p. 2)

In response, DOE plans to establish eight product classes for GSFL. For IRL, although DOE is considering only two product classes, DOE defines CSLs with lamp efficacy requirements that vary by wattage to prevent oversimplification of the analysis. In addition, for each potential GSFL and IRL product class that is being analyzed, DOE is analyzing more than one baseline lamp to reflect the range of manufacturers' current lamp offerings. For example, for IRL, DOE recognizes that an incandescent lamp with the same basic technology exhibits higher efficacies at higher wattages. By analyzing multiple products at several different wattages, DOE was able to define a CSL that sets the same technology requirement for IRL, regardless of wattage.

a. General Service Fluorescent Lamps

As discussed in section III.A.2, DOE has tentatively decided to revise the table of product classes to reflect the utility of these products and how they are used in the market. From this new set of product classes, DOE generally selected as representative product classes those that encompassed the majority of shipments and from which efficacy values could be scaled.

DOE observed that 4-foot medium bipin lamps constitute the vast majority of GSFL sales. These are followed in order of unit sales by 8-foot single pin slimline lamps and 8-foot recessed double contact HO lamps, which together constitute less than a quarter of GSFL sales. Because 4-foot medium bipin, 8-foot single pin slimline, and 8-foot recessed double contact HO lamps are the most common GSFL, DOE has selected them as representative lamps for its analysis. Shipments of 2-foot U-shaped lamps account for less than 5 percent of GSFL unit sales historically.[31] Given the relatively small market share of U-shaped lamps, DOE did not explicitly analyze these lamps.

With regard to product class divisions by CCT, DOE recognizes that lamps whose CCT is greater than 4,500K represent a small market share of GSFL. Therefore, DOE has chosen to analyze lamps with CCT less than or equal to 4,500K.

Although DOE is not analyzing the 2-foot U-shaped lamps or lamps that have a CCT greater than 4,500K, DOE nevertheless plans to consider standards for these product classes. DOE will extend its decision for the 4-foot medium bipin product class to the 2-foot U-shaped product class. This is possible because 2-foot U-shaped lamps generally are operated in the same way and generally span the same wattages as 4-foot medium bipin lamps. For lamps whose CCT is greater than 4,500K, DOE will extrapolate its findings from the representative lamps it analyzed that are less than or equal to 4,500K. For details on how DOE intends to consider development of standards for product classes not analyzed, see section III.C.6 of this notice.

Within the representative product classes for GSFL, DOE selected as representative units for analysis those lamps with the highest volumes. Although DOE reorganized the product classes from what it presented in the Framework Document, the representative units selected for analysis are generally consistent with the comments received regarding the appropriate units for analysis. For example, several stakeholders commented that DOE should select the cool white phosphor energy-saver T12 as a baseline lamp. (NEMA, No. 8 at pp. 2–3; GE, No. 4.5 at pp. 63–65 at pp. 70–71; Philips, No. 11 at p. 1; GE, No. 13 at pp. 2–4; Osram, No. 15 at p. 3; GE, No. 4.5 at pp. 63–65). Osram commented that DOE should also

[30] Efficacy levels span multiple lamps of different wattages. In selecting CSLs, DOE considered whether these multiple lamps can meet the efficacy levels.

[31] Source: NEMA, No. 12 at p. 7.

consider a 700 series T8 as a baseline lamp. (Osram, No. 15 at p. 3). In contrast, EEI and PG&E commented that the baseline lamps should be selected in terms of when the standard will go into effect (six years from now), and the cool white lamp may not be a good representative baseline lamp at that time. (EEI, No. 4.5 at pp. 68–69, PG&E, No. 4.5 at p. 73). In addition, ACEEE commented that it may be better for DOE to analyze both the energy-saver and non-energy-saver lamps as baselines, and then later in the process DOE could decide whether one should be removed from the analysis. (ACEEE, No. 4.5 at pp. 66–67).

After consideration of the public comments, DOE selected T8 and T12 baseline lamps for analysis. For T12 lamps, DOE selected both non-energy-saver lamps (i.e., 40W T12 4-foot medium bipin GSFL) and energy-saver versions (i.e., 34W T12 4-foot medium bipin GSFL), where they were available, as baseline lamps. For non-energy-saver versions of T12 GSFL, DOE selected 700 series, non-cool-white T12 lamps. For energy-saver versions of the T12 GSFL, DOE selected cool white models as baseline lamps. For T8 lamps, DOE only selected the non-energy-saver lamp (i.e., 32W T8 4-foot medium bipin GSFL) as a baseline lamp because energy-saver versions are not prevalent in the marketplace. For the baseline 32W T8 lamp, DOE used a rare-earth phosphor 700 series non-energy-saving lamp as the baseline. In all cases, the phosphor technology employed by each of these lamps is a direct reflection of the most commonly sold lamp today. DOE also selected fluorescent lamps with a CCT of 4,100K for all the analysis (i.e., baseline lamps and standard-compliant replacement lamps). DOE selected this CCT value because it is both the most popular CCT and because it falls approximately in the middle of the range of typical GSFL, which span from 3,000K to 6,500K.

Table III.9 presents the representative product classes and baseline lamps that DOE has tentatively developed for GSFL.

TABLE III.9.—GSFL REPRESENTATIVE PRODUCT CLASSES AND BASELINE LAMPS

Lamp type	Representative product class	Baseline lamps						
		Descriptor	Nominal wattage *W*	CCT *K*	Rated efficacy* *lm/W*	Initial light output *lm*	Mean light output *lm*	Lifetime *hr*
4-foot medium bipin	CCT ≤4,500K	F40T12	40	4,100	80.0	3,200	2,880	20,000
		F34T12	34	4,100	77.9	2,650	2,300	20,000
		F32T8	32	4,100	86.2	2,800	2,520	20,000
8-foot single pin slimline.	CCT ≤4,500K	F96T12	75	4,100	85.6	6,420	5,906	12,000
		F96T12	60	4,100	87.6	5,300	4,664	12,000
		F96T8	59	4,100	94.8	5,700	5,130	15,000
8-foot recessed double contact HO.	CCT ≤4,500K	F96T12	110	4,100	80.1	9,050	8,145	12,000
		F96T12	95	4,100	82.5	8,000	6,950	12,000

*Rated efficacy is based on the rated wattage of the lamps and the initial lumen output. The rated wattage in order of baseline is 40W, 34W, 32.5W, 75W, 60.5W, 60.1W, 113W, and 97W.

As discussed in section III.C.3.a, DOE is taking a systems approach to its analysis for GSFL. In accordance with this approach, DOE selected typical ballasts to pair with the baseline lamps. DOE generally paired a ''normal'' BF ballast (i.e., with a BF typically between 0.84 and 1.0) with baseline lamp systems. These pairings are intended to characterize the typical system used in the market. For example, for installed T8, 4-foot medium bipin fluorescent systems, DOE selected an instant start electronic ballast with a BF of 0.88. In addition to ballast types, DOE also selected the number of lamps per ballast that represent a typical system. DOE is aware that 4-foot medium bipin ballasts are available in a variety of lamp-per-ballast designs. According to the 2000 rule on GSFL ballasts (hereafter ''2000 Ballast Rule''), there are on average 2.8 lamps per 4-foot medium bipin system. 62 FR 56740 (Sept. 19, 2000).[32] To accurately represent the market and to simplify the analysis, DOE has decided to use a 3-lamp system for 4-foot medium bipin lamps. For 8-foot lamps, DOE selected 2-lamp ballasts, representative of typical 8-foot systems in the market. For further detail on the lamps and lamp-and-ballast systems DOE uses in its analyses, see Chapters 5 and Appendix 5A of the TSD.

b. Incandescent Reflector Lamps

As discussed above, for the ANOPR, DOE decided to revise the table of product classes to reflect the utility of these products and how they are used in the market, including the creation of a product class for modified-spectrum lamps. Because modified-spectrum lamps currently make up only a small percentage of the market, DOE has selected the standard-spectrum IRL product class for analysis and intends to extrapolate its findings to the modified-spectrum product class. Section III.C.6 provides detail on this extrapolation.

ACEEE commented that DOE should analyze each of the six IRL wattage group product classes, rather than only two, as DOE presented in its Framework Document. Otherwise, ACEEE argued that DOE would potentially risk oversimplifying the analysis. (ACEEE, No. 4.5 at pp. 79–80) The Joint Comment also asserted that DOE should examine each product class for IRL since the appropriate substitute lamps in each of those classes can vary. (Joint Comment, No. 9 at p. 2)

Given the revisions to the product class structure for IRL (i.e., that product classes are no longer defined by wattage), DOE now recognizes that the discrete utility of IRL is based on the lumen package, not the wattage rating. For this reason, the discrete IRL representative wattage groups that were discussed in the Framework Document,

[32] U.S. Department of Energy. Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Technical Support Document: Energy Efficiency Standards for Consumer Products: Fluorescent Lamp Ballast Proposed Rule. Appendix B. Marginal Energy Prices and National Energy Savings. Table B.6. (Jan. 2000). Available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/appendix_b.pdf.*

and upon which DOE received comment, are being merged into one product class. However, to prevent oversimplification of the analysis, DOE has chosen to analyze three different lamps of multiple wattages (and lumen packages) in the standard-spectrum product class. DOE has tentatively decided to concentrate its resources on conducting analysis of the most popular reflector lamps—in terms of lamp size, wattage, and lumen package. Accordingly, DOE examined existing products on the market at multiple wattages to select baseline lamps which it used to derive efficacy equations that span wattage. Therefore, DOE was able to apply the analysis performed on the most popular lamps to the other, less common lamps. Further detail on the CSLs DOE has developed for IRL follows in section III.C.6.

With regard to baseline lamps, NEMA commented that DOE should conduct more analysis on the 75W and the 150W parabolic aluminized reflector (PAR) lamp, and clarify whether these are ''blown PAR'' lamps. (NEMA, No. 8 at pp. 2–3) EEI commented that given the market penetration of halogen PAR lamps, DOE might consider them as some of the baseline lamps for the analyses. (EEI, No. 4.5 at p. 77) GE commented that blown PAR38 lamps are very common in the market (both 75W and 150W), and that they may represent a good baseline because they are the least efficient type of PAR technology currently sold. (GE, No. 4.5 at p. 79)

In response, DOE selected three baseline lamps of varying wattage and shapes to provide a comprehensive understanding of consumer economics. Specifically, DOE included PAR halogen baseline lamps of three different wattages: 50, 75, and 90 Watts. Average wattage information of PAR lamps acquired from NEMA and a review of manufacturer product catalogs indicate that these are the highest volume wattages. These baseline lamps are currently regulated by EPCA and, therefore, meet the EPCA standard.

DOE identified three lumen packages that are popular in the commercial and residential sectors, and then identified lamps that provided that service. These three packages are in the range of approximately 600 to 1,300 lumens. DOE analyzed PAR baseline lamps in each of the lumen packages as DOE believes that these lamps represent a good cross-section of the most common reflector lamps that will be sold and used at the effective date of the standard (the year 2012). Since these lamps capture a range of wattages and lumen packages, they cover a range of applications.

Table III.10 presents the representative product class and baseline lamps that DOE has selected for the ANOPR IRL analyses.

TABLE III.10.—IRL REPRESENTATIVE PRODUCT CLASS AND BASELINE LAMPS

Lamp category	Representative product class	Representative product class baseline lamps				
		Descriptor	Wattage *W*	Efficacy *lm/W*	Initial light output *lm*	Lifetime *hr*
IRL	IRL Standard-Spectrum	PAR30	50	11.6	580	3,000
		PAR38	75	14.0	1,050	2,500
		PAR38	90	14.6	1,310	2,500

DOE requests comment on its preliminary selection of representative product classes and baseline lamps for GSFL and IRL.

3. Lamp and Lamp-and-Ballast Designs

In the market and technology assessment (see TSD Chapter 3), DOE identifies a range of technology options that improve the efficacy of the two categories of lamps considered in this rulemaking. In the screening analysis (see TSD Chapter 4), DOE screened out certain technology options because they fail to satisfy the requirements of all four screening criteria. Those technology options not screened out by the four criteria are called ''design options,'' and DOE considered them in the engineering analysis.

The Joint Comment suggested that, when deciding how many potential standard levels to examine, DOE should look at natural divisions in the market, by product class, rather than selecting an arbitrary number of standard levels. (Joint Comment, No. 9 at p. 4)

For the lamps considered in this rulemaking, DOE's selection of design options guided its selection of CSLs. Because products spanned a large range of efficacies for GSFL and IRL, DOE looked at natural divisions in the market when selecting lamp designs. For example, for GSFL, DOE noted groupings around the types of phosphor used and the wall thickness of those phosphors. With regard to IRL, DOE identified natural ''technology-based'' divisions in the market around the type of incandescent technology used (i.e., halogen, or HIR).

DOE also took into account lumen output when it established lamp designs for its analyses. In the Framework Document, DOE stated its intention to hold the lamp lumen output constant at the level of the baseline model. Thus, as the lamps become more efficacious, they will consume less energy rather than produce more light. Holding lumen output constant across the efficacy levels is necessary to ensure that products supply equivalent service under the base-case and standards-case scenarios.

The Joint Comment agreed with DOE's intention in this regard and suggested that DOE avoid structuring the standard so that compliant lamps would noticeably reduce light output. The Joint Comment also expressed concern about a standard that might result in the use of efficiency gains to over-illuminate certain installations or to install longer-life lamps instead of capturing energy savings. (Joint Comment, No. 9 at p. 6) EEI stated that there are some energy-saving incandescent lamps that use a slightly lower wattage and produce fewer lumens, but do so at a higher efficacy. Therefore, to allow for energy savings, and as a sensitivity to the analysis, EEI recommended that DOE should evaluate a 10-percent lumen band of equivalency for incandescent lamps. (EEI, No. 4.5 at pp. 117–118)

In response, it is noted that for the LCC, DOE considered those lamps (or lamp-and-ballast systems) which: (1) Emit lumens equal to the lumen output of the baseline lamp or lamp-and-ballast system, or below that lamp by no more than 10 percent, and (2) result in energy savings. Lamp or lamp-and-ballast designs that under-illuminate and over-illuminate are considered in the NIA. For the LCC, DOE also chose to consider only energy-saving options. For GSFL, energy savings can either be achieved through lamp replacements or lamp-and-ballast replacements. For GSFL,

energy savings can only be achieved through lamp replacements. For the NIA, DOE analyzed a range of energy saving and non-energy-saving options. The non-energy-savings lamps, as well as more-efficient lamps that increase or decrease light output by more than 10 percent of the base case, can be found in Appendix 5A of the TSD.

a. General Service Fluorescent Lamps

EEI recommended that DOE should take a systems approach when analyzing GSFL in the NES and LCC, because the ballast is the piece of the system that determines the energy usage overall. (EEI, No. 7 at p. 1) DOE agrees with this comment and did apply a systems approach for the fluorescent lamp analysis because DOE recognizes that both lamps and ballasts determine a system's energy use and the overall system lumen output. By using a systems approach, DOE was able to demonstrate the actual energy consumption and light output of an operating lamp in a given end-user installation. DOE is cognizant of the fact, however, that it is not regulating fluorescent lamp ballasts in this rulemaking, and, therefore, while it selected ballasts with different ballast factors (BF) [33] in order to obtain the appropriate level of system lumen output, DOE did not necessarily select the most energy-efficient versions of those ballasts with different BF. (Note: DOE is initiating a separate rulemaking on fluorescent lamp ballasts, in which it will evaluate whether new and amended efficiency standards should be applied to fluorescent lamp ballasts.[34]) So although DOE is not setting minimum performance standards for fluorescent systems in this rulemaking, DOE's analysis does consider the operation of fluorescent lamps in a lamp-and-ballast system while evaluating efficacy standards for these lamps.

This systems approach allows DOE to select a variety of energy-saving lamp-and-ballast designs that meet a given CSL. In general, DOE chose its potential design options by selecting commercially-available fluorescent lamps at higher efficacies than the baseline lamps. These higher efficacies are achieved through a variety of technologies. As discussed in the screening analysis (section III.B.2), DOE considered commercially-available GSFL that use highly emissive electrode coatings, higher efficiency lamp fill gas composition, higher efficiency phosphors, glass coatings, or higher efficiency lamp diameter to achieve a higher efficacy. After selecting these higher efficacy lamps, DOE selected lamp-ballast combinations for the LCC that both save energy and maintain comparable lumen output. For instances in which the consumer is replacing only the lamp, DOE selected a reduced-wattage, higher-efficacy lamp for use on the existing ballast. For instances in which the consumer is replacing both the lamp and the ballast, DOE was able to obtain energy savings and maintain comparable lumen output using a variety of lamp-and-ballast combinations.

GE argued that DOE can only control a lamp for lamp replacement in this rulemaking, and that the ballast type is not regulated as part of this rulemaking. (GE, No. 4.5 at pp. 110–111) GE also commented that an increase in lumens would suffice for the lamp replacement events. (GE, No. 4.5 at p. 122)

ACEEE and GE commented that DOE should consider replacement lamps that have the same wattage but higher efficacy coupled with a lower ballast factor (BF) ballast as energy-efficient substitutes for the baseline lamp. Similarly, ACEEE recommended that DOE should consider technology options that use a lower BF ballast with a higher-efficiency lamp to achieve energy savings. (ACEEE, No. 4.5 at p. 113) GE stated that the energy use for fluorescent lamps is driven primarily by the BF, and that this should be a part of the energy savings analysis. (GE, No. 4.5 at pp. 116–117) DOE agrees with these comments, and followed the recommendations of these stakeholders in its analysis. As the efficacies of the fluorescent lamps being considered increased, DOE selected and used ballasts with lower ballast factors, such that the system lumen output was within ten percent of the baseline system lumen output.

In this rulemaking, DOE considers reduced-wattage lamp options (i.e., ones which emit lumens equal to the lumen output of the baseline lamp, or below that lamp by no more than 10 percent, and result in energy savings). In the NIA, DOE also considers substitute lamps which produce more light but do not save energy. This reflects the fact that DOE cannot require consumers to change their ballast along with their lamps. However, in situations where a consumer has the opportunity to replace a ballast, DOE allows consumers to change both their ballast and lamp. For example, consumers can select a lamp with a higher efficacy and a ballast with a lower BF to obtain a system that would result in approximately the same system light output as the baseline system. This new lamp-and-ballast combination would have a lower-wattage consumption due to the lower BF.

In the Framework Document, DOE identified several technology options that it intended to consider analyzing in this rulemaking. In response to that list of technology options, stakeholders provided feedback on certain options. Upon reviewing some of the fluorescent lamp-and-ballast pairings, GE commented that DOE should not assume that as lamp efficacy increases, one could always reduce wattage to achieve a constant light output with fluorescent lamps. GE points out that going below the 34W energy savings lamp, for example, is not possible, because lower-wattage lamps would not work on available ballasts. (GE, No. 4.5 at pp. 106–107)

In response, DOE has sought to create lamp and lamp-and-ballast designs that are practical and realistic in this engineering analysis. For example, for the 34W 4-foot medium bipin T12 GSFL, DOE did not consider reduced-wattage substitutes. Rather, DOE paired higher efficacy 34W 4-foot medium bipin T12 GSFL with lower BFs to capture energy savings while maintaining lumen output.

GE also stated that it is not always possible to use a 28W fluorescent lamp as a replacement for a 32W lamp on all the available ballasts. GE recommends that DOE decide what an acceptable range of reduced-wattage lamps might be, given that restrictions on use increase as the wattage decreases. (GE, No. 4.5 at pp. 126–127).

DOE understands that one of the ways manufacturers build lower-wattage fluorescent lamps is through the addition of krypton gas into the mix to change the resistance of the lamp. In the manufacturer interviews DOE held to prepare for the ANOPR, DOE was told that as the proportion of krypton gas increases, the fluorescent lamp has more

[33] The ''ballast factor'' of a ballast is the ratio of the light output of a fluorescent lamp or lamps operated on a ballast to the light output of the lamp(s) operated on a standard (reference) ballast. Ballast factor depends on both the ballast and the lamp type; a single ballast can have several ballast factors depending on lamp type. The light output of a single fluorescent lamp is measured on a ballast with a ballast factor of 1.0. One can reduce the light output of a lamp-and-ballast system by operating a lamp on a ballast with a lower ballast factor.

[34] Energy efficient ballasts are characterized as having higher ballast efficacy factors (BEF). The BEF is directly related to the quotient of the BF and the power consumed by the ballast, such that a ballast maintaining BF while reducing power consumption will have a higher BEF, and be a more energy-efficient ballast. In its ANOPR analysis, DOE varied the ballast BF, not the BEF, in its assessment of standards for fluorescent lamps. DOE will be considering new and amended BEF standards in the separate fluorescent lamp ballast rulemaking.

difficulty starting, being dimmed, and operating in cold-temperature environments. However, in other manufacturer interviews, DOE was informed that technological improvements were such that 28W fluorescent lamps should no longer have problems starting nor issues with features such as dimming or frequent on-off (often caused by motion sensors). DOE also reviewed publicly-available manufacturer literature and found at least one major lamp manufacturer stating that its 28W fluorescent lamp does not have restrictions on use.[35] For these reasons, DOE did consider the 28W lamp as an energy-saving replacement for a 32W T8 baseline lamp. However, DOE is aware that consumers should not be subject to any decrease in utility and performance and that not all consumers would choose a lower-wattage lamp if DOE established standards for T8 lamps. The NIA analysis contains technology option market-share matrices which contain assumptions about the relative proportion of consumers who would elect a particular lamp (or lamp and ballast) option in response to a standard. These matrices are described in section III.H of this notice, and Chapter 9 of the TSD. DOE invites further comment on the use of 28W, as well as 25W, replacement fluorescent lamps in the analysis and the expected market share these lamps would capture at the various CSLs. DOE intends to continue the dialogue with the public on this issue to better understand the capability of these reduced-wattage fluorescent lamps.

b. Incandescent Reflector Lamps

For IRL, DOE has observed natural efficacy divisions in the marketplace which correspond to the use of halogen capsules, HIR technology, and improved reflector coatings to increase lamp efficacy. DOE considers these efficacy divisions in selecting CSLs by using the efficacy levels of commercially-available lamps as a guide. Commercially-available products do not exist at all of the CSLs for all of the baseline lamps, however. For example, the 75W PAR38 baseline lamp with 1,050 lumens has commercially-available products at all three CSLs, but the 50W PAR30 baseline lamp with 580 lumens only has commercially-available products at one of the three CSLs. Because DOE believes it is technically feasible to incorporate the commercially-available technologies in lamp types that correspond to all of the baseline lamps, and in order to have a continuous range of efficacies to analyze, DOE is developing some model IRL which it bases on lamp lumen packages which are commercially available. In particular, using efficacy information for the commercially-available lamp designs (that are substitutes for certain baseline lamps), DOE is able to develop a relationship of efficacy to wattage. This then allows DOE to develop lamp designs that are not commercially available for certain wattages, but that would be substitutes for other baseline lamps. DOE assumes that lamps of similar diameters may substitute for one another (e.g., PAR38 IRL will be substituted with another PAR38 IRL). Generally, the lamp design substitutes for baseline lamps are based around the lumen output of the baseline lamp, plus or minus 10 percent.

In reviewing published catalog data, DOE observed that higher efficacy, reduced-wattage IRL (which maintain light output within 10 percent) are available as substitutes for a number of baseline lamps. Furthermore, these reduced-wattage designs span a range of design options available for consideration in this rule. These design options, discussed in the screening analysis portion of this notice (section III.B), include the tungsten-halogen regenerative cycle (hereafter ''Halogen'') and halogen infrared technologies (hereafter ''HIR''), a technology that uses both Halogen and glass coatings that reflect infrared light. DOE observed that the commercially-available halogen IRL fall within two tiers of efficacy. To distinguish the efficacies of these halogen IRL, DOE is designating them as Halogen and Improved Halogen. DOE also observes two tiers of efficacy for HIR IRL. To distinguish the efficacies of these IRL, DOE is designating them as HIR and Improved HIR. DOE believes Improved HIR and Improved Halogen can be achieved by using the additional design options discussed in the screening analysis. These design options include higher-efficiency filaments, efficient filament coiling, filament configuration, capsule design, high pressure capsules, or higher efficiency reflector coating. DOE observed lifetime changes across these ''naturally-occurring'' reduced-wattage IRL. (That is, a halogen reduced-wattage IRL typically has a lifetime of around 2,000 to 3,000 hours, whereas an HIR IRL typically lives for 3,000 to 4,000 hours.) DOE has maintained the lifetime attributes of the commercially-available product for its analysis.

In summary, DOE seeks comment on its selection of lamp and lamp-and-ballast designs for GSFL and IRL.

4. Candidate Standard Levels

a. General Service Fluorescent Lamps

Table III.20 and Table III.22 present a summary of the candidate standard levels (CSLs) for each of the representative product classes for the lamps covered under this rulemaking. In general, the CSLs for GSFL (presented in Table III.20) follow a general trend of increasing efficacy through the use of higher-quality phosphors. The CSLs also represent a move from higher-wattage T12 technologies to lower-wattage, higher-efficacy T8 technologies. CSL5 represents the most efficacious fluorescent lamp (i.e., ''max tech''). In all product classes, fluorescent lamps that meet CSL5 are T8 lamps which use 800 series phosphors.

The following paragraph presents a detailed discussion of the design options used to meet each CSL for the 4-foot medium bipin product class. For more information on design options used to meet each CSL for the 8-foot single pin slimline product class and the 8-foot recessed double contact HO product class, refer to Chapter 5 of the TSD.

A standard at CSL1 impacts the two 4-foot medium bipin T12 baseline lamps. Because the baseline T8 lamp is above this efficacy level, consumers using the T8 lamp are not impacted. This CSL can be met with a 34W T12 lamp using 700 series rare earth phosphors or a 40W T12 lamp using improved 700 series or 800 series rare earth phosphors. A standard at CSL2 also only impacts T12 lamps. This CSL can be met by both the 34WT12 and 40W T12 lamp using an 800 series rare earth phosphor. A standard at CSL3 impacts all three baseline lamps. To meet this level, the 32W T8 lamp must use an 800 series rare earth phosphor. The T12 lamps must use an 800 series rare earth phosphor and possibly other design options such as a different gas fill or increased thickness of the bulb-wall phosphor to increase the lamp's efficacy. A standard at CSL4 also impacts all three baseline lamps. However, there are no T12 lamps commercially available that can meet this efficacy requirement. Therefore, users of T12 lamps would be forced to replace their ballasts and operate T8 lamps instead. For the T8 lamps, this level requires the use of higher-efficacy 800 series rare earth phosphor. A 30W T8 lamp that produces an equivalent amount of light as the baseline unit on a similar ballast meets this CSL. CSL5,

[35] This catalog states the following about 25W, 28W, and 30W T8 lamps: ''Operates on: Any Instant Start Ballast; Programmed Start Ballast that supplies equal to or greater than 550 starting voltage.'' Source: Philips Lamp Specification and Application Guide (2006), p. 72.

which also impacts all three baseline lamps, represents the most efficacious 4-foot medium bipin lamps. Again, there are no T12 lamps commercially available that can meet this efficacy requirement. Therefore, users of T12 lamps would be forced to replace their ballasts and operate T8 lamps instead. 32W T8 lamps which meet this efficacy level must use 800 series rare earth phosphor and may incorporate other efficacy improvements to the lamp, such as a different gas fill or increased thickness of the bulb-wall phosphor. A 28W and a 25W T8 lamp that produces an equivalent amount of light on the same ballast as the baseline unit meets this CSL.

Philips commented that there is more than one kind of reference ballast that can be used to test GSFL, and that the same lamp operated on two different ballasts can have a different efficacy. Because a given lamp can exhibit different efficacies based on the testing method use, Philips commented that DOE should use a standard test procedure based on ANSI requirements to develop lamp efficacy values. (Philips, No. 11 at p. 3)

In response, DOE's current test procedure for fluorescent lamps is based on ANSI standards and evaluates the performance of lamps on a single, low-frequency reference ballast. As noted previously, DOE is currently conducting a rulemaking on the test procedures for fluorescent and incandescent lamps in tandem to this energy standards rulemaking. In that rulemaking, DOE is proposing to continue to use low-frequency ballast testing for all GSFL except those which can only be tested on a high-frequency ballast. Further detail on the ANSI standards incorporated by reference that are used to evaluate lamps is available in 10 CFR Part 430, Subpart B, Appendix R and in the Test Procedures NOPR. DOE does note, however, that while it uses the test procedure values to set efficacy levels, it considers the operation of lamps on several different ballast types in the LCC and NIA analyses. This way, the economic evaluation of the CSLs more accurately reflects how users actually operate these lamps.[36] DOE calculated system power data using published catalog information. Further detail on this calculation is available in Chapter 5 of the TSD.

A more detailed discussion on how DOE selected these CSLs for each product class, which technologies they represent, and which design option lamps DOE used at these CSLs for each of the representative units, can be found in Chapter 5 of the TSD.

TABLE III.11.—SUMMARY OF THE CANDIDATE STANDARD LEVELS FOR FLUORESCENT LAMPS WITH CCT ≤ 4,500K

Candidate standard level	4-Foot medium bipin	8-Foot single pin slimline	8-Foot recessed double contact HO
	lm/W	*lm/W*	*lm/W*
CSL1	82.4	87.3	83.2
CSL2	85.0	92.0	86.1
CSL3	90.0	94.8	87.6
CSL4	92.3	98.2	91.9
CSL5	95.4	101.5	95.3

b. Incandescent Reflector Lamps

Table III.22 presents the CSLs for IRL. For IRL, the increasing CSLs represent shifts in technology, including shifts from halogen to HIR technology. As the baseline lamps are generally already utilizing halogen technology, CSL1 for IRL is met through improved halogen technologies which are achieved with an improved reflective coating or higher pressure halogen capsules. CSL2 for IRL can be met with HIR technology (i.e., a technology that uses a halogen capsule with an infrared reflective coating.) CSL3 for IRL can be met with improved HIR technologies; this level can be achieved with an HIR lamp that has an improved reflective coating, better HIR coatings or higher pressure halogen capsules.

The CSLs for IRL use an efficacy equation which calculates minimum average efficacy (in lumens per watt) based on the rated wattage of the lamp (denoted by the variable P in the equation). As an example, consider a baseline 50W PAR30 lamp with an efficacy of 11.6 lm/W. The minimum required efficacies of a 50W lamp under the CSLs would be 14.4 lm/W at CSL1, 15.8 lm/W at CSL2, and 17.8 lm/W at CSL3. Plots of these CSLs are presented in Chapter 5 of the TSD.

TABLE III.12.—SUMMARY OF THE CANDIDATE STANDARD LEVELS FOR STANDARD-SPECTRUM IRL

Candidate standard level	Standard-spectrum incandescent reflector lamps
	lm/W
CSL1	$5.0P^{0.27}$
CSL2	$5.5P^{0.27}$
CSL3	$6.2P^{0.27}$

A more detailed discussion on how these CSLs were derived, which technologies they represent, and which design option lamps are used at these CSLs for each of the representative units can be found in Chapter 5 of the TSD.

DOE invites comment on the CSLs for GSFL and IRL.

5. Engineering Analysis Results

The following section presents partial results from the engineering analysis for GSFL and IRL. The results include detail on the characteristics of lamp and lamp-and-ballast designs DOE used in its analyses and the CSL which they meet. The full set of results for the lamps and lamp-and-ballast systems DOE analyzed, including additional product classes and baselines, are available in Chapter 5 and Appendix 5A of the TSD. DOE is presenting the partial results here to facilitate comment on the methodology of DOE's analyses, and on the presentation of its results.

a. General Service Fluorescent Lamps

Engineering analysis results for GSFL include descriptions of the lamp-and-ballast systems DOE selected for the analyses. Because the CSLs are based on lamps, and at some CSLs DOE has analyzed multiple lamps, in some

[36] This approach is similar to other rulemakings where DOE bases product efficacy levels on the test procedure measurements, while design options analyzed in the NIA are adjusted with operating hour data to reflect energy use in the marketplace.

instances DOE presents multiple systems per CSL.

Table III.13 presents the engineering analysis results for a 34W T12 baseline lamp system. Building from the baseline system, the table presents each of the engineering analysis lamp-and-ballast designs DOE used for each of the five CSLs. At each CSL, DOE generally considered both a replacement lamp that had the same wattage as the baseline lamp and operates on a new (lower BF) ballast, and a replacement lamp that had a reduced wattage. This difference between the design lamps considered is evident in the ''rated wattage'' column. Then, for each of those design lamps, DOE provides the rated efficacy, the initial and mean light outputs, and the average operating life of the lamp. The table is sorted by efficacy, such that each lamp represents a higher efficacy, and thus constitutes a more-efficient lamp design in the engineering analysis. The table also presents the type of ballast DOE pairs with each lamp, including the BF for that ballast, the resultant system power rating of the lamp operating on that ballast, and the system initial and the system mean light outputs. The BF was selected so that the new system does not reduce light output by more than 10 percent of the baseline lamp system. The system performance of the more-efficacious lamps is utilized in the LCC, where an economic analysis is conducted to determine whether a more-efficacious lamp or lamp-and-ballast system is cost-justified. For details on the LCC, see section III.G and Chapter 8 of the TSD.

4-Foot T8 lamp and ballast replacements are considered as substitutes for the baseline lamp. The highest energy-saving system uses a 0.88 BF electronic ballast with a reduced-wattage T8 lamp and maintains lumen output within 10 percent. Additional engineering analysis results for GSFL are available in Chapter 5 and Appendix 5A of the TSD.

TABLE III.13.—LAMP-AND-BALLAST REPLACEMENT ENGINEERING ANALYSIS 4-FOOT MEDIUM BIPIN GSFL WITH A CCT ≤ 4,500K

Candidate standard level	Lamp diameter	Nominal wattage	Rated wattage	Rated efficacy	Initial light output	Mean light output	Life	Ballast type	Ballast factor	System power rating	System initial light output	System mean light output
		W	*W*	*lm/W*	*lm*	*lm*	*hr*			*W*	*lm*	*lm*
Baseline	T12	34	34	77.9	2,650	2,300	20,000	Magnetic	0.88	108.0	6,996	6,072
Baseline	T12	34	34	77.9	2,650	2,300	20,000	Electronic	0.88	91.7	6,996	6,072
CSL1	T12	34	34	82.4	2,800	2,460	20,000	Electronic	0.88	91.7	7,392	6,494
CSL1	T12	34	34	82.4	2,800	2,460	20,000	Electronic	0.86	90.3	7,224	6,347
CSL2	T12	34	34	85.3	2,900	2,610	20,000	Electronic	0.86	90.3	7,482	6,734
CSL2	T8	32	32.5	86.2	2,800	2,520	20,000	Electronic	0.88	87.5	7,392	6,653
CSL3	T8	32	32.5	90.8	2,950	2,710	20,000	Electronic	0.78	78.5	6,903	6,341
CSL3	T12	34	34	91.2	3,100	2,790	24,000	Electronic	0.86	90.3	7,998	7,198
CSL4	T8	32	32.5	92.3	3,000	2,850	24,000	Electronic	0.75	75.9	6,750	6,413
CSL4	T8	30	30	95	2,850	2,680	18,000	Electronic	0.78	72.4	6,669	6,271
CSL5	T8	32	32.5	95.4	3,100	2,915	24,000	Electronic	0.75	75.9	6,975	6,559
CSL5	T8	28	28	97.3	2,725	2,560	18,000	Electronic	0.78	63.3	6,377	5,990
CSL5	T8	25	25	96	2,400	2,280	24,000	Electronic	0.88	66.8	6,336	6,019

*This table includes the systems DOE analyzed for 3-lamp 34W T12, 4,100K systems. These lamp-and-ballast designs apply to situations where consumers purchase both a lamp and a ballast. Additional results for other baselines and purchasing events are available in Chapter 5 of the TSD.

b. Incandescent Reflector Lamps

Engineering analysis results for IRL describe the baseline lamps DOE selected for the analyses. Table III.14 presents the engineering analysis results for the 75W PAR38 IRL. This baseline lamp and its lamp design substitutes are based around a 1,050 lumen-output lamp. The max-tech option (CSL3) offers a 36 percent improvement in efficacy, with longer life. Additional engineering analysis results are available in Chapter 5 and Appendix 5A of the TSD. Discussion on the CSL efficacy values (derived from observed and extrapolated lamp efficacy values) are also available in Chapter 5 and Appendix 5A of the TSD.

TABLE III.14.—ENGINEERING ANALYSIS FOR STANDARD-SPECTRUM IRL*

Candidate standard level	Design option	Lamp descriptor	Wattage	Initial light output	Efficacy	Lamp lifetime
			W	*lm*	*lm/W*	*Hr*
Baseline	Halogen	PAR38	75	1050	14.0	2,500
CSL1	Improved Halogen	PAR38	66	1050	15.9	3,000
CSL2	HIR	PAR38	60	1050	17.5	3,000
CSL3	Improved HIR	PAR38	55	1050	19.1	4,000

*The results in this table are for 75W PAR38 IRL. Additional results are available in Chapter 5 of the TSD.

6. Scaling to Product Classes Not Analyzed

As discussed above, DOE identified and selected certain product classes as ''representative'' product classes where DOE would concentrate its analytical effort. DOE chose these representative product classes primarily because of their high market volumes. The following section discusses how DOE intends to scale CSLs from those product classes that it analyzed to those product classes that it did not analyze.

a. General Service Fluorescent Lamps

As discussed in section III.C.2, above, DOE did not analyze GSFL with a correlated color temperature (CCT) above 4,500K and 2-foot U-shaped lamps. As discussed in section III.A, the efficacy of lamps with cooler CCTs (i.e.,

higher CCT values) is lower due to the quality of blue light emitted by lamps with cooler CCT. DOE compared commercially-available T8 lamps at 4,100K and 6,500K, and found that the efficacy of the 6,500K lamps was between 4 and 7 percent lower than that of the 4,100K lamps. In order not to overly penalize current product offered in the market, DOE is considering adopting the larger of the two scaling factors, namely 7 percent, when determining the minimum efficacy requirement for lamps greater than 4,500K. This would mean, for example, that if 82.4 lm/W (i.e., CSL1) were selected for the 4-foot medium bipin product class of 4,500K CCT and below, the scaled minimum efficacy requirement for the product class greater than 4,500K CCT would be 76.6 lm/W. DOE invites comment on this preliminary decision, including other approaches the public suggests, and any mathematical or other technical scaling factors that could be applied.

Similarly, DOE observed that 2-foot U-shaped lamps generally are less efficacious than 4-foot medium bipin lamps due to the bend of a 2-foot U-shaped lamp. This drop in efficacy appears to be dependent on the wattage and diameter of the lamp in question. DOE has observed that 40W T12 2-foot U-shaped lamps are on average 6 percent less efficacious than a 40W T12 medium bipin lamp of the same phosphor series and manufacturer, while 34W T12 or 32W T8 2-foot U-shaped lamps are generally 3 percent less efficacious than the 34W T12 or 32W T8 medium bipin lamp of the same phosphor series and manufacturer. In order not to overly penalize T12 lamps, DOE is considering applying a 6 percent decrease to the CSLs for 4-foot medium bipin lamps for 2-foot U-shaped lamps. DOE invites comment on this preliminary decision, including other approaches, and any mathematical or other technical scaling factors that could be applied.

b. Incandescent Reflector Lamps

DOE has analyzed standard-spectrum lamps in its analysis, but DOE intends to set separate minimum efficacy requirements for standard-spectrum and modified-spectrum IRL, utilizing the approach discussed below. Modified-spectrum IRL filter out portions of the light spectrum emitted by the filament in order to obtain a particular spectral emission. Modified-spectrum lamps achieve their particular spectral emission through either a coating applied to the outer glass of the lamp or through the incorporation of neodymium (or other additives) into the outer glass bulb. Because this filtering of light reduces the lumen output of the lamp, DOE plans to establish a separate minimum efficacy requirement, appropriately scaled, for modified-spectrum lamps. As there is considerable variability in the modification of the spectrum (i.e., with some lamp coatings or glass additives adsorbing more light, others less), DOE plans to scale standard levels based on the degree of spectral modification.

In order to scale appropriately, manufacturers would be required to measure the lumen output of both their modified-spectrum lamp, as well as the lumen output of an equivalent, standard-spectrum reference lamp (i.e., a lamp with equivalent: (1) Rated wattage; (2) rated voltage; (3) gas fill pressure and composition; (4) bulb shape and size; (5) filament type and orientation; (6) finish; and (7) other design features of the modified-spectrum lamp except for the coating or neodymium (or other additives) which produces the modified-spectrum. In order to determine the appropriate minimum efficacy requirement for the modified-spectrum lamp, manufacturers would measure the lumen output of both the modified-spectrum lamp and the equivalent standard-spectrum reference lamp, and then multiply the ratio of lumen outputs (i.e., the lumen output of the modified spectrum lamp divided by the lumen output of the standard-spectrum reference lamp) by the minimum efficacy requirement for the standard-spectrum reference lamp. This lumen-output-adjusted minimum efficacy requirement would be scaled appropriately for exactly the coating or neodymium (or other additives) content producing the modified spectrum. In this way, the consumer would be assured that any minimum efficacy standard the Secretary may establish for standard-spectrum lamps would also be incorporated into the covered modified-spectrum lamps. DOE invites comment on this method of establishing a lumen-output-adjusted efficacy requirement, including other approaches, and any mathematical or other scaling factors for modified-spectrum lamps.

Additional detail on the engineering analyses can be found in the Engineering Chapter (Chapter 5) of the TSD.

D. Energy-Use Characterization

The purpose of the energy-use characterization is to estimate the energy consumption of the baseline and higher efficacy lamps and lamp systems considered in this analysis. DOE determines the energy consumption of the lamps and lamp systems through the rated power (i.e., rated in watts) and the way consumers use the lamp (i.e., operating hours per year). This analysis, which is meant to represent typical energy consumption in the field, is an input to both the LCC and PBP analyses and the NIA. The energy-use characterization enables DOE to determine the LCC and the PBP of more-efficacious lamps relative to the baseline lamp.

DOE derives the annual energy consumption of lighting systems by multiplying the power rating by the number of hours of operation per year. The following sections discuss the inputs and calculations DOE used to develop annual operating hours and the energy consumptions for the various lamps and lamp systems considered in this analysis. For more information on the representative classes analyzed for these lamp and lamps systems refer to section III.C.2 of this notice. Comments provided on issues related to the energy-use characterization are also summarized in these sections.

1. Operating Hours

In the Framework Document, DOE sought data on the typical applications and end-use profiles of GSFL and IRL. EEI recommended that DOE take into account the distribution of operating hours (i.e., the number of hours a lamp is in use) by both lamp category and sector. (Public Meeting Transcript, No. 4.5 at pp. 158–159)

DOE structured the analysis in a manner consistent with this comment, developing operating hours by both lamp category and sector. In addition, for the LCC analysis, DOE accounted for variability of operating hours by developing a distribution of operating hours for the LCC spreadsheet. The operating hour distributions capture variation across census divisions, building types, and lamp categories for all sectors. Within the commercial and industrial sectors, the distributions capture variation across ''applications,'' and within the residential sector, the distribution captures variation across ''room types.'' A list of these applications and room types is available in Chapter 6 of the TSD.

EEI and the Northwest Power and Conservation Council (NWPCC) suggested several sources (such as Electric Power Research Institute, New York State Energy Research and Development Authority, California Energy Commission, CalMac, Florida Solar Energy Center) that DOE could use to obtain operating hour distribution data. (Public Meeting Transcript, No. 4.5 at pp. 158–164) NEMA recommended that DOE should use data from the 2002

study, U.S. Lighting Market Characterization Volume I (LMC). (Public Meeting Transcript, No. 4.5 at p. 160; NEMA, No. 8 at p. 3)

After reviewing other data sources, DOE selected the LMC for this analysis because it is the most complete source of operating hour data and because it is generally consistent with other sources. The LMC, which is based on thousands of building audits and surveys, provides national-level data on operating hours by building type and lamp category for all sectors. These operating hours are broken down by application for the commercial and industrial sectors, and room type for the residential sector.

EEI suggested that DOE should update the operating hour distributions to account for lighting controls in the commercial sector (Public Meeting Transcript, No. 4.5 at p. 158). EEI was not specific whether the lighting controls should encompass occupancy sensors, daylight dimming, or demand-responsive dimming systems that are activated during peak demand periods.

While DOE recognizes that there probably are more lighting controls being used today, DOE does not believe the level of penetration is likely to be significantly different from LMC, which was published in 2002. Furthermore, DOE believes the overall national level of penetration of lighting controls at the individual level (i.e., those that would respond to one individual's office) is still relatively low. Finally, DOE is unsure how it would account for lighting controls, as there is uncertainty about which control systems are being recommended and nationally-representative data sources on the impact of lighting controls were not identified. Therefore, DOE has not modified the operating hour data from LMC for the ANOPR. However, DOE invites comment on this issue. In particular, DOE invites comment on the type, prevalence, and operating hour reductions due to lighting controls used separately in the commercial, industrial, and residential sectors.

In conjunction with data from the LMC, DOE used data from the Energy Information Administration's (EIA) CBECS (2003), RECS (2001), and the MECS (2002). These EIA studies provide information on the distribution of buildings within the U.S., by building type and census division. DOE associated the LMC's operating hour data by building type with the EIA's data by building type and census division to derive operating hours by census division. This allowed DOE to correlate the electricity price distribution (see TSD Chapter 8) and sales tax distribution (see TSD Chapter 7) with the operating hour distribution by census division in the LCC spreadsheet. The following describes data sources used to develop operating hours, by sector.

For the residential sector, DOE used RECS building data and LMC residential sector operating hour data. The 2001 RECS data indicate the probability that a certain building type is within a census division. The LMC indicates the occurrence of certain room types within a given building type and the operating hour characteristics of typical lamps in these rooms. By using probabilities derived from RECS, the LCC model selects a building of a certain type and census division. The model then selects a room within that building type using LMC data and presents operating hour data for a typical lamp in that room.

DOE used a similar approach to the one described for the residential sector to develop a distribution of operating hours in the commercial sector. However, in lieu of room type, the model selects operating hours based on application. The 2003 CBECS data indicate the probability a certain building type is located in a certain census division. Once the LCC model selects a building, DOE used the LMC to indicate the probability a lamp is installed in a certain application in that building. The LMC then estimates the operating hour characteristics of a typical lamp for that application. A sample of the diversity of operating hour characteristics can be found in Chapter 6 of the TSD.

To develop a distribution of operating hours in the industrial sector, DOE used an approach similar to that used for the commercial sector. The 2002 MECS data indicate the probability a certain building type exists. Once the model selects a building, DOE uses LMC to ascertain the probability a GSFL or IRL is installed in a certain application in that building. LMC then gives the operating hour characteristics of a typical lamp for that application. Because MECS does not provide the location of industrial sector buildings, DOE used population information from the 2007 census to establish the probability that a certain industrial building exists in a certain census division. Table III.15 summarizes the weighted-average operating hours per lamp category per sector.

DOE has not developed the weighted-average operating hours for GSFL in the residential sector because shipment information and manufacturer interviews indicate that the vast majority of the GSFL market resides in the commercial and industrial sectors. However, if analysis of GSFL in the residential sector were deemed necessary, DOE could use the distribution of operating hours of IRL, as this may approximate the operating hour profile of GSFL in the residential sector. Alternatively, DOE could develop a distribution of operating hours from an alternative data source.

DOE invites comment on the average operating hours for the use of GSFL and IRL in the commercial, residential, and industrial sectors. DOE also invites comment on how DOE should develop an operating hour distribution for GSFL in the residential sector.

TABLE III.15.—AVERAGE OPERATING HOURS BY SECTOR AND LAMP CATEGORY

Sector	Lamp category	Average annual operating hours *hrs/year*
Residential	IRL	884.2
Commercial	GSFL	3435.0
	IRL	3450.0
Industrial	GSFL	4795.1
	IRL	4664.0

2. Results

For GSFL, energy consumption by sector is based on the system power rating derived by DOE and the average annual operating hours of that lamp. As an illustration of how DOE determined energy consumption, Table III.16 and Table III.17 list the system power ratings and annual energy consumption of the 4-foot medium bipin product class. Additional detail on the energy-use

characterization of other GSFL can be found in Chapter 6 of the TSD.

TABLE III.16.—FOUR-FOOT MEDIUM BIPIN T8 GSFL 3-LAMP SYSTEM POWER CONSUMPTION RATING AND ANNUAL ENERGY CONSUMPTION

Lamp & ballast designs	System power rating	Annual energy consumption	
		Commercial	Industrial
	W	*kWh*	*kWh*
1.18BF32 Elec [37]	114.5	393.2	548.9
1.18BF25 Elec	93.0	319.5	446.1
1.0BF32 Elec	98.3	337.7	471.4
1.0BF30 Elec	90.2	309.8	432.5
1.0BF28 Elec	80.5	276.5	386.0
0.88BF32 Elec	87.5	300.6	419.7
0.88BF30 Elec	80.5	276.5	386.0
0.88BF28 Elec	71.1	244.2	340.9
0.88BF25 Elec	66.8	229.6	320.5
0.78BF32 Elec	78.5	269.8	376.6
0.78BF30 Elec	72.4	248.8	347.3
0.78BF28 Elec	63.3	217.3	303.3
0.75BF32 Elec	75.9	260.5	363.7

TABLE III.17.—FOUR-FOOT MEDIUM BIPIN T12 GSFL 3-LAMP SYSTEM POWER RATING AND ANNUAL ENERGY CONSUMPTION

Lamp-and-ballast designs	System power rating	Annual energy consumption	
		Commercial	Industrial
	W	*kWh*	*kWh*
0.95BF40 Mag	129.0	443.1	618.6
0.88BF34 Mag	108.0	371.0	517.9
0.88BF40 Elec	107.7	369.8	516.2
0.88BF34 Elec	91.7	314.8	439.5
0.87BF40 Elec	107.0	367.5	512.9
0.86BF40 Elec	90.3	310.2	433.0

Because the lamp system for IRL consists only of the lamp, the system's rate of energy use is simply the rated power of the lamp. Table III.18 details the lamp power rating and annual energy consumption for the 75W PAR38 reference lamp and its lamp designs. Additional detail on the energy-use characterization of IRL can be found in Chapter 6 of the TSD.

TABLE III.18.—IRL POWER RATING AND ANNUAL ENERGY CONSUMPTION, 75PAR38

Technology option	Lamp efficacy	Lamp power rating	Annual energy consumption		
			Commercial	Industrial	Residential
	lm/W	*W*	*kWh*	*kWh*	*kWh*
Baseline	14.0	75.0	258.8	349.8	66.3
CSL1	15.9	66.0	227.7	307.8	58.4
CSL2	17.5	60.0	207.0	279.8	53.1
CSL3	19.1	55.0	189.8	256.5	48.6

E. Product Price Determination

This section explains how DOE developed end-user prices for baseline products as well as higher-efficacy products, and how DOE developed the sales tax figures it used in the analyses. To derive the total, installed end-user cost of products, DOE added sales tax and installation costs, where appropriate, to end-user prices. Please see section III.G for a discussion of installation costs.

1. Introduction and Methodology

a. Overview

In the Framework Document, DOE suggested the approach of deriving end-user prices by applying distributor and contractor mark-ups to manufacturer-selling-price estimates. DOE had

[37] A notation of the form ''1.18BF32Elec'' indicates a lamp-ballast system consisting of a 32W lamp paired with an electronic ballast of a 1.18 ballast factor. ''0.95VF40 Mag'' refers to a lamp-ballast system of a 40W lamp paired with a magnetic ballast of a 0.95 ballast factor.

planned to derive manufacturer selling prices by applying manufacturer mark-ups to the manufacturer costs of production. At the Public Meeting, GE and NEMA commented that manufacturer cost data is proprietary information and is therefore unlikely to be shared by manufacturers. (Public Meeting Transcript, No. 4.5 at pp. 133–135).

As an alternative to deriving manufacturer selling price from manufacturer cost, GE suggested that DOE obtain manufacturer selling prices from distributors, State procurement contracts and other publicly-available information sources. GE further recommended that if DOE seeks to derive manufacturer costs, DOE could work backwards through the distribution chain from the publicly-available product list prices. (Public Meeting Transcript, No. 4.5 at p. 133) ACEEE and several stakeholders supported the same methodology recommended by GE. (NEMA, No. 8 at p. 3, Public Meeting Transcript, No. 4.5, p. 129 and p. 136; Joint Comment, No. 9 at p. 3).

As suggested by stakeholders, DOE obtained manufacturer's published end-user price schedules for lamps (hereafter called the manufacturer's ''blue book'' or ''lamp price schedules'') as well as information on discounts applied to those price schedules from distributors, State contracts, and other publicly-available information sources. In addition, DOE also obtained information on distributor pricing (i.e., what a distributor would pay) for commercial, industrial, and institutional consumers of lamps. Thus, in response to comments on the Framework Document, and due to the availability of pricing information, DOE revised its approach for developing lamp prices from what was presented in the Framework Document.

Starting from a consistent set of prices in the blue books, DOE looked at publicly-available prices in State procurement contracts, at large electrical supply distributors, home-improvement/hardware stores, and other sources of publicly-available end-user prices, such as Internet retailers. In its review of publicly-available market prices, DOE observed a range of end-user prices paid for a given lamp, depending on the distribution channel through which it is purchased and the volume at which it is purchased. DOE observed that State procurement contracts typically negotiated a discount of around 70 to 90 percent off the blue book. In the vast majority of instances, these discounts apply uniformly to all products on a price schedule irrespective of the volume of a particular lamp.

Internet retailers, electrical supply distributors, and home-improvement/hardware stores generally reflected prices paid by consumers in the medium-to-high range of prices. Furthermore, these channels usually apply different discounts to lamps depending on their sales volume. Since many high-efficacy lamps are ''niche'' products, DOE observed that they were generally less discounted than commodity lamps.

ACEEE commented that State procurement contracts represent prices with low mark-ups. (Public Meeting Transcript, No. 4.5 at pp. 129–130) GE and the Joint Comment stated that mark-ups vary by volume, with GE stating that higher volume lamps have lower mark-ups and lower volume lamps have higher mark-ups. (Public Meeting Transcript, No. 4.5 at p. 133; Joint Comment, No. 9 at p. 3).

In response to comments and in line with its observations of public pricing, DOE developed three sets of discounts from the blue books, representing the range of low, medium, and high lamp prices for GSFL and IRL. For IRL, commercially-available products did not span the full range of efficacies considered. For those lamps where commercial pricing was not available, DOE extrapolated pricing from available lamps. The development of the low, medium, and high prices specific to each lamp category is described below in subsection III.E.1.b.

Several stakeholders commented that the manufacturer costs DOE derives should reflect the production of commodity-type products. (Joint Comment, No. 9 at pp. 2–3). To reflect future commoditization of higher-efficacy lamps when they become the minimum complying products, the discounts DOE applied to blue books to derive the low, medium, and high prices are a constant markdown across all lamps. (Baseline incandescent lamps received a slightly larger discount, as reflected in State procurement contracts.) DOE also accounted for the future commoditization of high-efficacy residential IRL by using the incremental pricing of PAR 38 IRL. In particular, DOE notes that the market for high-efficacy PAR 38 IRL is well developed in comparison to the high-efficacy PAR 30 IRL market. Furthermore, DOE notes that the products themselves use the same fundamental technologies. Although DOE did not estimate manufacturer costs directly, DOE notes that the use of a single markdown across efficacies and types of PAR 38 IRL and the use of PAR38 IRL incremental pricing for PAR30 IRL accounts for commoditization of high-efficacy products.

Once DOE calculated end-user prices, DOE added sales tax and, if appropriate, installation costs to derive the total, installed end-user cost. Please see section III.G for a discussion of installation costs. For the reference case in the LCC, DOE used the medium lamp prices, but it also conducted analysis at the low and high lamp prices, to ascertain the impact of these other price points (see TSD Chapter 8). In the NIA, DOE used only the medium prices in that analysis because this price best represents the average purchase price for a variety of consumers nationwide (see TSD Chapter 10). DOE also developed a single average end-user price for the new and replacement ballasts used, to which it added sales tax and installation costs. DOE requests comment on the approach to developing end-user prices for GSFL and IRL considered in this rulemaking.

b. General Service Fluorescent Lamps

To develop low-range prices for GSFL, DOE calculated a discount off the blue book consistent with prices found in State procurement contracts. DOE mirrored the procurement discount schedule by using a constant discount across lamp efficacies. As noted above, DOE believes that using this discount schedule is appropriate for the rulemaking analyses, as it reflects currently-available pricing and because it takes into account commoditization of standard-compliant lamps. Consistent with State procurement contracts, DOE assumed that these low-range prices include a distributor mark-up but no contractor mark-up. As such, this is truly a lower bound of pricing which assumes the most favorable conditions.

For medium-range prices, DOE took a discount off the blue book that is consistent with the distributor pricing it received and that represents a typical discount for commercial institutions on high-volume (commodity) lamps. Again, DOE used a single discount across efficacies. DOE added a contractor mark-up of 13 percent so that the resulting price would encompass both a contractor and distributor mark-up. DOE obtained this contractor mark-up estimate from the 2000 Ballast Rule.[38]

[38] U.S. Department of Energy. Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Technical Support Document: Energy Efficiency Standards for Consumer Products: Fluorescent Lamp Ballast Proposed Rule (Jan. 2000). Available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/gs_fluorescent_0100_r.html.*

For the high-range prices, DOE deduced discounts on commodity lamps from blue book prices for small quantity purchasers by observing high-range pricing and obtaining distributor quotes. These prices also encompass both a contractor and a distributor mark-up. DOE was able to obtain data on actual prices for all GSFL it considered in the analyses.

For the replacement ballasts considered in the analysis, DOE gathered prices from publicly-available manufacturer price schedules and applied a uniform discount that is customary for pricing to large customers. All ballast prices represent contractor net price plus contractor mark-up for ballasts purchased from a distributor. DOE computed a simple average end-user price by applying a 50-percent mark-up above the lowest price paid in large multi-year State procurement contracts. Based on conversations with industry experts, DOE believes these prices are representative of average end-user sales prices. DOE was able to obtain data on actual prices for ballasts it considered in the analyses.

c. Incandescent Reflector Lamps

For IRL, DOE modeled PAR30 and PAR38 IRL. DOE calculated the low-range price for PAR38 IRL as it did for GSFL given their large range of higher-efficacy products commercially available. Specifically, DOE compared State procurement contracts to blue books to develop an average discount. Again, DOE mirrored State contract pricing by following the discount schedule used in State contracts. For the medium-range price, DOE took a discount off the blue book to represent shipment weighted-average prices paid by consumers for commonly available lamps. For the high-range prices, DOE took a discount off the blue book that represents prices that are higher-than-average but in line with observed high-range pricing. This medium-range price is equidistant from the low-range and high-range prices.

For PAR30 IRL, DOE used a slight variation to the methodology followed for GSFL and PAR38 IRL. In particular, to develop the PAR30 baseline lamp price, DOE used the price differential between an incandescent (non-halogen) BR40 lamp and halogen PAR38 lamp. DOE added this price differential to a incandescent (non-halogen) BR30 lamp price to obtain the baseline halogen PAR30 lamp price. By developing prices for the baseline lamps from the incandescent replacement lamps (BR30 and BR40 lamps), DOE is recognizing that the high-volume product currently being shipped may be a lower-efficacy (non-halogen) incandescent lamp.[39] Therefore, basing prices off of this lamp will most accurately represent the commoditization of the halogen PAR30 by 2012 (the effective date of the amended standard). Similarly for higher-efficacy lamp designs, DOE developed a list price to discount from based on the incremental blue book prices of PAR38 IRL. As such, DOE added the incremental end-user blue book price of PAR38 lamps to the baseline PAR30 lamp price to derive higher-efficacy PAR30 lamp list prices. DOE chose this methodology for PAR30 IRL because for PAR30 lamps, two of the standards-compliant lamps were not commercially available. In addition, PAR30 lamps use the same fundamental technologies as PAR38 lamps, which serve a more developed market.

2. End-User Price Results

The following section presents partial results from the product price determination. The tables summarize the end-user prices DOE developed through the product price determination. (The figures in the tables do not include tax or installation costs). They follow in order of lamp category. Additional results for the product price determination are available in Chapter 7 of the TSD.

a. General Service Fluorescent Lamps

Table III.19 lists the low, medium, and high end-user prices DOE used for the 4-foot medium bipin T12 GSFL considered in the analyses. Results for 4-foot medium bipin T8 GSFL and 8-foot GSFL are available in Chapter 7 of the TSD. In reviewing market prices, DOE observed that prices generally increased with increasing efficacy. However, other lamp characteristics such as lifetime, wattage, and CRI likely also affected price, but these variables cannot be completely isolated. To the extent feasible, DOE considered non-efficacy characteristics that affect installed or operating costs in the LCC.

TABLE III.19.—END-USER PRICES FOR 4-FOOT MEDIUM BIPIN GSFL*

CSL	Lamp efficacy *lm/W*	Lamp power *W*	Lamp lifetime *hr*	CRI	Mean lamp light output *lm*	Low price *$*	Medium price *$*	High price *$*
T12 40W Baseline	80.0	40	20,000	70	2,880	1.41	2.35	3.28
T12 34W Baseline	77.9	34	20,000	62	2,300	0.89	1.49	2.09
1	82.5	40	20,000	80	3,000	2.64	4.41	6.17
1	82.4	34	20,000	70	2,460	1.58	2.64	3.70
2	85.0	40	24,000	80	3,060	3.51	5.86	8.20
2	85.3	34	20,000	80	2,610	2.90	4.83	6.76
3	90.0	40	24,000	85	3,250	3.57	5.95	8.33
3	91.2	34	24,000	85	2,790	3.50	5.83	8.16

*This table presents results for T12 4-foot medium bipin GSFL. Results for additional product classes, and T8 4-foot medium bipin GSFL are available in Chapter 7 of the TSD.

As noted above, DOE derived one end-user price for the GSFL ballasts it considered in the analysis. DOE did not develop end-user prices for magnetic ballasts operating with 4-foot medium bipin lamps (rapid start magnetic ballasts), 8-foot single pin slimline lamps (instant start magnetic ballasts), and 8-foot recessed double contact high output lamps (rapid start magnetic ballasts). This is because the LCC and NIA analyses do not model any purchases of these ballasts after 2012. The energy conservation standards set by the 2000 Ballast Rule and the EPACT 2005, Pub. L. 109–58, are effective for all covered ballasts in 2010. These standards ban the sale of magnetic 4-

[39] Although currently the BR40 non-halogen IRL may be the higher-volume product, DOE expects that, with the prescription of energy conservation standards for certain ER and BR lamps by EISA 2007, by 2012 (the effective date of this rulemaking's amended standards) the PAR30 halogen baseline lamp price will reflect the effects of further commoditization.

foot medium bipin and 8-foot single pin slimline ballasts. In addition, DOE believes that sales of magnetic ballasts that operate 8-foot recessed double contact high output lamps will be minimal after 2012. Again, for all of these reasons, DOE did not consider magnetic ballasts in either the LCC or NIA analyses.

In its review of market prices for ballasts, DOE observed that prices tended to be constant within two groupings of BFs: (1) Low and normal BFs (a BF typically under 1.0); and (2) high BFs (a BF typically over 1.0). Table III.20 presents end-user prices for ballasts used in the LCC and NIA analysis.

TABLE III.20.—END-USER PRICES FOR INSTANT START ELECTRONIC FLUORESCENT LAMP BALLASTS

Lamp type	Ballast factor range		Ballast price
4-foot T8 Medium Bipin	Normal and Low BF	0.75–0.88	$18.31
4-foot T8 Medium Bipin	High BF	1.0–1.18	25.49
4-foot T12 Medium Bipin	Normal BF	0.86–0.88	24.36
8-foot T8 Single Pin Slimline	Normal and Low BF	0.78–0.88	25.86
8-foot T8 Single Pin Slimline	High BF	1.18	47.51
8-foot T12 Single Pin Slimline	Normal BF	0.85–0.88	24.73
8-foot T8 Recessed Double Contact HO	Normal BF	0.81–0.88	48.17
8-foot T12 Recessed Double Contact HO	Normal BF	0.88–0.90	30.40

b. Incandescent Reflector Lamps

For IRL, within the range of lamp wattages analyzed, DOE observed that lamp price did not vary significantly by wattage. As a result, DOE did not vary price by wattage in its analysis. However, DOE did observe price differentials between larger- and smaller-diameter IRL and, therefore, analyzed the two lamp shapes (PAR38 and PAR30) separately. Table III.21 presents the end-user price results for PAR38 IRL. Results for the PAR30 IRL are available in Chapter 7 of the TSD.

TABLE III.21.—END-USER PRICES FOR PAR38 IRL

Lamp type	Lamp shape	CSL	Lamp lifetime *hr*	Low price *$*	Medium price *$*	High price *$*
Halogen	PAR38	Baseline	2,500	3.20	4.80	6.40
Improved Halogen	PAR38	1	3,000	4.07	6.10	8.13
HIR	PAR38	2	3,000	4.18	6.26	8.35
Improved HIR	PAR38	3	4,000	5.00	7.50	10.00

DOE requests feedback on its approach to developing lamp or lamp-and-ballast prices for GSFL and IRL. Furthermore, DOE requests comment on its end-user prices results for fluorescent lamp ballasts.

3. Sales Taxes

The sales tax figure represents State and local sales taxes that are applied to the consumer product price. It is a multiplicative factor that increases the consumer product price. DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[40] These data represent weighted averages that include county and city rates. DOE then derived population-weighted average tax values for each Census division and large State. The distribution of sales tax rates ranges from a minimum of 0 percent to a maximum of 9.4 percent, with a weighted-average value of 6.9 percent.

Additional detail on the derivation of the product prices used in this analysis can be found in Chapter 7 of the TSD, product price determination.

F. Rebuttable Presumption Payback Periods

A more energy-efficient device will usually cost more to purchase than a device of standard energy efficiency. However, the more-efficient device will usually cost less to operate due to reductions in operating costs (i.e., lower energy bills). The payback period (PBP) is the time (usually expressed in years) it takes to recover the additional installed cost of the more-efficient device through energy cost savings. Section 325(o)(2)(B)(iii) of EPCA establishes a rebuttable presumption that a standard for GSFL or IRL is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.'' (42 U.S.C. 6295(o)(2)(B)(iii)) This rebuttable presumption test is an alternative path to establishing economic justification, as compared to consideration of the seven factors set forth in 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII).

DOE's lamp test procedures measure the rate of light output per unit power consumption of a lamp (i.e., lumens per watt) rather than a measurement of energy consumption (i.e., a measurement over a duration or operating time period). Therefore, in order to calculate energy savings for the rebuttable presumption payback period, one would need to multiply the rate of power consumption of a lamp times the usage profile of that lamp. For IRL, energy savings calculations in the LCC and PBP analyses use both the relevant test procedures as well as the relevant usage profile. Because DOE calculates payback periods using a methodology consistent with the rebuttable presumption test for IRL in the LCC and payback period analysis, DOE is not performing a stand-alone rebuttable presumption analysis for IRL, as it is already embodied in the LCC and PBP

[40] Sales Tax Clearinghouse, Aggregate State Tax Rates (2007). Available at: *http://thestc.com/STrates.stm*. Specifically, DOE utilized the relevant material from this website as posted on May 25, 2007; that material is available in Docket #EE–2006–STD–0131.

analyses. For GSFL, DOE believes that the rate of energy consumption of the lamp-and-ballast system is a more accurate measure of real world power consumption than the rate of power consumption of the lamp as measured on a reference ballast, as specified in the test procedure.[41] Because calculations of energy savings in the LCC are based on real-world conditions, DOE will also rely on payback periods calculated in the LCC for GSFL. See section III.G of this notice or Chapter 8 of the TSD for further detail on the LCC and payback period calculation.

G. Life-Cycle Cost and Payback Period Analyses

The life-cycle cost (LCC) and payback period (PBP) analyses determine the economic impact of potential standards on consumers. The effects of standards on individual or commercial consumers include changes in operating expenses (usually lower) and changes in total installed cost (usually higher). DOE analyzed the net effect of these changes GSFL and IRL first by calculating the changes in consumers' LCCs likely to result from CSLs as compared to a base case (no new standards). The LCC calculation considers total installed cost (which includes manufacturer selling price, sales taxes, distribution chain mark-ups, and any installation cost), operating expenses (energy, repair, and maintenance costs), product lifetime, and discount rate. DOE performed the LCC analysis from the perspective of the consumer of a lamp.

DOE also analyzed the effect of changes in operating expenses and installed costs by calculating the PBP of potential standards relative to a base case. The PBP estimates the amount of time it would take the individual or commercial consumer to recover the assumed higher purchase expense of more energy efficient product through lower operating costs. The PBP is based on the total installed cost and the operating expenses, the same approach used in calculating the LCC. However, unlike in the LCC analysis, DOE considers only the first-year operating expenses in the calculation of the PBP. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP. Usually the consumer benefits of a regulation exceed the consumer costs of that regulation if the service life of the covered product is substantially longer than the PBP.

The following discussion provides an overview of the approach and inputs for the LCC and PBP analyses performed by DOE, as well as a summary of the preliminary results generated for the lamps under consideration in this rulemaking. However, for a more detailed discussion on the LCC and PBP analyses please refer to Chapter 8 of the ANOPR TSD.

1. Approach

The LCC analysis estimates the impact on consumers of potential energy conservation standards by calculating the net cost of a lamp (or lamp-ballast system) under two scenarios: (1) A ''base case'' of no new standard; and (2) a ''standards case'' under which lamps must comply with a new energy efficiency standard. The first step in calculating the LCC is specifying the installed costs associated with each design, which includes the lamp (or lamp-and-ballast system) price, sales taxes, and any installation cost. (The development of total installed costs is explained more fully in sections III.E of this notice and Chapters 7 and 8 of the TSD.) After developing the installed costs, DOE used operating hour data and electricity price data to develop operating costs of the base-case and standards-case lamps over the analysis period. (The development of operating costs is explained in section III.D.1. of this notice and Chapters 6 and 8 of the TSD.)

DOE calculated the LCC value for each design and each customer using a discount rate that represents the average cost of capital for that customer. After repeating the calculation for many customers and many designs,[42] DOE calculated the distribution of net LCC impacts of each design. A distinct advantage of this approach is that DOE can identify the proportion of lamp installations achieving LCC savings or attaining certain payback values due to a new energy conservation standard, in addition to the average LCC savings or average payback for that standard. Refer to Chapter 8 of the ANOPR TSD for detailed discussion of the LCC analysis method.

During the Public Meeting on the Framework Document, DOE stated its intention to use Monte Carlo analysis in the LCC to consider end-user variability and conduct sensitivity analyses. Reinforcing this decision, stakeholders commented that conducting such analyses using a Monte Carlo approach would provide useful information on the number of purchasers who benefit from or are disadvantaged by the standard, and by how much. (Joint Comment, No. 9 at p. 4) Accordingly, DOE has incorporated in its LCC and PBP spreadsheet model both Monte Carlo simulation and probability distributions by using Microsoft Excel spreadsheets with Crystal Ball (a commercially-available add-in program). DOE's Monte Carlo simulation considers variability in electricity prices, sales taxes, operating hours, and discount rates. See section III.G.2 for a discussion of LCC inputs. For a detailed discussion on the average annual energy use of lamps and the methodology used to calculate the distribution of annual energy use, please refer to section III.D of this ANOPR and Chapter 6 of the TSD.

In order to accurately compare the life cycle cost of two different products, one must evaluate the life cycle cost of each product over the same fixed period of time (i.e., the analysis period). For the life-cycle cost analysis, the analysis period is the lifetime of the covered product. For most covered products that DOE analyzes, the lifetimes of the more efficient products are the same as the lifetimes of baseline products being analyzed. For this rulemaking, given the unequal lifetimes of the baseline and higher efficacy lamp designs, DOE has chosen to establish its analysis period on the lifetime of the baseline lamp. In situations where a lamp lifetime is shorter than the analysis period, DOE assumes that the lamp is replaced during the analysis period. To account for any remaining lifetime at the end of the analysis period, DOE calculates a ''residual value'' for that lamp.[43]

$$RV = IC \cdot \left\{ \frac{SL - \left[P_{Analysis} - (n \cdot SL) \right]}{SL} \right\}$$

The residual value is an estimate of the product's value to the consumer at the end of the life-cycle cost analysis period. In addition, this residual value must recognize that a lamp system continues to function beyond the end of

[41] For example, T8 lamps which are often operated on high-frequency electronic ballasts would be tested and measured on a line-frequency (60 Hz) reference ballast using DOE's test procedure, resulting in different performance characteristics than this lamp would exhibit in the field, operated on an electronic ballast.

[42] For each design, DOE calculated the LCC results for 1,000 consumers using Monte Carlo simulations. These results are presented in Appendix 8B of the TSD.

[43] The ''residual value'' represents the remaining value of a lamp or a ballast from the end of the period of analysis to the end of the service life of the lamp or ballast. The equation for residual value is as follows: (see equation above)

Where IC = total installed cost of the product, n = the number of replacements within the analysis period, SL = the service life of the product, and $P_{Analysis}$ = the analysis period.

the analysis period. DOE calculates the residual value by linearly prorating the product's initial cost consistent with the methodology described in the Life-Cycle Costing Manual for the Federal Energy Management Program.[44] More information discussing the residual value is given in Chapter 8 of the TSD.

ACEEE commented that a residual value calculation or a 50-year analysis period would yield similar results. (Public Meeting Transcript, No. 4.5 at p. 188) DOE agrees that using a long analysis period, such as 50 years, and discounting cash flows would normalize for differences in lifetimes of different lamps. However, the statute explicitly directs DOE to consider the increased first costs and operating cost savings over ''the estimated average life of the covered product.'' (42 U.S.C. 6295(o)(2)(B)(i)(II)) The life-cycle costs over a 50 year analysis period would be significantly larger than those over a typical lamp lifetime. For this reason, DOE believes that the residual value approach is more consistent with the statute and with the concept of life-cycle costing, and elected to use the lifetime of the baseline lamp as the period of analysis. DOE invites comment on its usage of residual values in the life-cycle cost analysis as well as any other possible approaches to calculating life-cycle costs for products with different lifetimes.

2. Life-Cycle Cost Inputs

For each efficacy level analyzed, the LCC analysis requires input data for the total installed cost of the product, the operating cost, and the discount rate. Table III.22 summarizes the inputs and key assumptions DOE used to calculate the consumer economic impacts of various energy efficacy levels for each product. A more detailed discussion of the inputs follows.

TABLE III.22.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC ANALYSES

Input	Description
Consumer Equipment Price	As discussed in section III.E, DOE started with manufacturer catalog (''blue-book'') pricing, and used different discounts to represent low, medium, and high prices for all lamp categories.
Sales tax	Sales tax is then applied to convert the consumer equipment price to a final consumer price including sales tax. The sales tax mark-up is described in detail in section III.E.
Installation cost	This input represents the cost to the commercial or industrial customers of installing the lamps or lamp systems. The installation price represents all costs required to install the lamp or lamp system but does not include the customer equipment price. The installation price includes labor and overhead. Thus, the total installed cost equals the consumer equipment price including sales tax plus the installation price.
Annual operating hours	The annual operating hours are the estimated hours that a lamp is in use during the time span of one year. Section III.D, Energy-Use Characterization, details how DOE determined the lamp operating hours as a function of end-user sector, geographic region, and application.
Product energy consumption rate	The product energy consumption is the site-energy usage rate associated with operating the lamp system. Section III.D, Energy-Use Characterization, details how DOE determined the product energy consumption rate.
Electricity prices	Electricity prices used in the analysis are the average price per kilowatt-hour (i.e., $/kWh) paid by customers. DOE determined electricity prices using national average residential, commercial, and industrial electricity prices for the sample calculation, while for the Monte Carlo distribution, DOE used average residential, commercial, and industrial values for 13 regions and large States. All electricity price data are obtained from the EIA, 2005.
Electricity price trends	DOE used the EIA's *AEO2007* [45] to forecast electricity prices. For the results presented in this notice, DOE used the *AEO2007* reference case to forecast future electricity prices.
Lifetime	The total hours in operation after which the consumer retires the lamp or components of a lamp system from service.
Discount rate	The discount rate is the rate at which DOE discounts future expenditures to establish their present value.
Analysis Period	Analysis period is the time span over which DOE calculated the LCC.

a. Total Installed Cost Inputs

The following sections describe the total installed cost inputs. As described previously, to account for variability in pricing, DOE estimated three product prices per lamp design, which correspond to variation in purchasing power. DOE applied sales tax to each product price to create a set of end-user prices for these system components.

The installation cost represents all costs associated with installing the lamp or lamp-and-ballast system, other than the end-user lamp price. Thus, the total installed cost equals the consumer lamp price (which includes mark-ups and taxes) plus the installation cost. In its Framework Document, DOE noted that installation costs are negligible for the residential sector but important in the commercial and industrial sectors. NEMA commented that there are generally no repair or maintenance costs for incandescent lamps, but only installation costs. (Public Meeting Transcript, No. 4.5 at p. 174; NEMA, No. 8 at p. 3)

DOE is aware that installation costs for incandescent lamps are applicable by sector and not by lamp type. For example, consumers in the residential sector typically do not incur installation costs, as these consumers typically change their own lamps. Therefore, for IRL analyzed in the residential sector, DOE assumed no installation costs. Rather, the cost the user pays is simply that of the product. Purchasers in the commercial and industrial sectors, on the other hand, do incur installation costs because they usually employ a maintenance worker to install their incandescent lamps. Therefore, DOE applied installation costs for IRL analyzed in the commercial and industrial sectors.

DOE stated in the Framework Document that it would consider installation costs but not maintenance costs in its analysis. According to NEMA, installation costs are important

[44] National Institute of Standards and Technology Handbook 135, 1996 Edition, 210 pages (Feb. 1996), p. 4–6.

[45] U.S. Department of Energy. Energy Information Administration, Annual Energy Outlook 2007 with Projections to 2030 (Feb. 2007). Available at: *http://www.eia.doe.gov/oiaf/aeo/index.html.*

for fluorescent lamps, but there are also some maintenance costs. (Public Meeting Transcript, No. 4.5 at p. 174) DOE presumes that the maintenance costs to which NEMA referred are the costs of re-lamping a lighting system (i.e., replacing the lamp in a lighting system at end of lamp life). For GSFL, DOE assumed installation costs for lamp-and-ballast systems, and re-lamping costs for lamps.

DOE requested comment in the Framework Document on whether it should consider group and spot re-lamping practices in its analysis of installation costs. NEMA commented that, for GSFL, a small percentage of fluorescent lamps are group re-lamped rather than spot re-lamped. (Public Meeting Transcript, No. 4.5 at pp. 174–176; NEMA, No. 8 at p. 3) GE commented that group re-lamping should not be considered for incandescent or incandescent reflector lamps, but could be considered for fluorescent lamps; however, GE did not provide further explanation for its opinion. (Public Meeting Transcript, No. 4.5 at pp. 176–177)

The approach DOE is following for the ANOPR is consistent with these comments. For GSFL, DOE obtained estimates of the prevalence of group versus spot re-lamping from the 2000 Ballast Rule. DOE then weighted the spot and group re-lamping times by the percent occurrence of spot versus group re-lamping to derive weighted-averaged re-lamping times. To account for installation costs for IRL in the commercial sector, DOE used re-lamping time estimates from the *RS Means Electrical Cost Data, 2007*[46] (hereafter ''RS Means'').

For ballasts, DOE derived labor rates for electricians and helpers from RS Means. Labor rates are the sum of the wage rate, employer-paid fringe benefits (i.e., vacation pay, employer-paid health, and welfare costs), and any appropriate training and industry advancement funds costs. DOE assumed that the labor rate for installing a ballast is a composite that equals 50 percent of the electrician labor rate plus 50 percent of the electrician-helper labor rate. For re-lamping (only lamp replacement), DOE assumed that the task was performed by a general maintenance worker at a labor rate DOE obtained from the U.S. Bureau of Labor Statistics for a General Maintenance worker.[47] Using these labor rates and labor times, DOE derived the average cost to install a lamp and the average cost to install a lamp and ballast.

DOE recognizes that labor times for replacing a ballast may change because of changes in the 2005 National Electric Code.[48] Specifically, the addition of Part XIII, Section 410.73(G) to the 2005 National Electric Code requires a means for disconnecting luminaires installed in an indoor location so that electrical contractors will not work on energized equipment while replacing or servicing ballasts. This change applies to both commercial and industrial installations.[49] This requirement goes into effect January 1, 2008, and it is expected to significantly increase the labor time required for ballast installations. Therefore, DOE is requesting comment on how labor times and related installation costs for ballasts will be affected by this change in the National Electric Code.

Additional details on the development of installation costs can be found in Chapter 8 of the ANOPR TSD.

b. Operating Cost, Replacement Cost, and Residual Value Inputs

The following sections describe additional inputs used in calculating the LCC. These include inputs used to develop operating costs, replacement costs, and residual values. The operating cost of a lamp system is a function of the annual energy consumption, energy cost, repair and maintenance costs, analysis period, and the discount rate. Annual energy consumption is the site-energy use (i.e., electricity use) associated with operating a lamp or lamp-and-ballast system. The inputs for estimating annual energy consumption are discussed in section III.D of this ANOPR. Electricity prices are the prices paid by consumers for electricity. DOE used electricity price trends to forecast electricity prices into the future. Multiplying the annual energy consumption by the electricity prices yields the annual energy cost. Because DOE assumed no repair or maintenance costs, costs associated with repairing or replacing components that have failed, the only operating costs associated with lamps are energy costs. The analysis period is the time span over which the LCC is calculated. For the purpose of this rulemaking, DOE based the analysis period on the baseline lamp's service lifetime (i.e., the lamp's operating lifetime in hours divided by annual operating hours). The discount rate is the rate at which DOE discounted future expenditures to establish their present value. The replacement cost (i.e., the costs associated with a lamp replacement) is dependent on the installed cost, discount rate, analysis period, and service life. The product service life is the age at which the product is retired from service. The residual value (also dependent on the four inputs used to develop replacement costs) is the discounted total installed cost of a lamp (or lamp and ballast) multiplied by the percentage of remaining life for that lamp (or lamp and ballast) past the analysis period.

i. Electricity Prices

With regard to electricity prices, DOE derived average prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately. For Census divisions containing one of these large States, DOE calculated the regional average values leaving out data for the large State—for example, the Pacific region average does not include California, and the West South Central region does not include Texas.

DOE estimated residential, industrial, and commercial electricity prices for each of the 13 geographic areas based on data garnered from EIA Form 861, Annual Electric Power Industry Report. DOE's calculation methodology uses the most recently available EIA data (2005). For further details of the methodology that DOE used for deriving energy prices, see Chapter 8 of the ANOPR TSD.

DOE stated in the Framework Document that it would use price forecasts by the EIA to estimate the trends in electricity prices. In response, ACEEE and the Joint Comment argued that current EIA energy price forecasts are too low and will likely be revised upwards over the next few years. (Joint Comment, No. 9 at p. 3; Public Meeting Transcript, No. 4.5 at p. 216) Therefore, the Joint Comment requested that DOE use the latest available price forecasts from EIA to conduct the analyses. (Joint Comment, No. 9 at p. 3) Taking into account these comments, DOE used EIA's AEO2007, containing the latest available price forecasts from EIA to estimate future energy prices. For the analyses to be conducted for the NOPR and Final Rule, DOE intends to update its energy price forecasts to be based on the latest available version of AEO.

[46] R.S. Means Company, Inc., 2007 RS Means Electrical Cost Data (2007).

[47] U.S. Department of Labor Bureau of Labor Statistics. Occupational Employment and Wage Estimates. National Cross-Industry Estimates (May 2005). Available at: *http://www.bls.gov/oes/oes_dl.htm.*

[48] National Fire Protection Association, *National Electric Code 2005*. CENGAGE Delmar Learning: 2004.

[49] Ode, Mark C., ''Unplugging Fluorescents,'' Electrical Contractor (July 2005). Available at: *www.ul.com/regulators/ode/0705.pdf.*

DOE did not explicitly discuss demand charges [50] in the Framework Document, but stakeholders identified this as an issue and submitted comments. For example, ACEEE commented that DOE should consider demand charges in its electricity pricing rather than averaging prices because lighting tends to be ''peakier'' than the average use. (Public Meeting Transcript, No. 4.5 at pp. 169–171) PG&E commented that DOE should account for the marginal consumer cost of electricity in its analysis and that the marginal cost of electricity is significantly different than the average cost of electricity in certain regions (Public Meeting Transcript, No. 4.5 at pp. 215) PG&E also commented that in addition to using a single average price, DOE should look at a range of electricity prices. EEI commented that separating out demand charges could lead to similar results, except, possibly, for the residential sector. (Public Meeting Transcript, No. 4.5 at pp. 172 and 215) The Joint Comment stated that utility rate structures have been changing over time, and it recommended that DOE conduct a sensitivity analysis to evaluate whether changes in pricing structure would significantly impact the rulemaking analyses. The Joint Comment also suggested that DOE should consider basic electricity tariff evolutions in the structure of the LCC and NIA, if the sensitivity analysis shows that expected changes to electricity price structures are influential. (Joint Comment, No. 9 at p. 4)

DOE notes that in the analysis performed for the fluorescent ballast rulemaking, DOE found that the reduction in ballast energy consumption results in a correspondingly lower reduction in peak power. In other words, the lighting load improves a building's load profile. Thus, the marginal rate of electricity for lighting was found to be slightly lower than the average utility rate. In relative terms, DOE assumed in the ballast rulemaking that the demand reduction was 80 percent of the energy savings. For the case study analyzed in the ballast rule, a 5-percent energy savings resulted in a 4-percent demand reduction of the peak kW, and at the consumption weighted mean of the differences, the electricity marginal prices were found to be 5.2 percent lower than average prices.[51]

Consistent with a number of other current DOE rulemakings, DOE has tentatively decided to use average regional electricity prices for its analyses. DOE believes that using average regional EIA prices would not underestimate operating cost savings. In addition, the approach will include the regional variations in energy prices, while reducing analytical complexity.

In addition to accounting for regional variability, DOE also addressed future variability by incorporating three separate projections from AEO2007 into the spreadsheet models for calculating LCC and PBP: (1) Reference; (2) low economic growth; and (3) high economic growth. These three cases reflect the uncertainty of economic growth in the forecast period (from 2005 to 2030). The high- and low-growth cases show the projected effects of alternative growth assumptions on energy markets. The development and use of regional average electricity prices are described below and in more detail in Chapter 8 of the TSD.

ii. Lamp Lifetime

With regard to lamp lifetime, DOE stated in the Framework Document that it would consider published catalog data, as well as literature sources and inputs from manufacturers and other stakeholders in its analysis. GE and NEMA commented that DOE should use published catalog data for lamp lifetimes. (Public Meeting Transcript, No. 4.5 at p. 176; NEMA, No. 8 at p. 3) In response, DOE did use published manufacturer literature for lamp lifetimes, where available. However, for some IRL, published manufacturer literature on lamp lifetimes is not available. Therefore, where applicable, DOE derived lamp lifetimes as part of the engineering analysis, in the manner discussed in section III.C.

For GSFL, the manufacturer literature provides lamp lifetimes for both lamps operated three hours per start and those operated 12 hours per start. Therefore, in the Framework Document, DOE invited comment as to which lifetime value is more appropriate for use in the LCC analysis. GE and EEI commented that by referencing studies on lighting controls, DOE could develop a weighted lamp lifetime by estimating the proportion of the installed base that is operated at 12 hours per start and the proportion that is operated at three hours per start. (Public Meeting Transcript, No. 4.5 at p. 179, Public Meeting Transcript, No. 4.5 at pp. 179–180) In its comments, EEI opined that using 3 hours per start in the base case and standards case would be sufficient for this analysis (Public Meeting Transcript, No. 4.5 at p. 180). After considering public comments, DOE has tentatively decided on the following approach in this area. Because published manufacturer literature on lamp lifetimes for 12 hours per start is not available for all lamps in the base case and the standards case, and because the lifetimes are shorter in three-hours-per-start data, DOE decided to base its calculation of lamp lifetimes for both base- and standards-case lamps on three hours per start data. Thus, under this approach, DOE would not risk overstating energy savings. DOE welcomes comment on this approach.

Lamp lifetime is not only affected by the number of hours per start but also by the type of relamping practiced. For example, lamps replaced through group relamping, in contrast to spot relamping, will be replaced before the end of their rated life. In the Framework Document, DOE invited comment on whether the effect on lamp lifetime of group and/or spot re-lamping practices should be taken into account. GE commented that group re-lamping practices should be taken into account for GSFL and that this practice usually occurs at 70 percent of the rated lifetime. (Public Meeting Transcript, No. 4.5 at pp. 176–177) Like the calculation of re-lamping costs, DOE averaged the group versus spot re-lamping impact on lifetime by their percent occurrence for GSFL. DOE assumed a lamp subject to group re-lamping practices operates for 75 percent of its rated life, an estimate obtained from the 2000 Ballast Rule.[52] DOE then applied this life impact factor to the rated lifetimes from the manufacturing literature for the GSFL it analyzed. For 4-foot medium bipin lamps, the average lifetime used in the analysis was 94 percent of the rated lifetime. For 8-foot single pin slimline lamps, the average lifetime was 91 percent of the rated lifetime, and for 8-foot recessed double contact HO lamps, the average lifetime was 92 percent of the rated lifetime. For the reasons discussed in section III.G.2.a, DOE

[50] Typically consumers pay a premium for electricity consumed during times in the day when the demand for electricity is at its peak. These additional charges are called ''demand charges.''

[51] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Technical Support Document: Energy Efficiency Standards for Consumer Products: Fluorescent Lamp Ballast Proposed Rule: Appendix B, Marginal Energy Prices and National Energy Savings p. B–10 (Jan. 2000). Available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/appendix_b.pdf.*

[52] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Technical Support Document: Energy Efficiency Standards for Consumer Products: Fluorescent Lamp Ballast Proposed Rule: Appendix A, p. A–19 (Jan. 2000). Available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/appendix_a.pdf.*

agrees with GE that group re-lamping should not be considered for IRL. (Public Meeting Transcript, No. 4.5 at pp. 176–177). Therefore, DOE did not assume an impact on lamp lifetime due to group re-lamping for IRL.

iii. Discount Rates

As noted in the Framework Document, DOE planned to develop an analysis on discount rates similar to prior rulemaking analyses that evaluated the impact of standards on products or equipment installed in the residential, commercial, and industrial sectors. NWPCC commented that DOE should use discount rates from prior rulemakings, because these rates do not vary appreciably over the long term. (Public Meeting Transcript, No. 4.5 at pp. 183–184) In response, DOE reviewed the discount rate analyses from several recent rulemakings, and decided to use the same residential discount rates as it did for the 2007 ANOPR for the Residential Electric and Gas Ranges and Microwave Ovens, Dishwashers, Dehumidifiers, and Commercial Clothes Washers (hereafter ''Home Appliance ANOPR''). 72 FR 64432 (November 15, 2007). For the commercial sector, DOE used the same discount rates for the categories of lamp users as it used for those same categories in the 2006 NOPR for Electrical Distribution Transformers (hereafter ''Transformer NOPR''). 71 FR 44356 (August 4, 2006). However, DOE adjusted the aggregate commercial sector discount rate to account for differences in the proportions of types of owners of each lamp type.

For residential replacement lamps, DOE identified all possible debt or asset classes that would be sources of funds used to purchase replacement lamps, including household assets that might be affected indirectly. The mean real effective rate across all types of household debt and equity, weighted by the shares of each class, is 5.6 percent.

For the commercial and industrial sectors, DOE derived the discount rate from the cost of capital of publicly-traded firms in the sectors that purchase lamps. To obtain an average discount rate value for the commercial sector, DOE used data from CBECS 2003, which provides market-share data by type of owner. Weighting each ownership type by its market share, DOE estimated the average discount rate for the commercial sector to be 6.2 percent. Similarly, the industrial sector discount rate was derived to be 7.5 percent. For further details on DOE's method for estimating discount rates, see Chapter 8 of the ANOPR TSD.

iv. Analysis Period

The analysis period is the time span over which the LCC is calculated. DOE bases the analysis period on the longest baseline lamp life in a certain product class divided by the annual operating hours of that lamp. If the user chooses to run the LCC using weighted average values, then the analysis period is based on the longest baseline lamp life divided by the average annual operating hours for that lamp in a chosen sector, or a multiple thereof. For example, the longest lived baseline IRL lamp is 3,000 hrs. If the user chooses to analyze this lamp in the commercial sector, then the analysis period is the lamp lifetime of 3,000 hours divided by the average annual operating hours for IRL in the commercial sector of 3,450 hrs/yr, which yields an analysis period of 0.9 years. In order to allow users to compare the cost of IRL lamps over multiple lamp lifetimes, one can select a multiple of this analysis period (i.e., 1.8, 2.7, or 3.6 years). If the user chooses to run the LCC using Crystal Ball® software (a tool used to do the Monte Carlo analysis), the analysis period is based on the longest baseline lamp life divided by the annual operating hours chosen by Crystal Ball®. For example, the user may choose to run IRL in the commercial sector using Monte Carlo analysis. If Crystal Ball® selects a building that is used for religious worship, the analysis period for IRL for that selection will be based on a lamp lifetime of 3,000 hours divided by the annual operating hours for IRL in a building used for religious worship of 1,609 hrs/yr, which yields an analysis period of 1.9 years. However, users cannot select a multiple of this analysis period when using Crystal Ball® due to the nature of the LCC spreadsheet. For detail on additional results, please see Chapter 8 and Appendix 8B of the TSD.

v. Effective Date

For purposes of this discussion, the ''effective date'' is the future date when a new standard becomes operative (i.e., the date by and after which lamp manufacturers must manufacture products that comply with the standard). DOE publication of a final rule in this standards rulemaking is scheduled for completion in June 2009. Pursuant to sections 325(i)(3) and (5) of EPCA, the effective date of any new or amended energy conservation standards for these lamps must be three years after the final rule is published, which would be June 2012. (42 U.S.C. 6295(i)(3) and (i)(5)) DOE calculated the LCCs for all consumers, based upon an assumption that each would purchase the new product in the year the standard takes effect.

3. Payback Period Inputs

As explained above, the PBP is the amount of time it takes the consumer to recover the estimated additional installed cost of more-efficient products through energy cost savings only. Payback analysis is a technique used to obtain a rough indication of whether an investment is worthwhile. This type of calculation is known as a ''simple'' payback period because it does not take into account other changes in operating expenses over time or the time value of money.

The inputs to the calculation of the PBP are the total installed cost of the product to the customer for each efficacy level and the annual (represented by first-year) operating expenditures for each efficacy level. The PBP calculation uses the same inputs as the LCC analysis, except that energy price trends and discount rates are not needed. The calculation needs energy prices only for the year in which a new standard is expected to take effect, in this case 2012.

4. Lamp Purchasing Events

GE, ACEEE, and PG&E all recommended that DOE should divide the lamp market into three market segments: (1) New construction; (2) major retrofit; and (3) replacement lamps; such an approach would allow DOE to differentiate between the options facing consumers for those three scenarios. (GE, No. 4.5 at p. 112; ACEEE, No. 4.5 at p. 113; PG&E, No. 4.5 at p. 113) GE, for example, commented that lumens can be kept constant with the baseline system for new construction, whereas for the replacement lamp market segment, lumens may be higher than the baseline system. (GE, No. 4.5 at p. 122) In response, DOE agrees with stakeholders on this point and has broken the LCC and NIA into several market segments or ''lamp purchasing events'' to represent the lamp-and-ballast designs facing consumers under each scenario. These ''lamp purchasing events'' are described below. Although DOE considers in the LCC only those energy-saving design options which reduce lumen output by 10 percent or less, all other design options facing consumers are considered in the NIA.

To further explain, DOE designed the LCC analysis for this rulemaking around scenarios where consumers have a need to replace a lamp; these are collectively referred to as ''lamp purchasing events.'' Each of these events may present the consumer with a different set of technology options and, therefore, a

different set of LCC savings for a certain CSL. For GSFL, DOE identified five possible scenarios under which consumers would purchase a lamp and potentially be affected by a minimum energy conservation standard. These scenarios are: (1) Lamp failure; (2) standards-induced retrofit; (3) ballast failure; (4) ballast retrofit; and (5) new construction/renovation. These five lamp purchasing events are described in more detail below. (It is noted that for IRL, due to the fact that there is no ballast involved, the scenario for the incandescent lamp product classes is simply a lamp failure.) In addition to the descriptions below, Table III.23 and Table III.24 summarize the lamp purchasing events considered in this analysis.

• *Lamp Failure (Event I):* This event reflects a scenario in which a lamp either fails (spot-relamping) or is about to fail (group relamping) and must be replaced. In the absence of the energy conservation standard, the analysis assumes an identical lamp would have been installed as a replacement. However, under a lamp energy conservation standards scenario, a standards-compliant lamp is required which operates on the existing ballast. Thus, the first consumer response to a lamp failure is expected to be a simple lamp replacement with the same type of lamp. A second response occurs for owners of T12 systems. Unlike T8 lamps, there are certain lamp standard levels which a T12 lamp cannot meet. These users would be required to purchase both new lamps and ballasts in order to meet the lamp energy conservation standard.

• *Standards-Induced Retrofit (Event II):* This event reflects a scenario in which an increase in the energy conservation standard for lamps prompts end-users to retrofit both lamps and ballasts, whereas, in the base case, they would otherwise have installed only a lamp due to a lamp failure. This lamp purchasing event only applies to users with T12 lamps because, unlike T8 lamps, there are certain lamp standard levels which a T12 lamp cannot meet. This event contemplates a scenario where users, under a lamp energy conservation standard, can no longer purchase a T12 replacement lamp for their T12 ballast. For this scenario, DOE assumes a uniform age distribution of T12 lamps throughout the nation. Therefore, based on this age distribution, the average T12 lamp is halfway through its lifetime. Consumers in the base case purchase only a lamp after the average T12 lamp has died (i.e., after it has lived through the second half of its lifetime). Consumers in the standards case choose to change both the lamp and the ballast early, instead of waiting for their T12 lamps to fail. Therefore, in the standards case, a lamp-and-ballast purchase would occur at the beginning of the analysis, before the average lamp being replaced has failed.

• *Ballast Failure (Event III):* This event reflects a scenario in which the installed ballast has failed. DOE recognizes that energy conservation standards for ballasts set by the 2000 Ballast Rule and EPACT 2005 are effective in 2010. These standards ban the sale of magnetic 4-foot medium bipin and 8-foot single pin slimline ballasts. In addition, DOE believes that sales of magnetic ballasts that operate 8-foot recessed double contact high output lamps will be minimal after 2012. Therefore, in the baseline, users who had a magnetic T12 ballast would be expected to replace it with an electronic T12 ballast. Users who had a T8 ballast installed would be expected to replace it with a T8 ballast. However, in the standards case, end-users would select a standards-compliant lamp-ballast combination such that the system light output never drops below 10 percent of the baseline system.

• *Ballast Retrofit (Event IV):* This event applies only to T12 users because, according to industry experts, the majority of ballasts that are retrofitted are T12 lamp-and-ballast systems. As opposed to the standards-induced retrofit event where end-users replace only their lamps in the base case, end-users under this event replace both their lamps and ballasts in the base case in order to save energy. With standards, end-users will also retrofit their old lamps and ballasts, but with standards-compliant lamps. DOE assumes that end-users continue to use the existing fixture and replace only the ballast. Because the spatial layout in the building space is constrained by the number of fixtures, light output of the replacement lamp-and-ballast system is maintained.

• *New Construction and Renovation (Event V):* This lamp purchasing event encompasses all the new fixture installations where the lighting design will be completely new or can be completely changed. This scenario is only applicable to those baseline lamps that are usually used in new construction and renovation (4-foot T8s, 8-foot single pin slimline T8s, and 8-foot recessed double contact HO T12s). In this scenario, the spatial layout of fixtures in the building space is not constrained to any previous configuration. Because new fixtures can be installed, consumers could install a lamp-and-ballast system that would not maintain the light output of the baseline system. For instance, if light output of the standards case system is lower than the base case system, consumers can increase the number of standards case lamp-and-ballast systems installed in the building by a certain percentage to maintain the light output of base case lamp-and-ballast systems.

Table III.23 and Table III.24 outline the events and actions taken by consumers in response to those events both in the base case and the standards case.

TABLE III.23.—FRAMEWORK OF EVENT-TYPE SCENARIOS FOR T12 LAMPS

Event	Base-case action	Standards-case action
Event I. Lamp Failure	(a) Installs a T12 lamp	Installs a lower-wattage, higher efficacy lamp, where the system light output never drops below 10 percent of the baseline system.
	(b) Installs a T12 lamp	Installs a T12 or T8 electronic ballast and lamp, where the system light output never drops below 10 percent of the baseline system.
Event II. Standards-Induced Retrofit.	Replace T12 lamp halfway through analysis period.[53]	Installs a new T12 or T8 electronic ballast and lamp, where the system light output never drops below 10 percent of the baseline system.
Event III. Ballast Failure	Installs a T12 electronic ballast and lamps in the existing fixture.	Installs a new T12 or T8 ballast and lamps, where the system light output never drops below 10 percent of the baseline system.

TABLE III.23.—FRAMEWORK OF EVENT-TYPE SCENARIOS FOR T12 LAMPS—Continued

Event	Base-case action	Standards-case action
Event IV. Ballast Retrofit	Installs a T8 electronic ballast and lamps in the existing fixture.	Installs a new T12 or T8 ballast and lamps, where the system light output never drops below 10 percent of the baseline system.
Event V. New Construction and Renovation.	Installs a new T12 system	Installs a new T12 or T8 system that is where the system light output never drops below 10 percent of the baseline system. Light output can be maintained through spacing.

TABLE III.24.—FRAMEWORK OF EVENT-TYPE SCENARIOS FOR T8 LAMPS

Event	Base-case action	Standards-case action
Event I. Lamp Failure	Installs a T8 lamp	Installs a lower-wattage, higher efficacy lamp, where the system light output never drops below 10 percent of the baseline system.
Event III. Ballast Failure	Installs a T8 electronic ballast and lamps in the existing fixture.	Installs a new T8 ballast and lamps, where the system light output never drops below 10 percent of the baseline system.
Event V. New Construction and Renovation.	Installs a new T8 system	Installs a new T8 system, where the system light output never drops below 10 percent of the baseline system. Light output can be maintained through spacing.

5. Life-Cycle Cost and Payback Period Results

DOE calculated the average LCC savings relative to the base-case forecast for each product class. As mentioned above, the base case consists of the projected pattern of product purchases that would occur in the absence of new energy conservation standards.

DOE did not explicitly discuss aggregating results of the LCC and PBP analyses in the Framework Document, but stakeholders identified this as a critical issue and submitted comment thereon. For example, ACEEE commented that DOE should weigh its results for the three market segments it considered—new construction, retrofit, and lamp replacement—by their percentage of sales. (Public Meeting Transcript, No. 4.5 at pp. 118–119) The Joint Comment also recommended that DOE should weigh its results by market segment. (Joint Comment, No. 9 at p. 5) In addition, ACEEE commented that some of the higher efficacy lamp substitutes could have higher wattages than their replacement. (Public Meeting Transcript, No. 4.5 at pp. 118–119)

DOE recognizes that different lamp consumers will be impacted differently by a new standard depending on the market segment to which they belong. To model these different situations, the LCC analysis is designed around scenarios—the ''lamp purchasing events''—where consumers have a need to replace a lamp. The LCC spreadsheet calculates the LCC impacts for each of these scenarios separately. Looking at the impacts on each scenario separately allows one to view the results of many subgroup populations in the LCC analyses.

For the ANOPR, DOE decided not to aggregate the results of the various event scenarios together into a single LCC at each CSL. To do so would have required too many assumptions, such as: (1) The relative occurrence of each event over time, or (2) the market share of each lamp in the base case and each standards case. Another argument against aggregating the LCC results stems from the fact that the LCC analysis only considers energy-saving lamp or lamp-and-ballast designs. As ACEEE commented, consumers may elect options that save no energy or perhaps consume more energy. (Public Meeting Transcript, No. 4.5 at pp. 118–119) Finally, aggregating the results of the LCC analysis events blurs the lines with the NIA analysis. DOE believes it is more appropriate to incorporate assumptions about consumer decisions and long-term market trends in the NIA, and leave the LCC as a direct head-to-head comparison between lamp and lamp-and-ballast designs under different scenarios or ''events.'' Note further that the LCC savings results help DOE estimate consumer behavior decisions for the NIA.

DOE recognizes that the large number of LCC and PBP results can make it difficult to draw conclusions about the cost-effectiveness of CSLs. The following presents partial results from the LCC analysis. The LCC results are presented according to the lamp purchasing events that culminate in purchase of lamp-and-ballast designs. These results are for a subset of all of the possible events, although they represent the most prevalent purchasing events (events I(b) and IV have been omitted in this notice but are presented in the TSD). A range of the LCC savings and PBP are given for each CSL. The range reflects the results of multiple systems (i.e., multiple lamp-ballast pairings) which consumers could purchase to meet a CSL. In addition, DOE has chosen not to present detailed PBP results by CSL in this ANOPR because DOE believes that, given the drawbacks to PBP discussed earlier, the short lifetime of IRL and the systems nature of GSFL, LCC results are a better measure of cost-effectiveness. However, a full set of both LCC and PBP results for the systems DOE analyzed are available in Chapter 8 of the TSD. DOE is presenting the partial results here to facilitate comment on DOE's methodology of its analyses, and on the presentation of its results.

a. General Service Fluorescent Lamps

Table III.25 through Table III.27 lists the result for one baseline lamp in each of the three product classes DOE analyzed (i.e., 4-foot medium bipin, 8-foot single pin slimline and 8-foot recessed double contact HO). Throughout this section, the terms ''positive LCC savings'' and ''negative LCC savings'' are used. When a standard results in ''positive LCC savings,'' the life cycle cost of the standards-compliant lamp is less than the life cycle cost of the baseline lamp, and therefore, the consumer benefits. A

[53] Event Type II represents a standards-induced retrofit where lamps are substituted before the end of their lifetime. DOE assumed that lamps lived to half of their average lifetime when substituted under this scenario.

consumer is adversely affected when a standard results in ''negative LCC savings'' (i.e., when the life cycle cost of the standards-compliant lamp is higher than the life cycle cost of the baseline lamp). The range of values given represents the multiple ways a consumer can meet a certain CSL under each lamp purchasing event. For example, at CSL3, a consumer in need of a lamp and ballast can either purchase a high-efficacy T12 lamp on an electronic ballast or a high-efficacy T8 lamp on an electronic ballast. While both these choices are available to the consumer, the selection of a T8 system offers positive LCC savings.

Table III.25 presents the findings of an LCC analysis on the 34W T12 4-foot medium bipin GSFL baseline operating in the commercial sector. Key inputs consist of using AEO2007 reference case electricity prices, an analysis period of 5.5 years, and medium-range lamp and ballast prices. Note that any standard level beyond CSL3 for this baseline lamp would require a lamp and ballast replacement, since no T12 lamp currently meets the efficacy requirements of CSL4. In addition, because DOE is only presenting energy-saving options in the LCC and because there are no energy-saving (or reduced wattage) lamp replacement options for the 34W T12 lamp, Event I(a) which would require only a lamp replacement is not shown. In general, one finds that consumers who do switch from T12 to T8 lamps experience positive LCC savings at all CSLs.

The positive LCC results for Event II are due to consumers that replace a functioning 34W T12 lamp on a magnetic ballast with a high efficacy T8 lamp on an electronic ballast. This situation occurs at CSLs three through five. Negative LCC savings (i.e., increases in life-cycle costs) are generally due to replacement of a functioning 34W T12 lamp on a magnetic ballast with a higher-efficacy T12 lamp on a T12 electronic ballast. This situation occurs at CSLs one through three. (Both the T12 and T8 electronic substitutions result in negative LCC savings at CSL2) These LCC results explain why consumers are electing to replace their T12 magnetic systems with T8 electronic systems instead of choosing T12 electronic ballast systems.

Event III represents consumers who are already faced with replacing both a lamp and a ballast. The baseline ballast for this event is assumed to be an electronic T12, since the ballast standards from the 2000 Ballast Rule and EPACT 2005 would be effective in 2010. Consumers prompted by this event would experience positive LCC savings if they purchase a high efficacy 4-foot T8 lamp on an electronic ballast at all CSL levels. Negative LCC savings would occur if consumers replace a functioning 34W T12 lamp on an electronic ballast with a high efficacy T12 lamp. The LCC savings of Event III are greater than those of Event II because in the base case of Event III consumers were faced with a ballast replacement cost.

PBP results for Event II and III range from zero to 37.7 years. The systems nature of the lamp LCC makes the payback period results difficult to interpret. For example, LCC savings are positive for many CSLs where the payback period exceeds the lifetime of the baseline lamp which is approximately five years. When these paybacks are compared to the lifetime of a lamp-ballast system of 15 years (spanning the life of one ballast and three lamp replacements), the payback periods appear much more acceptable. Payback periods longer than the lifetime of the system are associated with negative LCC savings. The zero-year payback (or instantaneous payback) also results from the systems nature of these LCC results. For example, zero payback periods that appear for Event III are due to the replacement of a more expensive electronic T12 ballast with a less expensive T8 electronic ballast. For more information on PBP results refer to Chapter 8 of the TSD.

TABLE III.25.—LCC RESULTS FOR A 3-LAMP 4-FOOT MEDIUM BIPIN SYSTEM OPERATING IN THE COMMERCIAL SECTOR*

Candidate standard level	Rated lamp efficacy *lm/W*	LCC savings 2006$	
		Event II: standards-induced retrofit (lamp & ballast replacement)	Event III: ballast failure (lamp & ballast replacement)
CSL1	82.4	−18.00	−2.02
CSL2	85.3 to 86.2	−23.36 to −6.31	−9.05 to 8.01
CSL3	90.8 to 91.2	−23.66 to 1.60	−9.34 to 15.92
CSL4	92.3 to 95.0	5.01 to 6.26	19.33 to 20.58
CSL5	95.4 to 97.3	4.88 to 16.96	19.19 to 31.28

*The results displayed are for the 34W T12 baseline lamp with a 5.5 yr analysis period. Additional results are available in Chapter 8 of the TSD.

Table III.26 presents the findings of an LCC analysis on the 60W T12 8-foot single pin slimline GSFL baseline lamp operating in the commercial sector. Key inputs consist of using AEO2007 reference case electricity prices, an analysis period of 4.0 years and medium-range lamp and ballast prices. Note that any standard level beyond CSL3 for this baseline lamp would require a lamp-and-ballast replacement, since no T12 lamp currently meets the efficacy requirements of CSL3. In general, consumers who do switch from a 60W T12 to a T8 lamp experience positive LCC savings only if their ballast has already failed.

Event I is not shown because there are no energy-saving lamp replacement options for a 60W T12 lamp. Event II represents consumers who respond to higher lamp standards by replacing a functioning 60W T12 system with a new lamp and ballast. For this event, consumers experience increased LCC at all CSLs. Event III represents consumers who are already faced with replacing both a lamp and a ballast. The baseline ballast for this event is assumed to be an electronic T12, since the ballast standards from the 2000 Ballast Rule and EPACT 2005 would be effective in 2010. Consumers prompted by this event would experience positive LCC savings if they purchase a high-efficacy 8-foot single pin slimline T8 lamp on an electronic ballast. Negative LCC savings would occur because some consumers who replace a functioning 60W T12 lamp on an electronic ballast with a high-efficacy T12 lamp on an electronic ballast.

PBP results for Event II and III range from 2.7 to 20.7 years. For more information on PBP results refer to Chapter 8 of the TSD.

TABLE III.26.—LCC RESULTS FOR A 2-LAMP 8-FOOT SINGLE PIN SLIMLINE SYSTEM OPERATING IN THE COMMERCIAL SECTOR*

Candidate standard level	Rated lamp efficacy *lm/W*	LCC savings 2006$	
		Event II: standards-induced retrofit (lamp & ballast replacement)	Event III: ballast failure (lamp & ballast replacement)
CSL1[54]	87.6	N/A	N/A
CSL2	92.6	−24.78	−3.04
CSL3	94.8 to 97.5	−24.31 to −23.55	−2.56
CSL4	98.2	−16.42	5.33
CSL5	101.5 to 101.8	−15.68 to −13.73	6.06 to 8.02

*The results displayed are for the 60W T12 baseline lamp with a 6.0 yr analysis period. Additional results are available in Chapter 8 of the TSD.

Table III.27 presents the findings of an LCC analysis for a 95W T12 8-foot recessed double contact GSFL baseline lamp operating in the industrial sector. Key inputs consist of using AEO2007 reference case electricity prices, an analysis period of 2.3 years, and medium-range lamp and ballast prices. Note that any standard level beyond CSL2 for this baseline lamp would require a lamp and ballast replacement, since no T12 lamp currently meets the efficacy requirements of CSL3. In general, DOE's research indicates that consumers who do switch from a 95W T12 to a T8 lamp would experience positive LCC savings only if their ballast has already failed or if they are renovating or constructing a new building.

Event I is not shown because there are no energy-saving lamp replacement options for a 95W T12 lamp. The positive LCC results for Event II occur because some consumers replace a functioning 95W T12 lamp on an electronic ballast with a high-efficacy T8 lamp on an electronic ballast. Negative LCC results are due to consumer replacement of a functioning 95W T12 lamp on a magnetic ballast with a high-efficacy T12 lamp on an electronic ballast. Events III and V represent consumers who are already faced with replacing both a lamp and a ballast. Consumers, prompted by these events, would experience positive LCC savings if they purchase a high-efficacy T8 lamp on an electronic ballast. Consumers would experience higher LCCs if they replace a functioning 95W T12 lamp on an electronic ballast with a high-efficacy T12 lamp on an electronic ballast. Under this scenario, the lowest LCC occurs at CSL4.

PBP results for Event II, III, and V range from 3.2 to 64.8 years. For more information on PBP results refer to Chapter 8 of the TSD.

TABLE III.27.—LCC RESULTS FOR A 2-LAMP 8-FOOT RECESSED DOUBLE CONTACT HO SYSTEM OPERATING IN THE INDUSTRIAL SECTOR*

Candidate standard level	Rated lamp efficacy *lm/W*	LCC savings 2006$	
		Event II: standards-induced retrofit (lamp & ballast replacement)	Event III: ballast failure and event V: new construction and renovation (lamp & ballast replacement)
CSL1	N/A[55]	N/A	N/A
CSL2	85.5 to 86.1	−36.86	−3.43
CSL3	87.6 to 88.9	−47.10 to −46.48	−13.67 to −13.05
CSL4	91.9 to 93.0	−24.12 to −21.19	9.32 to 12.25
CSL5	95.3	−20.53	12.9

*The results displayed are for the 95W T12 baseline lamp with a 2.3-yr analysis period. Additional results are available in Chapter 8 of the TSD.

Results for all GSFL events and baselines are presented in Table 8.5.1 to Table 8.5.16 of Chapter 8 in the TSD.

b. Incandescent Reflector Lamps

Table III.28 provides the LCC results for a 75W PAR38 IRL operating in the commercial sector. These results are based on the AEO2007 reference case electricity prices, an analysis period of 0.9 years,[56] and use of medium-range

[54] Because the 60W T12 baseline exceeds CSL1, there are no energy saving design options at this level. There are, however, energy saving design options at CSL1 for the 75W T12 baseline.

[55] Because the 95W T12 baseline is only slightly below CSL1, there are no energy saving design options at this level. There are, however, energy saving design options at CSL1 for the 110W T12 baseline.

[56] The service life of commercial IRL is shorter than GSFL because the longest lived baseline IRL

Continued

lamp prices. Note that the lowest LCC (and highest LCC savings) occurs at CSL3. PBP results for IRL range from 0.4 to 0.6 years. LCC and PBP results for all IRL baseline lamps are available in Chapter 8 in the TSD. More information about the lamps that meet each CSL are provided in Chapter 5 of the TSD.

TABLE III.28.—LCC RESULTS FOR A 75W PAR38 OPERATING IN THE COMMERCIAL SECTOR*

Candidate standard level	Rated lamp efficacy *lm/W*	LCC savings 2006$
CSL1	15.9	2.71
CSL2	17.5	3.92
CSL3	19.1	5.89

*These results are for the 75W PAR38 baseline lamp. Additional results are available in Chapter 8 of the TSD.

In summary, DOE presents these findings to facilitate public review of the LCC and PBP analyses for this rulemaking. DOE seeks information and comments relevant to the assumptions, methodology, and results for all of these analyses. See Chapter 8 of the TSD for additional detail on the LCC and PBP analyses and results. For results of the Monte-Carlo model and other sensitivities refer to Appendix 8B of the TSD.

H. Shipment Analysis

This section presents the shipment analysis, which is an input into the national impact analysis (NIA) (section III.I) and manufacturer impact analysis (section III.K). DOE will undertake revisions to the NIA, conduct the final manufacturer impact analysis (MIA), and then report the findings from both in the NOPR.

As indicated above and in the NIA section below, DOE developed a base-case shipment forecast for each analyzed lamp type to depict what would happen to energy use, and to consumer costs for purchase and operation of lamps, in the absence of new or revised energy conservation standards. To evaluate the impacts of such standards for these lamps, DOE compares the estimated base-case projection against forecasted estimates of what would happen if DOE were to promulgate standards for GSFL and IRL. One common element in the base-case and standards-case forecasts is product shipments. In determining the base case, DOE considered historical shipments, the mix of efficacies sold in the absence of any new standards, and how that mix might change over time.

DOE developed separate shipment models for GSFL and IRL. The GSFL shipment model projects lumen growth by forecasting lumen demand serviced by GSFL lamp type in the commercial and industrial sectors. In accordance with historical shipment data, annual shipments are forecasted for 8-foot recessed double contact HO lamps in the industrial sector, and 4-foot medium bipin and 8-foot single pin slimline lamps in the commercial sector. Due to their relatively small shipment-based market share (approximately four percent) of the total GSFL market, DOE decided—for the ANOPR only—not to forecast shipments of or analyze the national impacts of standards on 2-foot U-shaped lamps. However, for the NOPR, DOE does intend to scale the NIA results from other product classes that were analyzed to the 2-foot U-shaped lamp product classes, to develop estimates of the NES and NPV for this lamp type. DOE may base the extrapolation of NIA results on relative market shares, average incremental prices for each lamp design, or average changes in energy consumption between lamp-and-ballast designs. DOE invites comment on which of these or other scaling relationships it should use for the NOPR.

The shipment model for IRL is based on the growth in the number of sockets using these light sources in the commercial and residential sectors. Based on manufacturer interviews, DOE forecasted shipments of IRL in both the commercial and residential sectors. DOE invites comment on the various sectors used to establish shipment forecast estimates for GSFL and IRL.

DOE followed a consistent four-step process to forecast shipments for GSFL and IRL. First, DOE used NEMA's historical shipment data from 2001 to 2005 to estimate total historical (NEMA member and non-NEMA members) shipments of each analyzed lamp type in the sectors described above. Second, using these historical shipments, DOE projected shipments to 2011. Then, based on average service lifetimes, DOE estimated a stock of lamps in 2011 for each lamp type. Third, DOE forecasted lamp (and ballast for GSFL) shipments from 2012 to 2042 (the analysis period for the NIA) by modeling various events, such as lamp replacement or new construction. Because these shipments are dependent on lamp and lamp-system properties (e.g., lifetime and lumen output), as a fourth step, DOE developed base-case and standards-case market-share matrices. These market-share matrices determine the forecasted technology mixes in the lamp stock and shipments. Each of these analytical steps in the shipment analysis is discussed in further detail below.

1. Historical Shipments

GE and NEMA both commented that historical shipment data should be used as an input to the fluorescent and incandescent lamp shipment models. (Public Meeting Transcript, No. 4.5 at p. 198; NEMA, No. 12 at p. 2) NEMA provided shipment data on GSFL and IRL spanning 2001 to 2005. Recognizing that these shipment figures cover only NEMA members, based on manufacturer interviews DOE increased these estimates slightly to account for the volume of fluorescent and incandescent lamps that are imported and/or manufactured by non-NEMA lamp companies. A list of lighting-related NEMA member companies and several lists including various lighting-related non-NEMA member companies can be found in Chapter 3 of the TSD.

Because certain ER and BR shaped IRL (BR 30 and BR40 65 Watt) are statutorily exempted from energy conservation standards, DOE used manufacturer product catalogs to estimate the market share of those exempted products. As research indicated that these exempted products constitute approximately 60 percent of all incandescent (non-halogen) IRL shipments, DOE accounted for this when using the NEMA historical shipments data. In addition, to model

lamp is 3,000 hrs while the baseline lamps for GSFL vary between 12,000 and 20,000 hours. In addition, operating hours for commercial IRL are comparable to the operating hours for commercial and industrial GSFL (3,450 for commercial IRL and 3,435 for commercial GSFL or 4,795 for industrial GSFL).

IRL operated in the commercial sector separately from those operated in the residential sector, DOE used a reflector lamp study conducted by the New York State Energy Research and Development Authority [57] with additional shipment data submitted by NEMA (NEMA, No. 17 at p. 2) [58] to estimate the percentage of incandescent and halogen IRL shipments by sector.

In addition, because GSFL of different correlated color temperatures (CCTs) were not segregated in the NEMA historical shipment data, DOE decided to analyze and forecast shipments of each lamp type, aggregating across the lamps of low (less than or equal to 4,500K) and high (greater than 4,500K) CCT. Similarly, DOE forecasts IRL shipments by aggregating across the standard-spectrum and modified-spectrum lamps. In both of these cases of aggregation, DOE used a representative product class to evaluate lamp designs and believes that the national impacts will be similar for those product classes not directly analyzed. Specifically, for GSFL, DOE used lamp designs with CCT less than or equal to 4,500K to represent both low-CCT and high-CCT lamps. For IRL, DOE used standard-spectrum lamp designs to represent the markets of both standard-spectrum and modified-spectrum reflector lamps. In addition, by aggregating the previously-discussed product classes, DOE assumes that there will be no significant migration of shipments or stock between lamps of different CCTs or spectrums. DOE invites comment on this aggregation of product classes in the shipment analysis and NIA. Details regarding scaling and usage of NEMA's historical shipments can be found in Chapter 9 of the TSD.

2. Shipment Projections to 2011 and Calculations of Stock of Lamps in 2011

DOE estimated shipments to 2011 for GSFL and IRL by linearly extrapolating historical shipment data (from 2001 to 2005) of each lamp type. In addition, DOE also accounts for efficacy standards (effective in 2008) for small diameter and ER and BR shaped lamps prescribed by EISA 2007. DOE expects that the result of these standards is that by 2008, all IRL shipments covered in this rulemaking will be of products using halogen technology. Because halogen lamps generally have longer lifetimes than their incandescent counterparts, and are therefore replaced (and shipped) less often, DOE has applied a reduction to its projection of IRL shipments after 2007. DOE invites comment on the shipment projections to 2011 for GSFL and IRL.

The stock of lamps in 2011 was estimated by summing annual shipments backward from 2011. For each lamp type, DOE summed shipments for the number of years that corresponds to the average lifetime of that lamp type. For GSFL, this initial lamp stock is converted into an initial lamp-and-ballast system stock. DOE extrapolated the ballast age profile of each lamp system type by considering historical shipments from census data for electronic and magnetic ballasts and historical growth in lumen demand. Since DOE determined that the 2011 lamp stock of 8-foot T8 recessed double contact HO are a small minority of the total GSFL stock, DOE disregarded this initial lamp stock in its shipment forecast. However, as discussed later, DOE did capture future shipments of these lamps as they replace 8-foot T12 recessed double contact HO systems. DOE invites comment on the methodology and data sources used to estimate initial lamp stocks in the year 2011, in particular its treatment on 8-foot T8 recessed double contact HO lamps.

3. Base-Case and Standards-Case Shipment Forecasts to 2042

The shipment models DOE developed for the ANOPR each consider specific market segments in developing their estimate of annual shipments. For all lamp types, DOE accounts for two lamp purchase events (corresponding to those discussed in Section III.G): (1) Lamp replacement following a lamp failure (Event I); and (2) new construction (Event V). In addition, for the GSFL shipment models, DOE models two additional lamp purchase events—lamp-and-ballast systems installed following a ballast failure (Event III), and lamp-and-ballast systems installed due to lamp system retrofit (an aggregation of Events II and IV).

ACEEE and the Joint Comment recommended that DOE should weigh the analytical results for GSFL by market segment. (Public Meeting Transcript, No. 4.5 at pp. 118–119; Joint Comment, No. 9 at p. 5) In response, DOE implicitly weighs the occurrence of new construction, retrofit, and replacement lamp sales based on stock turnover in the shipment model. DOE's determination of shipments due to new construction assumes a 1.6 percent per year lumen growth rate. DOE estimated a 1.6 percent per year lumen growth rate based on the latest CBECS data on growth of building floor space. Shipments due to ballast replacement are based on a ballast inventory model with a 14-year ballast lifetime in the commercial sector and a 10-year ballast lifetime in the industrial sector. To account for consumer reactions in response to higher total installed costs of certain systems, DOE assumes that the retrofit rates (or rates of early ballast retirement) of these systems increase as the CSLs increase. Finally, DOE calculated the market share of lamp replacements in the GSFL shipment model as a function of the average lamp lifetime of the lamp designs chosen. For more information, see Chapter 9 of the TSD.

GE and NEMA both recommended that DOE should develop its lamp shipment forecast based on lamp shipments, rather than a ballast inventory model. (Public Meeting Transcript, No. 4.5 at pp. 193–194; NEMA, No. 8 at p. 3) In response, DOE did use the lamp shipment data provided by NEMA and has calibrated its shipment models using historical shipment data. However, for the fluorescent lamp shipment analysis (and NIA), based on this historical lamp shipment data and 2002 and 2005 U.S. Census Bureau data, DOE developed a ballast inventory model for several reasons. For example, DOE needs to capture and track the anticipated decline in BF that would occur in the ballast inventory (or stock) in standards cases as discussed earlier. This decline in BF is critical to tracking the NIA calculations and results. Also, by modeling the ballast stock and its turnover, DOE was able to model the occurrence of lamp-and-ballast purchase events, as described earlier.

In their comments on the Framework Document, GE and the Joint Commenter emphasized the importance of accounting for wider fixture spacing of higher-lumen-output systems in the new construction/remodeling market. (Joint Comment, No. 9 at p. 5; Public Meeting Transcript, No. 4.5 at pp. 119–120) In response, DOE notes that the fluorescent shipment model's base-case and standards-case forecasts account for this effect by allowing installed systems to have a range of light outputs. DOE then normalizes the total lumen output due to new construction by decreasing or increasing the number of shipments

[57] New York State Energy Research and Development Authority, Incandescent Reflector Lamps Study of Proposed Energy Efficiency Standards for New York State (2006). (Last accessed October 7, 2006 at: *http://www.nyserda.org/publications/Report%2006-07-Complete%20report-web.pdf.*) The October 7, 2006 material from this Web site is available in Docket #EE–2006–STD–0131.

[58] This written comment, document number 17, was submitted in response to the Energy Conservation Program for Commercial and Industrial Equipment: High-Intensity Discharge (HID) Lamps and is available in Docket #EE–DET–03–001.

based on the average lumen output per system.

For IRL, the shipment forecasts are based on a stock turnover (i.e., lamp replacements upon lamp failure) and growth in the number of sockets in use (through new construction). DOE assumed a 1.6 percent growth rate in lamp sockets per year for the commercial sector and 1.3 percent growth rate per year for the residential sector. DOE based these estimates on the latest CBECS and RECS forecasts of square footage growth in these respective sectors. The rate of stock turnover from one lamp technology to another and the total number of shipments depend upon operating hours and the lifetimes of shipped lamps.

DOE also received comments from ACEEE and NEMA remarking that DOE should be aware of any clear trends in historical shipment data and that these trends should be reflected in the base-case shipment model. (Public Meeting Transcript, No. 4.5 at p. 194; NEMA, No. 12 at p. 2) DOE took these comments into account when developing its analytical approach, using the data on market trends provided by NEMA as well as manufacturer and expert interviews to establish base-case trends. For example, for GSFL, DOE mimicked historical trends and modeled a shift from magnetic to electronic ballasts in both the 4-foot medium bipin and 8-foot single pin slimline markets. For the 8-foot T12 recessed double contact HO lamp, DOE modeled it as having no new construction, because historical shipments have indicated that its market is relatively flat. In addition, DOE incorporated historical market trends in the GSFL model by controlling the types of systems shipped to account for new construction and retrofits. DOE invites further comments on other trends that should be modeled in its shipment forecasts, particularly for GSFL.

For IRL, a significant source of uncertainty in the base-case lamp forecasts involves the potential for rapidly-emerging new lighting technologies to enter the market. For example, the residential market is already being transformed by the rapid increase in reflector CFL sales. CFL can be three to four times more efficient and last several times longer than the incandescent lamps they are replacing. Assumptions made in the base-case lamp forecast about any change in market share for CFL greatly impact the energy savings and NPV benefits that could result from standards. Yet in comparison to solid-state lighting (SSL) sources,[59] CFL are a ''mature'' technology, with relatively predictable price, efficacy, and lifetime attributes. Technology forecasts about the potential attributes of SSL sources suggest that they may achieve efficacies twice that of CFL and may last up to ten times longer. Clearly, if SSL technology achieved such promise, it would radically impact the benefits calculations from potential standards. However, in order to calculate the energy savings and NPV benefits, DOE would need to accurately forecast the anticipated price and performance points of an emerging technology such as SSL, which would be extremely difficult and speculative.

Therefore, in this rulemaking, DOE plans to account for the market impact of these emerging technologies in the NIA by deducting the anticipated emerging technology market share from the installed base. DOE would estimate the market shares of these technologies in the future (absent standards) by deducting that market share from the base case of impacted customers. This methodology would effectively reduce the size of the market impacted by energy conservation standards, without requiring DOE to prepare estimates of the price and efficacy of those emerging technologies for the NIA model. Thus, DOE could incorporate the impact of emerging technologies in the base-case and standards-case, without having to prepare uncertain forecasts for those emerging technologies. DOE believes that reducing the number of affected consumers is the most appropriate approach for this rulemaking because: (1) the efficacies of the emerging technologies are projected to be much higher than those that can be achieved by incandescent-based lamps; and (2) the emerging technology lamps are not yet subject to any DOE regulation, and, therefore, consumers would be migrating to non-covered, substitute lamps.

For the ANOPR, DOE is estimating that the market penetration of these emerging technologies (e.g., SSL, Ceramic Metal Halide, CFL) will be 50% of the IRL sockets in the installed base by the year 2042. DOE requests comment on this methodology used in the ANOPR for incorporating emerging technologies in the base-case forecasts. In addition, DOE seeks input on reasonable market-share estimates for GSFL and IRL in order to properly bound the range of potential energy savings and NPV that would result from standards.

[59] ''SSL source'' refer to a lighting technology using light-emitting diodes (LEDs).

4. Market-Share Matrices

As discussed in the engineering analysis (Section III.C) and the LCC analysis (section III.G), consumers have available to them a variety of choices in terms of lamps and lamp systems. When choosing lighting systems, consumers often make their choice after considering lamp attributes such as lifetime, efficacy, price, lumen output, rated wattage, and total system power. As discussed earlier, the shipments for GSFL and IRL depend on input assumptions, including lamp lifetime and system lumen output. In addition, other lamp or lamp-system properties such as price and energy consumption are key inputs to the NES and NPV calculations. Therefore, within each product class, DOE believes it necessary to directly account for the mix of technologies which consumers select in the base case and standards case. In order to account for the range of possible consumer choices, DOE developed and populated technology market-share matrices. These market-share matrices allocate percentage market shares to each of the lamp technologies for the base case and standards case, either by proportioning lamp shipments or lamp stocks. As discussed in the NIA (Section III.I), the base-case and standards-case efficacy forecasts are also dependent on the market-share matrices.

a. General Service Fluorescent Lamps

The GSFL shipment model incorporates several separate market-share matrices to characterize shipments of lamps and lamp-and-ballast systems at different times during the analysis period. For each analyzed system type (e.g., 4-foot T8 medium bipin), DOE defines market-share matrices for the ballasts installed before 2012 versus new ballasts installed in 2012 and later. This enables the GSFL shipment model to capture a migration to different lamp-and-ballast designs over time in both the base and standards cases.

At the Public Meeting, PG&E commented that, by the effective date of the standard, it is expected that commercial fluorescent lighting fixtures will be considerably improved. (Public Meeting Transcript, No. 4.5 at p. 113) In addition, NWPCC generally commented that typical BFs may change between the current stock and the stock in 2012. (Public Meeting Transcript, No. 4.5 at p. 175) In response, DOE recognizes that fluorescent lighting systems will likely improve and that the ballast factors (BFs) may change over time. DOE populated the 2012 base-case market-share matrix (including BFs) based on

discussions with industry experts, manufacturer interviews, and a review of available products. DOE can alter the inputs into the base-case market-share matrix (the technology mix in 2012) to reflect any level of improvement in lighting fixtures by 2012. In addition, the base-case GSFL shipment forecast has the ability to model improvement in lighting systems and shifts in BFs after 2012. Furthermore, if the public were to present alternative forecast scenarios to those considered for the ANOPR, the matrices are designed such that these alternative scenarios could be modeled for the NOPR.

In addition, for the standards-case market-share matrices, DOE implemented two shipment scenarios for fluorescent lamps: (1) ''roll-up,'' and (2) ''shift.'' The ''roll-up'' scenario represents the standards case assuming all product efficacies in the base case which do not meet the standard would ''roll-up'' to meet the new standard level. Those that were above the standard level are considered unaffected and continue to purchase the same base-case lamp or lamp system. The ''roll-up'' scenario characterizes consumers primarily driven by the first-cost of the lamp, and they are restricted to replacing their base-case lamp with an equal wattage lamp when possible. The ''roll-up'' scenario, therefore, represents a lower bound of energy-savings scenario.

The ''shift'' scenario models the standards case assuming all product efficacies are affected by the standard (whether or not their base-case efficacy meets the standard). This scenario, in which consumers are driven by both lamp cost and energy savings, results in an upper bound energy-savings scenario. A detailed description of the two fluorescent standards-case scenarios can be found in Chapter 9 of the TSD. DOE invites comment on the populated GSFL market-share matrices in the base-case and both standards-case scenarios.

To illustrate the above approach, Table III.29 presents an example of a market-share matrix for the GSFL shipment model. This matrix characterizes the technology mix of new 4-foot T8 medium bipin lamp-and-ballast systems shipped in 2012 and 2042 in the base case and at CSL 3 under the shift scenario. Shipments of new systems in the intermediate years can be characterized by a linear progression from the 2012 technology mix to the 2042 technology mix. A separate market-share matrix exists for 4-foot T8 medium bipin lamp purchases on pre-existing ballasts. For this new system market-share matrix, the lamp-and-ballast designs were generated by pairing each lamp with the three ballasts with the most common BFs (0.88, 0.78, and 0.75) in the 4-foot T8 medium bipin market. This produces both energy-saving and non-energy-saving options. In the standards-case scenario shown, consumers then shift to reduced-wattage lamps and/or lower BFs.

TABLE III.29.—FOUR-FOOT T8 MEDIUM BIPIN MARKET-SHARE MATRIX UNDER THE SHIFT SCENARIO

Mix of New Lamp-and-Ballast Systems Purchased					
CSL	Lamp-and-ballast design	Base case		CSL3	
		2012 (percent)	2042 (percent)	2012 (percent)	2042 (percent)
Electronic Ballast Factor					
0.88					
2	32.5 W, 86.2 lm/W	43	8	.....	.....
3	32.5 W, 90.8 lm/W	29	10	0	0
4	32.5 W, 92.3 lm/W	11	14	0	0
4	30 W, 92.3 lm/W	0	3	11	14
5	32.5 W, 95.4 lm/W	7	12	7	12
5	28 W, 97.3 lm/W	0	3	0	3
5	25 W, 96 lm/W	0	4	0	0
0.78					
2	32.5 W, 86.2 lm/W	0	4	.....	.....
3	32.5 W, 90.8 lm/W	0	0	43	8
4	32.5 W, 92.3 lm/W	0	6	29	10
4	30 W, 92.3 lm/W	2	6	0	0
5	32.5 W, 95.4 lm/W	0	6	0	0
5	28 W, 97.3 lm/W	3	7	0	4
5	25 W, 96 lm/W	0	4	3	7
0.75					
2	32.5 W, 86.2 lm/W	0	0	.....	.....
3	32.5 W, 90.8 lm/W	0	0	0	10
4	32.5 W, 92.3 lm/W	0	0	0	9
4	30 W, 92.3 lm/W	2	6	0	0
5	32.5 W, 95.4 lm/W	0	0	0	0
5	28 W, 97.3 lm/W	3	7	7	19
5	25 W, 96 lm/W	0	0	0	4
Total		100	100	100	100

b. Incandescent Reflector Lamps

Similar to the GSFL model, the IRL shipment model use market-share matrices to project shipments. The IRL commercial and residential shipment models separately designate stock technology mixes in the years 2012 and 2042. These market-share matrices also present the available lamp designs in the standards case for which the stock technology mix is also characterized in one intermediate year. DOE developed percentage inputs for the IRL market-share matrices based on an examination of manufacturer product catalogs,

historical shipment information, and interviews with manufacturers.

Table III.30 presents an example of a market-share matrix for the commercial IRL shipment model. This matrix characterizes the stock technology mix of IRL in the years 2011 and 2042 in the base case, and in the years 2013 and 2042 at CSL 2. DOE chooses to characterize the stock in 2013 because DOE projects that by then the majority of the base-case commercial IRL stock would have turned over to be standards compliant. In the base case, DOE predicts a decline in halogen technology lamps and a rise in more-efficient HIR lamps. At CSL 2, all IRL must meet an HIR standard.

TABLE III.30.—MARKET-SHARE MATRIX FOR COMMERCIAL IRL SOCKETS

Candidate standard level	Lamp design	Percentage stock in 2011 (Base case input only)	Percentage of stock in 2013 (Standards case input only)	Percentage of stock in 2042
Base Case	90 W, 14.6 lm/W, 2500 hrs, Halogen	33		21
	75 W, 14.0 lm/W, 2500 hrs, Halogen	26		16
	50 W, 11.6 lm/W, 3000 hrs, Halogen	22		14
	70 W, 18.0 lm/W, 3000 hrs, HIR	8		21
	60 W, 17.5 lm/W, 3000 hrs, HIR	6		16
	41.3 W, 15.0 m/W, 3000 hrs, HIR	5		14
	Total	100		100
CSL2	70 W, 18.0 lm/W, 3000 hrs, HIR		41	41
	60 W, 17.5 lm/W, 3000 hrs, HIR		32	32
	41.3 W, 15.0 m/W, 3000 hrs, HIR		27	27
	Total		100	100

In addition to modeling one main scenario for IRL shipments, in order to capture the range of NES and NPV results possible, DOE created two sensitivity scenarios in the IRL shipments analysis. In one sensitivity scenario (termed ''65 Watt BR lamp substitution'') in the standards case, DOE models a migration away from covered IRL toward exempted 65 Watt BR 30 and 65 Watt BR 40 lamps. As discussed earlier, EISA 2007 extended energy conservation standards coverage to certain ER and BR while exempting others. DOE believes that as the efficacy standards for IRL increase, some consumers who would normally purchase a covered IRL may instead choose to purchase a higher-wattage, lower-first-cost, exempted 65 Watt BR lamp. Although these exempted lamps do not fall under the scope of this rulemaking, DOE has included a sensitivity scenario incorporating this potential outcome, because it affects NES and NPV results. Further discussion of this 65 Watt BR lamp substitution sensitivity scenario can be found in Chapter 9 and Appendix 9A of the TSD.

Regarding the second standards-case sensitivity scenario modeled, EEI commented that consumers may choose to purchase a higher-wattage lamp rather than a reduced-wattage lamp. (EEI, No. 7 at p. 1) If this were to happen, consumers would operate lamps in the standards case that gave them more lumens than they are modeled to be using in the base case. To represent this scenario, DOE created a ''10-percent lumen increase'' sensitivity scenario, which assumes that the residential IRL market, on average, would produce ten percent more lumens under standards scenarios. To achieve this increase in lumens, DOE models a portion of IRL purchases at reduced wattages and others at constant or higher wattages. Appendix 9A of the TSD presents both the market-share matrix and results associated with this scenario.

Chapter 9 and Appendix 9A of the TSD presents all of the market-share matrices used in the shipment models for GSFL and IRL. DOE requests specific comment on the detailed matrices which represent the underlying input assumptions for each of the shipment scenarios and lamp types.

5. Shipment Forecast Results

Table III.31 and Table III.32 present the results of the base-case shipment forecasts for GSFL and IRL, respectively. In those tables, values provided for the years 2001 to 2005 present historical shipment data, whereas the 2006 to 2011 shipments are linear extrapolations from the historical shipments. The shipments estimated for 2012 to 2042 are the projected unit shipments generated by the shipment models. This section includes a general discussion of the market dynamics impacting shipments in the standards cases. Chapter 9 of the TSD provides the detailed numerical output of the standards-case shipment forecasts.

For GSFL, in accordance with historical shipment data, shipments of 4-foot T12 medium bipin and 8-foot T12 single pin slimline lamps in the base case are expected to decline as the magnetic ballasts on which those lamps are installed are no longer sold. These retired 4-foot T12 medium bipin and 8-foot T12 single pin slimline systems are expected to be replaced with 4-foot T8 medium bipin lamp-and-ballast systems, respectively. In addition, DOE forecasts that 90 percent of 8-foot T12 single pin slimline systems will be replaced with 4-foot T8 medium bipin lamp systems, and 10 percent will be replaced with 8-foot T8 single pin slimline systems. This effect, along with the 4-foot T8 systems purchased for new construction, account for the expected increase in 4-foot T8 and 8-foot T8 shipments. The base-case shipment forecasts of 8-foot T12 recessed double contact HO are depicted as constant, similar to the historical shipments.

The standards-case forecasts experience similar trends, though at modified rates. At CSL1, CSL2, and CSL3, the early retrofit rates of 4-foot T12 medium bipin and 8-foot T12 single pin slimline systems are expected to increase, thereby accelerating the reduction in those shipments while increasing shipments of 4-foot T8 medium bipin and 8-foot T8 single pin slimline shipments. Because voluntary retrofits are not incorporated in the 8-foot T12 recessed double contact HO model, the standards-case shipment forecasts of these lamps at CSL1, CSL2,

and CSL3 are similar to the base-case forecast. In addition, because at CSL 4 and CSL 5, 4-foot T12 medium bipin, 8-foot T12 single pin slimline, and 8-foot T12 recessed double contact HO lamps are no longer standards-compliant, these systems are automatically retrofitted upon lamp failure.

TABLE III.31.—GSFL SHIPMENTS IN THE BASE CASE

[Millions]

Year	4-foot T12 medium bipin	4-foot T8 medium bipin	8-foot T12 single pin slimline	8-foot T8 single pin slimline	8-foot T12 recessed double contact HO
2001	236	182	48	5	27
2003	202	191	41	6	27
2005	181	240	37	6	28
2007	151	262	32	7	27
2009	122	292	26	7	27
2012	111	425	17	9	31
2015	71	479	10	9	31
2020	22	584	3	10	31
2025	.....	657	.....	10	31
2030	.....	705	.....	10	31
2035	.....	775	.....	10	31
2040	.....	874	.....	10	31
2042	.....	889	.....	10	31
Cumulative (2012–2042)	556	20,812	78	305	971

The forecasted shipments beyond the year 2011 of covered IRL (exempted BR and ER lamps are not included) are shown in Table III.32. As demonstrated below, the shipments shown decrease over the analysis period. There are two reasons why DOE projects shipments to decrease: (1) Increased penetration of CFL and other long-lived emerging technologies; and (2) historical growth in IRL stock (approximately 8 to 10 percent annually) which is significantly higher than the historical growth rate in building floor space (i.e., 1.6 percent annually in the commercial sector and 1.3 percent annually in the residential sector). Given this inconsistency in growth rates, DOE believes this high historical growth rate in IRL stock is unsustainable in the long term, so DOE has tentatively decided to instead base IRL socket growth after 2011 on the historical growth in building floor space. This decrease in stock growth contributes to the expected decline in IRL shipments.

In the standards case, shipments of IRL in both the commercial and residential sectors are generally expected to decrease relative to the base case, as longer-lived HIR and improved HIR lamps are incorporated into the installed stock. In addition, for the 65 Watt BR lamp substitution scenario, shipments of covered IRL decrease relative to the base case due to the migration to exempted 65 Watt BR lamps.

TABLE III.32.—IRL SHIPMENTS IN THE BASE CASE

[Millions]

Year	Commercial	Residential
2001	67	66
2003	71	70
2005	83	85
2007	89	93
2009	92	85
2012	98	99
2015	98	98
2020	96	96
2025	94	93
2030	90	88
2035	86	83
2040	80	76
2042	77	74
Cumulative (2012–2042)	2,814	2,770

Additional detail on the shipments analyses can be found in Chapter 9 of the TSD.

I. National Impact Analysis

The national impact analysis (NIA) assesses cumulative national energy savings (NES) and the cumulative national economic impacts of candidate standards levels. The analysis measures economic impacts using the net present value (NPV) metric, which represents the net present value (i.e., future amounts discounted to the present) of total customer costs and savings expected to result from new standards at specific efficacy levels. For a given CSL, DOE calculated the NPV, as well as the NES, as the difference between a base case and the standards-case forecasts. Detailed information on the national impacts analysis can be found in Chapter 10 of the TSD.

DOE determined national annual energy consumption as the product of the annual energy consumption per unit lamp system and the number of total units in the installed stock. The per-unit annual energy consumption is a function of lamp efficacy and lamp wattage (and BF in the case of the GSFL). TSD Chapter 6, *Energy-Use Characterization,* describes how the per-unit energy consumption varies as a function of efficacy for each of the considered lamps. Cumulative energy savings are the sum of the annual NES determined over a specified time period. DOE calculated net economic savings each year as the difference between total operating cost savings and increases in total installed costs. Cumulative economic savings are the sum of the annual NPVs determined over a specified time period.

1. Approach

In the standards case, more-efficacious products gradually replace less-efficacious products over time. This affects calculations of both the NES and NPV, which are both a function of the total number of units in use and their efficacies, and thus depend on annual shipments and the lifetime of a product. Both calculations start by first estimating the installed lamp stock. As discussed in section III.H (Shipments Analysis), new lamps (or, for GSFL, new lamp-and-ballast systems) shipped over time are specified by market-share matrices. These shipments are tracked through the analysis period to establish the installed stock of lamps.

In the standards case, given that most consumers are likely to install lamp systems with energy consumption less than or equal to their base-case systems, the energy consumption per unit of capacity used by the products in service gradually decreases in the standards case relative to the base case. To estimate the resulting national energy savings at each CSL, DOE followed a four-step process. First, DOE calculated the national site-energy [60] consumption for GSFL and IRL for each year, beginning with the expected effective date of the standards (2012) for the base-case forecast and each standards-case forecast. Second, DOE determined the annual site-energy savings, consisting of the difference in site-energy consumption between the base case and the standards case. DOE also estimated and reported additional heating, ventilating, and air conditioning (HVAC) interaction savings associated with increased lamp efficacy in the commercial sector. Third, DOE converted the annual site-energy savings into the annual amount of energy saved at the source of electricity generation (i.e., primary energy), using a site-to-source conversion factor that varies by year (calculated from AEO 2007 projections). Finally, DOE summed the annual source-energy savings from 2012 to 2042 to calculate the total NES for that period.

To estimate NPV, DOE calculated the net impact each year as the difference between total operating cost savings (or the electricity cost savings) and increases in total installed costs (which consist of manufacturer selling price, sales taxes, and installation cost). DOE calculated the national NPV at each CSL using a three-step process. First, DOE determined the total product costs under the standards case and the base case from the total installed cost (including product prices, installation, and replacement costs as discussed in section III.G.2.a) and shipments of lamps (or lamp-and-ballast systems). Second, DOE determined the total operating costs in the base case and standards case from electricity prices and the stock of lamps and lamp systems. Third, DOE determined the difference between the net operating cost savings and the net product cost increase to get the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2007 for lamps bought during the analysis period (2012 to 2042) and summed the discounted values to provide the NPV of a CSL. An NPV greater than zero shows net savings (i.e., the CSL would reduce customer expenditures relative to the base case in present-value terms). An NPV that is less than zero indicates that the CSL would result in a net increase in customer expenditures in present-value terms.

2. Base-Case and Standards-Case Forecasted Efficacies

A key aspect of the estimates of NES and NPV is the proportion of future lamp shipments meeting different efficacies for the base case (without new standards) and each of the standards cases (with new standards). Because key inputs to the calculation of the NES and NPV are dependent on the estimate of the efficacies shipped, it is important to know the projected efficacy-distribution of lamp shipments. However, with regard to the calculation of the NES, it is also important to note that the total energy savings per unit is not solely dependent on the lamp efficacy, but also on the lamp wattage (and BF for fluorescent lamps). Because most consumers select lamp wattage when purchasing lamps, per-unit energy consumption for a particular standards-case purchase is not necessarily less than per-unit energy consumption for the corresponding base-case purchase. For example, a higher-efficacy lamp can be purchased at the same wattage under the standards case, thereby increasing lumen output without reducing energy consumption. On the other hand, by installing an equally-efficacious fluorescent lamp on a ballast with a lower BF, the outcome can be a positive energy savings for that system. As discussed in section III.H, the lamp systems available in the shipments forecast, and ultimately in the NIA, incorporate consumer choices that encompass both energy-saving and non-energy-saving options.

Also discussed in the shipments analysis (section III.H), the base-case and standards-case forecasted efficacies are primarily determined by inputs into the market-share matrices in both the fluorescent and incandescent NIA models. As exemplified in Table III.33, the base-case efficacy forecast of 4-foot medium bipin and 8-foot single pin slimline lamps show a gradual increase in average efficacy due to both the phasing out of T12 ballasts and the penetration of higher-efficacy T8 lamps. As T12 lamps are generally less efficacious than their T8 counterparts, the market shift toward T8 lamp-and-ballast systems causes an overall increase in efficacies of shipped fluorescent lamps. In addition, as T12 magnetic ballasts generally have higher system powers than their electronic T8 counterparts, average system power decreases overall. Due to the banning of magnetic ballasts by the 2000 Fluorescent Ballast rulemaking, by the year 2025, all magnetic T12 ballasts are expected to have retired from the installed stock, and the increase in average lamp efficacy and decrease in average system power slows. Because the installed stock of the 8-foot recessed double contact HO lamp market is already predominantly operating on electronic ballasts, the increase in average lamp efficacy and decrease in average system power is solely due to the penetration of more-efficacious or reduced-wattage lamps being installed on lower ballast factor ballasts.

[60] ''Site energy'' is the energy consumed by the lamp systems directly as they are operated at the end-use site.

TABLE III.33.—BASE-CASE AVERAGE LAMP EFFICACY AND SYSTEM POWER OF THE GSFL STOCK

Year	4-foot medium bipin		8-foot single pin slimline		8-foot recessed double contact HO	
	Average efficacy *lm/W*	Average system power * *W*	Average efficacy *lm/W*	Average system power ** *W*	Average efficacy *lm/W*	Average system power † *W*
2012	87.9	93	91.3	135	83.0	198
2015	88.9	89	92.6	129	83.0	197
2020	90.0	85	95.7	116	83.3	197
2025	90.7	84	97.5	110	83.7	196
2030	91.3	82	98.0	109	84.1	194
2035	91.9	81	98.4	108	84.5	193
2042	92.8	79	99.1	107	85.0	192

* 4-foot medium bipin systems are lamp systems composed of either one or two ballasts and three lamps.
** 8-foot single pin slimline systems are lamp systems composed of one ballast and two lamps.
† 8-foot recessed double contact systems are lamp systems composed of one ballast and two lamps.

Improvement in stock efficacy for IRL is driven by shifts to more-efficacious HIR technologies. For IRL, as discussed in the Shipments Analysis (see section III.H.3), DOE reports only the improvement in efficacy of the lamp sockets not migrating to non-IRL emerging technologies such as solid-state lighting or ceramic metal halide. As demonstrated in Table III.34 the average efficacy of the installed stock of IRL is expected to increase during the analysis period.

TABLE III.34.—BASE-CASE AVERAGE LAMP EFFICACY OF THE IRL STOCK

Year	Average efficacy *lm/W*
2012	13.7
2015	13.8
2020	13.8
2025	13.8
2030	13.9
2035	13.9
2042	13.9

DOE invites comment on the base-case efficacy forecasts of GSFL and IRL.

3. *National Impact Analysis Inputs*

Table III.35 summarizes the major inputs to the NES and NPV spreadsheet models. For each input, the table provides a brief description of the data source. For details on the entire national impact analysis, see Chapter 10 of the ANOPR TSD.

TABLE III.35.—NATIONAL ENERGY SAVING AND NET PRESENT VALUE INPUTS

Input data	Data description
Shipments	Annual shipments from the GSFL and IRL shipment models (see TSD Chapter 9, Shipments Analysis).
Stock of Lamps	Established based on the 2011 lamp stock, the service life of lamps and/or ballasts, and the annual shipments. The initial stock is based on historical shipments and projected shipments from 2006 to 2011. (See TSD Chapter 9, Shipments Analysis).
Effective Date of Standard	2012.
Analysis Period	2012 to 2042.
Unit Energy Consumption (kWh/yr)	Established in the Energy-Use Characterization, TSD Chapter 6, by lamp or lamp-and-ballast design and sector.
Total Installed Cost	Established in the Product Price Determination, TSD Chapter 7 and the LCC Analysis, TSD Chapter 8, by lamp-and-ballast designs.
Electricity Price Forecast	2007 EIA Annual Energy Outlook forecasts (to 2030) and extrapolation for beyond 2030 (see TSD Chapter 8).
Electricity Site-to-Source Conversion	Conversion varies yearly and is generated by 2007 EIA Annual Energy Outlook forecasts (to 2030) of electricity generation and electricity-related losses. Conversion factors for beyond 2030 are extrapolated.
HVAC Interaction Savings	6.25% of total energy savings in the commercial sector.
Rebound Effect	1% of total energy savings in the commercial sector. 8.5% of total energy savings in the residential sector.
Discount Rate	3 and 7 percent real.
Present Year	Future costs and savings are discounted to the year 2007.

Inputs for the calculation of NES identified in Table III.35 include the analysis period, per-unit annual energy consumption, shipments, lamp stock, site-to-source conversion factors, rebound effect, and heating/ventilating/air conditioning (HVAC) interaction savings. The following discussion provides further context and information on these inputs.

One of the critical inputs to the NES and NPV calculations is the analysis period. DOE received several comments at the Framework Meeting regarding the appropriateness of 30 years as the duration of the analysis period for a fluorescent and incandescent lamp NES. Both GE and PG&E commented that because the life-cycle of fluorescent lighting systems is approximately 15 or 20 years, a 30-year analysis period is too long in the commercial sector. In addition, GE commented that although incandescent lamps are often upgraded much sooner than 20 years, a 20-year analysis period could be used for

consistency with the GSFL analysis. (Public Meeting Transcript, No. 4.5 at pp.204–205) ACEEE commented that DOE should use a 30-year analysis period for consistency with other rulemaking analyses. (Public Meeting Transcript, No. 4.5 at pp. 205–206) In response, DOE recognizes that the life-cycle of GSFL systems and IRL are all estimated to be less than 30 years; however, DOE has tentatively decided to use an analysis period from 2012 to 2042 for consistency with the shipment and national impact analyses of other rulemakings.

Annual energy consumption per lamp system is used to calculate the annual national energy consumption. For IRL, the lamp system is solely composed of the incandescent lamp. For GSFL, DOE received a comment from EEI urging DOE to consider system energy consumption in the fluorescent lamp national impact analysis. EEI emphasized that the ballast determines the energy savings in many situations. (EEI, No. 7 at p. 1) DOE recognizes the significance of EEI's comment and has incorporated this approach into its analysis. Accordingly, for the ANOPR, DOE considered GSFL lamp-and-ballast pairs, or systems, in constructing its national impact analysis. Section III.D, *Energy-Use Characterization*, provides the energy consumption of each lamp-and-ballast pairing used in the national impact analysis.

The lamp stock in a given year is the number of lamps shipped from earlier years to the present and which survive in the given year. The NIA spreadsheet model keeps track of the number of units shipped each year. As discussed in Section III.H, *Shipments Analysis*, DOE develops its forecasted shipments for the base case from the initial stock of fluorescent and incandescent lamps in the year before the effective date of the standard (i.e., 2011).

For both GSFL and IRL, DOE developed market-share matrices illustrating the technology migration of the stock. The growth in stocks (either by lumen demand or by number of sockets in the field) and the average lumen output per lamp result in a forecasted lumen output for the commercial GSFL, industrial GSFL, commercial IRL, and residential IRL markets over the analysis period. If DOE receives comment that over-lighting or under-lighting in any of the markets will result in a decrease in total shipments and total stock, DOE may make such a stock adjustment for the NOPR. DOE invites comment on this issue.

The site-to-source conversion factor is the multiplicative factor DOE uses for converting site-energy consumption (the energy used at the end-use site) into primary or source energy consumption (the energy used at the source before transmission or conversion losses). For electricity, the conversion factors vary over time due to projected changes in generation sources (i.e., the power plant types projected to provide electricity to the country). For the ANOPR, DOE calculated annual average site-to-source conversion factors using EIA's AEO2007. The conversion factors were derived by dividing the total energy used to produce electricity in each forecast year in the United States, as indicated in AEO2007, by the total electricity delivered for each forecasted year. For example, the site-to-source conversion factor in 2012 is calculated to be 10,680 BTU/kWh.

DOE received multiple comments regarding the HVAC system interaction with fluorescent lighting fixtures in the commercial sector. EEI commented that DOE should account for this interaction (both the reduction of AC loads and increase in heating loads) as an effect of the standard in its national impacts analysis. (EEI, No. 7 at p. 1; Public Meeting Transcript, No. 4.5 at p. 242) In addition, EEI noted that a trend toward higher-efficacy HVAC systems may lower this HVAC interaction with lighting. (Public Meeting Transcript, No. 4.5 at pp. 159–160) Based on this comment, DOE has decided to include HVAC interaction in its calculation of the NES (but not in the NPV calculation). To account for HVAC energy savings, DOE used the analysis completed by the 2000 Fluorescent Ballast rulemaking, which calculates an HVAC interaction energy savings of 6.25 percent of total energy savings.[61] As EEI suggested, this analysis incorporates changes in both heating and cooling loads as a result of the standard. The analysis also involved calculating the lighting HVAC interaction energy savings on buildings built before 1989 (5 percent of total energy savings) and ones built from 1990 to 1995 (10 percent of total energy savings). The ballast analysis assumed that over the analysis period, the building stock would move from the 5 percent interaction factor towards the 10 percent interaction factor. Using simple scaling methods, 6.25 percent was used as an average interaction over the entire analysis period. Using this same methodology for lamps, an analysis period ranging from 2012 to 2042 would have a slightly higher HVAC energy savings. However, DOE acknowledges EEI's comment that the overall HVAC savings with lighting may also decrease due to more-efficient heating and cooling systems. Considering these competing factors, DOE believes it is reasonable to use 6.25 percent of total energy savings as the HVAC energy savings in commercial sector for both GSFL and IRL.

NWPCC commented that due to the increasing prevalence of air conditioning systems, it would be worthwhile to analyze the heating load of incandescent lamps on the HVAC systems in the residential sector. (Public Meeting Transcript, No. 4.5 at pp. 162–163) GE then responded that incandescent lamps have a minor effect on HVAC energy usage, so such an analysis is not warranted. (Public Meeting Transcript, No. 4.5 at p. 163) While DOE appreciates NWPCC's comment, DOE believes that IRL will have a minor effect on HVAC energy usage in the residential sector. Therefore, DOE has not included that interaction in the NES analysis. DOE invites further comment on the issue of HVAC interaction in both the commercial and residential sectors.

In its analysis, DOE considered the rebound effect[62] that occurs after installation of energy-efficient lighting equipment. DOE examined a summary of the literature regarding the rebound effect in relation to lighting equipment.[63] Based on four studies, the summary estimated that, for a 100 percent increase in energy efficiency, values of ''take-back'' or rebound for residential lighting are between five and twelve percent of the energy consumption savings. In addition, with regards to a firm's response to higher-efficiency lighting, the summary estimated zero to two percent for values of rebound for lighting. Therefore, in the calculation of national energy savings due to energy conservation standards on lighting, DOE used a rebound rate of 8.5 percent in the residential sector and one percent in the commercial and industrial sectors. However, DOE notes that the summary of the literature reports that the results of rebound due

[61] U.S. Department of Energy Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Technical Support Document: Energy Efficiency Standards for Consumer Products: Fluorescent Lamp Ballast Proposed Rule: Appendix B, pp. B–23–B–30 (Jan. 2000). Available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/appendix_b.pdf*

[62] Under economic theory, ''rebound effect'' refers to the tendency of a consumer to respond to the cost savings associated with more efficient equipment in a manner that actually leads to marginally greater product usage, thereby diminishing some portion of anticipated energy savings related to improved efficiency.

[63] Greening, L.A., D.L. Greene, and C. Difiglio, ''Energy efficiency and consumption—the rebound effect—a survey,'' 28 *Energy Policy* (2000), pp. 389–401.

to lighting are inconclusive. Thus, DOE invites comments on both the inclusion and magnitude of the rebound effect for purposes of analyzing the expected effects of this regulation.

The take-back in energy consumption associated with the rebound effect provides consumers with increased value (e.g., increased lighted hours, since the increased efficiency enables consumers to use their lighting equipment for longer periods of time). The impact on consumers is, thus, the sum of the change in the cost of owning the lighting equipment (i.e., life-cycle cost) and the increased value for the longer lit hours. However, DOE is unable to monetize this increase in consumer value in the LCC analysis. DOE believes that, if it were able to monetize the increased value to consumers added by the rebound effect, this value would be at least as great as the value of the foregone energy savings. For this analysis, DOE estimates that this value is equivalent to the monetary value of the energy savings that would have occurred without the rebound effect. Therefore, the economic impacts on consumers with or without the rebound effect, as measured in the LCC and NPV analyses, are the same.

The inputs to the NPV calculation are total installed cost per unit, annual operating cost savings per unit, total annual installed cost increases, total annual operating cost savings, discount factor, present value of increased installed costs, and present value of operating cost savings.

As discussed in section III.E, DOE has collected prices for GSFL and IRL with varying wattages, efficacies, and lifetimes. In addition, for GSFL, ballast prices are included in the analysis. The total installed cost per unit, as described in section III.G, consists of these manufacturer selling prices, labor costs, and sales tax.

The annual operating cost savings per unit incorporates changes in electricity costs due to a standard efficacy level and lower energy consumption per unit. As described previously, DOE forecasted the per-unit annual electricity consumption. DOE forecasted electricity prices based on EIA's AEO2007. By using both of these values, DOE is able to establish the annual operating cost savings per unit.

The total annual installed cost increase is equal to the annual change between the base case and standards case in the product of per-unit total installed cost multiplied by the shipments forecasted of each lamp or lamp-and-ballast design. The total annual operating cost savings are equal to the change in the product of annual operating costs per unit and the total lamp stock by lamp or lamp-and-ballast design.

DOE multiplies monetary values in future years by the discount factor to determine the present value. DOE estimated national impacts using both a three-percent and a seven-percent real discount rate as the average real rate of return on private investment in the U.S. economy. DOE uses these discount rates in accordance with Office of Management and Budget (OMB) guidance to Federal agencies on the development of regulatory analysis (OMB Circular A–4, September 17, 2003), and section E, ''Identifying and Measuring Benefits and Costs,'' therein. DOE defines the present year as 2007.

The present value of increased installed costs is the annual installed cost increase in each year (i.e., the difference between the standards case and base case), discounted to the present, and summed for the time period over which DOE is considering the installation of product (i.e., from the effective date of standards, 2012, to the year 2042). The increase in total installed cost refers to both product cost and installation cost associated with the higher energy efficacy of product purchased in the standards case compared to the base case.

The present value of operating cost savings is the annual operating cost savings (i.e., the difference between the base case and standards case) discounted to the present, and summed over the period from the effective date, 2012, to the time when the last unit installed in 2042 is retired from service. Savings are decreases in operating costs associated with the higher energy efficacy of products purchased in the standards case compared to the base case. Total annual operating cost savings is the savings per unit multiplied by the number of units surviving in a particular year.

4. National Impact Analysis Results

Tables III.36 through Table III.38 present the NES results (including rebound effect and HVAC interactions where applicable) for each CSL considered for GSFL and IRL. As mentioned in Section III.H, due to the relatively small shipments-based market share of 2-foot U-shaped lamps, national impact results for 2-foot U-shaped lamps are not presented in the ANOPR. However, DOE does intend to estimate NES and NPV results for these product classes in the NOPR. In addition, the following NES and NPV values provide results for lamps of all covered CCT for GSFL. For IRL, the results are representative for both the standard-spectrum and modified-spectrum lamps.

As mentioned earlier in sections III.H.3 and III.H.4, in the GSFL shipment model, when 8-foot T12 single pin slimline lamp-and-ballast systems are retired, consumers have the option to replace those systems with 4-foot T8 medium bipin lamp-and-ballast systems. For this reason, it is necessary that DOE considers pairs of CSLs when reporting the results for the ANOPR. For the ANOPR, when DOE reports the 4-foot medium bipin NES and NPV results, these values represent only the savings accrued from new construction and the replacements of the initial 2011 4-foot medium bipin stock. It does not include savings that may be accumulated due to the added shipments and installed stock of 4-foot medium bipin systems replacing 8-foot single pin slimline systems. In addition, DOE reports the 8-foot single pin slimline NES and NPV as the savings accrued from the replacements of the initial 2011 8-foot single pin slimline stock. This assumes that 4-foot medium bipin lamps that replace the 8-foot single pin slimline lamps are still at the base-case efficacies. However, when reporting the total NES and NPV for the entire linear GSFL market, DOE assumes that all product classes (4-foot medium bipin, 8-foot single pin slimline, and 8-foot recessed double contact HO) are at the same CSL and all savings are accounted for.

DOE invites comment on appropriate CSL pairings that should be reported as trial standard levels in the NOPR, including additional pairings not presented in this ANOPR. The NIA spreadsheet has the flexibility to compute results for all combinations of CSLs at the product class level and even at the level of baseline lamps for GSFL. For example, in the GSFL NIA model, it is possible to specify different efficacy requirements for 4-foot T12 medium bipin and 4-foot T8 medium bipin lamps. More detailed discussion regarding these CSL pairs can be found in Chapter 9 of the TSD.

Table III.36 and Table III.37 present the national energy savings for GSFL under both the ''shift'' (upper bound) and ''roll-up'' (lower bound) scenarios. The highest energy savings result from CSL 5 for both scenarios and all lamp types. In addition, note that at CSL 1 and CSL 2 (and CSL 3 for only 8-foot recessed double contact HO lamps), all energy savings originate from shifts to higher-efficacy T12 lamps and, in the 4-foot medium bipin and 8-foot single pin slimline models, early retrofits to the more-efficacious T8 systems. At these CSLs, all T8 lamps are standards-

compliant and, therefore, unaffected in both scenarios. At CSL 3, a large increase in total energy savings of GSFL can be observed, stemming from the saving associated with 4-foot T8 lamps (the majority of the stock) being affected by the regulations. It is also important to note that at CSL 4 and CSL 5 for all GSFL product classes, all T12 lamp systems are automatically retrofitted to T8 lamp systems because no T12 standards-compliant lamps are available as lamp designs.

TABLE III.36.—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSFL UNDER THE SHIFT SCENARIO

[2012–2042] [quads] [64]

Candidate standard level	Product class	NES *quads*		
		Undiscounted	Discounted at 7%	Discounted at 3%
1	4-foot medium bipin	0.27	0.14	0.20
	8-foot single pin slimline	0.05	0.03	0.04
	8-foot recessed double contact HO	0.48	0.15	0.27
	Total	0.80	0.31	0.51
2	4-foot medium bipin	0.45	0.24	0.34
	8-foot single pin slimline	0.09	0.05	0.06
	8-foot recessed double contact HO	0.65	0.20	0.37
	Total	1.19	0.49	0.78
3	4-foot medium bipin	6.79	1.98	3.81
	8-foot single pin slimline	0.13	0.07	0.10
	8-foot recessed double contact HO	0.67	0.20	0.38
	Total	7.94	2.35	4.49
4	4-foot medium bipin	8.17	2.54	4.72
	8-foot single pin slimline	0.41	0.15	0.25
	8-foot recessed double contact HO	2.16	0.63	1.21
	Total	11.09	3.43	6.39
5	4-foot medium bipin	12.69	3.62	7.05
	8-foot single pin slimline	0.41	0.16	0.26
	8-foot recessed double contact HO	2.19	0.64	1.23
	Total	15.86	4.59	8.86

TABLE III.37.—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSFL UNDER THE ROLL-UP SCENARIO

[2012–2042] [quads] [64]

Candidate standard level	Product class	NES *quads*		
		Undiscounted	Discounted at 7%	Discounted at 3%
1	4-foot medium bipin	0.27	0.14	0.20
	8-foot single pin slimline	0.05	0.03	0.04
	8-foot recessed double contact HO	0.35	0.12	0.21
	Total	0.67	0.28	0.45
2	4-foot medium bipin	0.45	0.24	0.34
	8-foot single pin slimline	0.09	0.05	0.06
	8-foot recessed double contact HO	0.61	0.19	0.35
	Total	1.15	0.48	0.76
3	4-foot medium bipin	2.88	0.92	1.68
	8-foot single pin slimline	0.13	0.07	0.10
	8-foot recessed double contact HO	0.63	0.19	0.36
	Total	3.79	1.23	2.23
4	4-foot medium bipin	3.71	1.16	2.14
	8-foot single pin slimline	0.17	0.09	0.13
	8-foot recessed double contact HO	1.89	0.55	1.06

TABLE III.37.—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSFL UNDER THE ROLL-UP SCENARIO—Continued

[2012–2042] [quads] [64]

Candidate standard level	Product class	NES *quads*		
		Undiscounted	Discounted at 7%	Discounted at 3%
	Total	5.92	1.85	3.42
5	4-foot medium bipin	6.62	1.90	3.68
	8-foot single pin slimline	0.23	0.11	0.16
	8-foot recessed double contact HO	2.05	0.60	1.15
	Total	9.26	2.72	5.20

Table III.38 presents the national energy savings for IRL in the commercial and residential sectors. As shown in the table, energy savings for both commercial and residential IRL are greatest at CSL3. Appendix 10B of the TSD presents NES results for both the ''65 Watt BR lamp substitution'' and the ''10 percent lumen increase'' sensitivity scenarios. Because both of these scenarios involve the purchasing of either higher-wattage or same-wattage lamps, the two sensitivity scenarios generally present lower NES results than that of the main scenario presented in this notice.

TABLE III.38.—CUMULATIVE NATIONAL ENERGY SAVINGS IRL

[2012–2042] [quads]

Candidate standard level	Sector	NES *quads*		
		Undiscounted	Discounted at 7%	Discounted at 3%
1	Commercial	0.48	0.15	0.28
	Residential	0.60	0.18	0.34
	Total	1.08	0.33	0.62
2	Commercial	0.83	0.27	0.49
	Residential	1.03	0.30	0.58
	Total	1.86	0.57	1.07
3	Commercial	1.13	0.36	0.66
	Residential	1.27	0.37	0.71
	Total	2.40	0.73	1.37

Below are the NPV results for the CSLs considered for GSFL and IRL. Results are cumulative and are shown as the discounted value of these savings in dollar terms. The present value of increased total installed costs is the total installed cost increase (i.e., the difference between the standards case and base case), discounted to the present, and summed over the time period in which DOE evaluates the impact of standards (i.e., from the effective date of standards, 2012, to 2042).

Savings are decreases in operating costs associated with the higher energy efficacy of each product purchased in the standards case compared to the base case. Total operating cost savings are the savings per unit multiplied by the number of units surviving in a particular year. Each product consumes energy and must be maintained over its entire lifetime. For a unit that survives after 2042, DOE calculates a residual value in both the base case and standards case to account for its remaining life. The cost savings associated with this residual value are incorporated into the total NPV result. A detailed description of this calculation can be found in Chapter 10 of the TSD.

The NPV results for the CSLs analyzed for each of the lamp types are based on discount rates of 7 and 3 percent.

Table III.39 and Table III.40 provide the NPV for GSFL under both the shift and roll-up scenarios. As seen below, CSL 4, for 8-foot recessed double contact HO lamps and 8-foot single pin slimline lamps, and CSL 5 for 4-foot medium bipin, achieve the highest NPV for the shift scenario. For the roll-up scenario, CSL 5 achieves the highest NPV for all types of fluorescent lamps analyzed. Also, for both scenarios and at all CSLs, the 4-foot medium bipin lamp results in positive NPV, because increasingly efficacious lamp-and-ballast designs generally have higher LCC savings relative to each other and

[64] Results of 4-foot medium bipin energy savings and NPV are calculated assuming there is no 8-foot single pin slimline standard while the 8-foot single pin slimline results assume no 4-foot medium bipin standard. Total results assume 4-foot medium bipin lamps and 8-foot single pin slimline lamps are subject to the same CSL.

the base-case lamp-and-ballast designs. For all GSFL, at CSL 4 and CSL 5, large and positive NPV generally result due to the integration of more-efficacious T8 design options into both commercial and industrial lamp stocks. As 4-foot T8 medium bipin lamps are the majority of stock of all GSFL, an increase in lamp efficacy and a decrease in energy consumption result in large operating cost savings and, therefore, high NPV.

TABLE III.39.—CUMULATIVE NPV RESULTS FOR GSFL UNDER THE SHIFT SCENARIO

[Billion 2006$]

Candidate standard level	Product class	NPV *billion 2006$*	
		Discounted at 7%	Discounted at 3%
1	4-foot medium bipin	0.20	0.52
	8-foot single pin slimline	−0.03	0.02
	8-foot recessed double contact HO	0.94	1.86
	Total	1.11	2.40
2	4-foot medium bipin	0.24	0.74
	8-foot single pin slimline	0.01	0.11
	8-foot recessed double contact HO	1.42	2.73
	Total	1.67	3.58
3	4-foot medium bipin	9.33	19.92
	8-foot single pin slimline	0.13	0.31
	8-foot recessed double contact HO	0.05	0.20
	Total	10.15	21.66
4	4-foot medium bipin	13.75	27.03
	8-foot single pin slimline	0.69	1.52
	8-foot recessed double contact HO	3.64	8.08
	Total	18.78	37.92
5	4-foot medium bipin	20.37	42.62
	8-foot single pin slimline	0.68	1.51
	8-foot recessed double contact HO	3.63	8.06
	Total	25.74	54.26

TABLE III.40.—CUMULATIVE NPV RESULTS FOR GSFL UNDER THE ROLL-UP SCENARIO

[Billion 2006$]

Candidate standard level	Product class	NPV *billion 2006$*	
		Discounted at 7%	Discounted at 3%
1	4-foot medium bipin	0.20	0.52
	8-foot single pin slimline	−0.03	0.02
	8-foot recessed double contact HO	0.56	1.01
	Total	0.73	1.55
2	4-foot medium bipin	0.24	0.74
	8-foot single pin slimline	0.01	0.11
	8-foot recessed double contact HO	1.15	2.13
	Total	1.40	2.98
3	4-foot medium bipin	2.60	6.15
	8-foot single pin slimline	0.13	0.31
	8-foot recessed double contact HO	0.00	0.07
	Total	2.98	7.00
4	4-foot medium bipin	5.37	10.63
	8-foot single pin slimline	0.07	0.26
	8-foot recessed double contact HO	3.27	7.33

TABLE III.40.—CUMULATIVE NPV RESULTS FOR GSFL UNDER THE ROLL-UP SCENARIO—Continued

[Billion 2006$]

Candidate standard level	Product class	NPV billion 2006$	
		Discounted at 7%	Discounted at 3%
	Total	9.00	18.74
5	4-foot medium bipin	8.19	17.29
	8-foot single pin slimline	0.24	0.66
	8-foot recessed double contact HO	3.40	7.61
	Total	12.47	26.72

Table III.41 presents the NPV for IRL in the commercial and residential sectors. As shown in Table III.41, the NPV for IRL is greatest at CSL3, consistent with trends in LCC savings. Appendix 10B of the TSD presents NPV results for both the ''65 Watt BR lamp substitution'' and the ''10 percent lumen increase'' sensitivity scenarios.

TABLE III.41.—CUMULATIVE NPV RESULTS FOR IRL

[Billion 2006$]

Candidate standard level	Sector	NPV billion 2006$	
		Discounted at 7%	Discounted at 3%
1	Commercial	0.82	1.53
	Residential	1.20	2.47
	Total	2.02	4.00
2	Commercial	1.54	2.86
	Residential	2.31	4.64
	Total	3.85	7.50
3	Commercial	2.88	5.40
	Residential	3.34	6.76
	Total	6.22	12.16

J. Life-Cycle Cost Subgroup Analysis

The LCC subgroup analysis evaluates impacts of standards on identifiable groups of customers, such as different population groups of consumers (e.g., consumers part of low income households) or different business types (e.g., educational facilities), which may be disproportionately affected by any national energy conservation standard level. In the NOPR phase of this rulemaking, DOE will analyze the LCCs and PBPs for consumers that fall into such groups. The analysis will determine whether any particular group of consumers would be adversely affected by any of the trial standard levels.

DOE plans to examine variations in energy prices and energy use that might affect the NPV of a standard for customer subpopulations. To this end, DOE intends to perform additional analyses to consider how differences in energy use will affect subgroups of customers. DOE will determine the effect on customer subgroups using the LCC spreadsheet model. As described in Section III.G, the ANOPR LCC analysis includes various customer types that use the lamps being considered under this rulemaking. This analysis includes consumers purchasing lamps in different sectors, purchasing lamps for different building types, replacing different baseline lamps or lamp/ballast systems, and undergoing different purchasing events.

For IRL, DOE can estimate LCC savings and payback periods for consumers in the residential, commercial, and industrial sectors. For GSFL, DOE can perform an LCC analysis for consumers in the commercial and industrial sectors. A subgroup analysis for consumers of GSFL in the residential sector could also be performed if DOE assumes GSFL residential lamps have the same operating hour profile as IRL residential lamps. DOE requests comment on this assumption.

DOE can also analyze the LCC impacts on consumers living in different buildings in the commercial and residential sectors. For example, DOE can analyze the impact of standards for people running educational facilities and for those who live in a mobile home. DOE also has the ability to analyze the impacts on consumers living in different regions of the country.

For both GSFL and IRL, DOE has the ability to evaluate the LCC impacts on consumers who purchase different baseline lamps or lamp-and-ballast systems. For example, the economic impacts of a standard will be different for a consumer who owns a typical 4-foot T8 lamp-and-ballast system than for a consumer who owns a typical 4-foot T12 lamp-and-ballast system. For GSFL, DOE also has the ability to analyze the LCC impact of a standard on consumers

faced with a variety of different lamp-purchasing events. The LCC impacts on a consumer who must replace a lamp for their existing system are very different from those impacts on a consumer who must purchase a lamp because they are constructing a new building.

DOE received one comment in response to the Framework Document pertaining to the LCC subgroup analysis. PG&E argued that consumers will experience differential LCCs impacts, particularly for low-income households. (PG&E, No. 4.5 at p.218) DOE will consider analyzing the impacts of candidate standards on low-income subgroups for the NOPR. DOE invites comment on these and other consumer subgroups that it should consider for the NOPR. DOE also invites comments on how LCC inputs might change for each consumer subgroup.

K. Manufacturer Impact Analysis

The purpose of the MIA is to identify the likely impacts of energy conservation standards on manufacturers. DOE has begun and will continue to conduct this analysis with input from manufacturers and other interested parties. During the MIA, DOE considers financial impacts and a wide range of other quantitative and qualitative industry impacts that might occur following the adoption of a standard. For example, if DOE adopts a particular standard level, it could require changes to manufacturing practices. DOE will identify and understand these impacts through interviews with manufacturers and other stakeholders during the NOPR stage of its analysis.

More specifically, DOE will conduct each MIA in this rulemaking in three phases, and will further tailor the analytical framework for each MIA based on comments. In Phase I, DOE creates an industry profile to characterize the industry and identify important issues that require consideration. In Phase II, DOE prepares an industry cash flow model and an interview questionnaire to guide subsequent discussions. In Phase III, DOE interviews manufacturers, and assesses the impacts of standards, both quantitatively and qualitatively. It assesses industry and sub-group cash flow and NPV through use of the Government Regulatory Impact Model (GRIM). DOE then assesses impacts on competition, manufacturing capacity, employment, and regulatory burden based on manufacturer interview feedback and discussions.

Until recently, DOE reported MIA results in its standards rulemakings only after the ANOPR phase of the rulemaking. However, DOE is now evaluating and reporting preliminary MIA information in its ANOPRs. For a detailed discussion on the MIA, refer to Chapter 12 of the ANOPR TSD.

From a comment received at the Framework Document public meeting, DOE is aware that manufacturer cost data may be difficult to obtain from industry. (Public Meeting Transcript, No. 4.5 at pp. 133–135) Therefore, as recommended, DOE may approximate manufacturer costs by working backwards through the distribution chain from publicly-available prices by using estimated manufacturer and supply chain mark-ups. (Public Meeting Transcript, No. 4.5 at pp. 129 and 133–136; NEMA, No. 8 at p. 3; Joint Comment, No. 9 at p. 3). For more information on the industry cash flow analysis, refer to Chapter 12 of the ANOPR TSD.

1. Cumulative Regulatory Burden

DOE recognizes and seeks to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same product. In response to the Framework Document, several stakeholders submitted comments concerning the cumulative impact of regulation on lamp manufacturers. Specifically, NEMA commented that a number of companies face regulations in other countries, and that some of these products are manufactured globally for sale around the world. Therefore, NEMA commented that there are some regulatory burdens and issues that may play a factor here. (NEMA, No. 4.5 at p. 229) EEI commented that DOE should take into account State regulations in assessing the impacts of different requirements for manufacturers. (EEI, No. 4.5 at p. 233) PG&E commented that DOE should take into account trade impacts in the industry. However, PG&E does not expect this would have a large impact for manufacturers of lighting products. (PG&E, No. 4.5 at pp. 239–240) In response, DOE recognizes that both States and foreign countries are already regulating certain lamp categories or contemplating doing so. As discussed in section III.A.1, many States are currently regulating IRL primarily used in the commercial sector, and a few are beginning to regulate lamp types used more often in the residential sector. Regulations are also pending in both Mexico and Canada.

DOE will analyze and consider the impact on manufacturers of multiple, product-specific regulatory actions in the NOPR. DOE invites comment on regulations applicable to lamp manufacturers that contribute to their cumulative regulatory burden.

2. Preliminary Results of the Manufacturer Impact Analysis

DOE conducted a series of preliminary interviews with manufacturers to assess their concerns about potential impact of changes to the requirements or coverage of the regulatory standard for fluorescent and incandescent lamps. In general, manufacturers identified the following major issues of concern: (a) Sufficient time to retool in response to the standards; (b) availability of materials to produce standards-compliant lamps; and (c) maintaining product availability and features that consumers use. Each of these concerns is discussed in further detail below.

a. Retooling Equipment To Produce Standards-Compliant Lamps

All of the manufacturers interviewed expressed concern regarding the adequacy of the time periods specified under EPCA for developing standards-compliant lamps. For GSFL, some manufacturers expressed concern about the time period necessary to retool to produce standards-compliant lamps (e.g., converting from a T12 product line to a T8 product line at certain standard levels). For IRL, manufacturers commented that, depending on the timeframe for transition, they could face production capacity problems if DOE were to raise standards such that the use of halogen capsules or infrared reflective (IR) coatings on halogen capsules were required. Manufacturers believe there could be a production capacity problem due to the process time involved in layering dozens of thin, IR-reflective film coatings on the capsule. The high volumes associated with both GSFL and IRL were cited frequently as the underlying cause for concern.

b. Availability of Materials To Produce Standards-Compliant Lamps

Manufacturers interviewed expressed concern about the availability of materials to manufacture standards-compliant lamps. More specifically, concern was expressed about potential shortages of certain materials (e.g., the phosphor that produces blue light), which could in turn drive up the production cost.

c. Maintaining Product Availability and Features

Manufacturers expressed concern to DOE about the potential impact the regulation may have on their ability to continue to supply a wide diversity of

products with attributes and features that their customers require. Depending on the mandatory standard level, manufacturers expressed concern that certain lamp shapes and sizes may be eliminated from the market, or that significant market shifts could occur (e.g., from incandescent technology to compact fluorescent lamps).

As discussed above, DOE will be conducting the manufacturer impact analysis for the NOPR stage of this rulemaking. As part of this inquiry, DOE will be investigating this preliminary list of issues in more depth, as well as discussing other impacts that manufacturers may experience. DOE invites comment on these and other issues, relating to the regulatory impacts on manufacturers.

Furthermore, DOE considered the possible effect of energy conservation standards for GSFL and IRL on small businesses. At this time, DOE is not aware of any small manufacturers of the lamps being considered in this rulemaking. Should any small business manufacturers be identified, DOE will study the potential impacts in greater detail during the MIA, which DOE will conduct as a part of the NOPR analysis.

L. Utility Impact Analysis

For the NOPR, the utility impact analysis will estimate the effects on the utility industry of reduced energy consumption due to any new or amended energy conservation standards for fluorescent and incandescent lamps. For GSFL and IRL, the utility impact analysis will compare the differences between each lamp type's forecasted base and standards cases for electricity generation, installed capacity, sales, and prices.

To estimate the effects of potential standards on the electric utility industry, DOE intends to use a variant of the EIA's National Energy Modeling System (NEMS).[65] NEMS, which is available in the public domain, is a large, multi-sectoral, partial equilibrium model of the U.S. energy sector. DOE/EIA uses NEMS to produce a widely recognized baseline energy forecast for the U.S. DOE uses a variant of NEMS known as NEMS-Building Technologies (NEMS–BT) to supply key inputs to its utility impact analysis.

For electrical end uses, NEMS–BT utilizes predicted growth in demand for each end use to build up a projection of the total electric system load growth for each of fifteen electricity market module supply regions, which it uses in turn to predict necessary additions to capacity. For electrical end uses, NEMS–BT accounts for the implementation of energy conservation standards by decrementing the appropriate reference case load shape. DOE will determine the size of the decrement using the per-unit energy savings data developed in the LCC and PBP analyses (see Chapter 8 of the ANOPR TSD) and the forecast of shipments developed for the NIA (see Chapter 9 of the ANOPR TSD). For more information on the utility impact analysis, refer to Chapter 13 of the ANOPR TSD.

The use of NEMS for the utility impact analysis offers several advantages. As the official DOE energy forecasting model, NEMS relies on a set of assumptions that are transparent and have received wide exposure and commentary. NEMS allows an estimate of the interactions between the various energy supply and demand sectors and the economy as a whole. The utility impact analysis will determine the changes for electric utilities in installed capacity and in generation by fuel type produced by each CSL, as well as changes in electricity sales.

DOE plans to conduct the utility impact analysis as a variant of AEO2007, applying the same basic set of assumptions. For example, the utility impact analysis uses the operating characteristics (e.g., energy conversion efficacy, emissions rates) of future electricity generating plants.

DOE will also explore deviations from some of the reference case assumptions to represent alternative future outcomes. Two alternative scenarios use the high- and low-economic-growth cases of AEO2007. (The reference case corresponds to medium growth.) The high-economic-growth case assumes higher projected growth rates for population, labor force, and labor productivity, resulting in lower predicted inflation and interest rates relative to the reference case. The opposite is true for the low-growth case. While DOE varies supply-side growth determinants in all three of these different economic-growth cases, AEO2007 assumes the same reference case energy prices for all three economic growth cases so that the impact of differences in the three scenarios are comparable, referenced against a consistent set of energy prices. The three different economic growth cases all affect the rate of growth of electricity demand.

Since the AEO2007 version of NEMS forecasts only to the year 2030, DOE must extrapolate results to 2042. It is not feasible to extend the forecast period of NEMS–BT for the purposes of this analysis, nor does EIA have an approved method for extrapolation of many outputs beyond 2030. While it might seem reasonable in general to use simple linear extrapolations of results, in practice this is not advisable, because outputs could be contradictory. For example, changes in the fuel mix implied by extrapolations of those outputs could be inconsistent with the extrapolation of marginal emissions factors. An analysis of the various trends to a sufficiently detailed degree to guarantee consistency among the extrapolations is not conducted as part of this analysis. Further, even it were, the extrapolations would still involve a great deal of uncertainty. Therefore, for all extrapolations beyond 2030, DOE intends to simply repeat the results from the year 2030 results, until it reaches the end of the analysis period, 2042. While this simplified extrapolation technique and the resulting values may seem unreasonable in some instances, results are nevertheless guaranteed to be consistent. As with the AEO reference case in general, the implicit premise is that the regulatory environment does not deviate from the current known situation during the extrapolation period. Only changes that have been announced with date-certain introduction are included in NEMS–BT.

In comments on the Framework Document, EEI requested that DOE provide an explanation of the calculations conducted using the NEMS–BT model. EEI believes such explanation would enable the public to more easily comment on the plausibility of the output. (EEI, No. 4.5 at pp. 236–237) In response, when DOE conducts the utility impact analysis for the NOPR, it will endeavor to improve the clarity and presentation of the calculations conducted using the NEMS–BT model.

M. Employment Impact Analysis

At the NOPR stage, DOE estimates the impacts of standards on employment for equipment manufacturers, relevant service industries, energy suppliers, and the economy in general. The following discussion explains the methodology DOE plans to use in conducting the employment impact analysis for this rulemaking. Both indirect and direct employment impacts are analyzed. Direct employment impacts would

[65] For more information on NEMS, please refer to the U.S. Department of Energy, Energy Information EIA documentation; a useful summary is *National Energy Modeling System: An Overview 2003,* Report number: DOE/EIA–0581(2003), March 2003 (available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/05812003.pdf*). DOE/EIA approves use of the name ''NEMS'' to describe only an official version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, in this analysis, DOE refers to it by the name ''NEMS–BT.''

result if standards led to a change in the number of employees at manufacturing plants and related supply and service firms. Direct impact estimates are covered in the MIA.

Indirect employment impacts are impacts on the national economy other than in the manufacturing sector being regulated. Indirect impacts may result both from expenditures shifting among goods (substitution effect) and changes in income which lead to a change in overall expenditure levels (income effect). DOE defines indirect employment impacts from standards as net jobs eliminated or created in the general economy as a result of increased spending driven by the increased equipment prices and reduced spending on energy.

DOE expects new standards to increase the total installed cost of equipment (includes manufacturer's selling price, distribution channel mark-ups, sales taxes, and installation cost). DOE also expects the new standards to decrease energy consumption, and, thus, expenditures on energy. Over time, increased total installed cost is paid back through energy savings. The savings in energy expenditures may be spent on new commercial investment and other items.

Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors and the net impact on jobs. DOE will estimate national employment impacts for major sectors of the U.S. economy in the NOPR, using public and commercially available data sources and software. DOE will make all methods and documentation pertaining to the employment impact analysis available for review in the Technical Support Document published in conjunction with the NOPR.

DOE developed Impact of Sector Energy Technologies (ImSET), a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use.[66] ImSET is a special-purpose version of the U.S. Benchmark National Input-Output (I–O) model, which has been designed to estimate the national employment and income effects of energy-saving technologies that are considered by the DOE Office of Energy Efficiency and Renewable Energy. In comparison with previous versions of the model used in earlier rulemakings, the current version allows for more complete and automated analysis of the essential features of energy efficiency investments in buildings, industry, transportation, and the electric power sectors.

The ImSET software includes a personal computer-based I–O model with structural coefficients to characterize economic flows among the 188 sectors. ImSET's national economic I–O structure is based on the 1997 Benchmark U.S. table (Lawson, et al. 2002),[67] specially aggregated to 188 sectors. The time scale of the model is 50 years.

The model is a static I–O model, which means that the model is able to accommodate a great deal of flexibility concerning the types of effects the energy conservation standards can have on the national employment and income effects. For example, certain economic effects of energy-efficiency improvements require an assessment of inter-industry purchases, which is handled in the model. Some energy-efficiency investments will not only reduce the costs of energy in the economy but the costs of labor and other goods and services as well, which is accommodated through a recalculation of the I–O structure in the model. Output from the ImSET model can be used to estimate changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in the various sectors of the economy.

Although DOE intends to use ImSET for its analysis of employment impacts, it welcomes input on other tools and factors it might consider. For more information on the employment impacts analysis, refer to Chapter 14 of the TSD.

N. Environmental Assessment

For the NOPR, DOE will assess the environmental effects of energy conservation standards for GSFL and IRL. DOE anticipates that the primary environmental effects will be reduced power plant emissions resulting from reduced electricity consumption. DOE will assess these environmental effects by using NEMS–BT to provide key inputs to the analysis. The environmental assessment produces results in a manner similar to those provided in the AEO.

The intent of the environmental assessment is to provide emissions results estimates, and to fulfill legislative requirements that DOE quantify and consider the environmental effects of all new Federal rules. The environmental assessment that will be produced by NEMS–BT considers potential environmental impacts from three pollutants (sulfur dioxide (SO_2), nitrous oxide (NO_X), mercury (Hg)) and from carbon dioxide (CO_2) emissions. For each of the trial standard levels, DOE will calculate total undiscounted and discounted power plant emissions using NEMS–BT.

DOE will conduct each portion of the environmental assessment performed for this rulemaking as an incremental policy impact (i.e., an energy conservation standard imposed on the product being evaluated, in this case general service fluorescent lamps and incandescent reflector lamps) of the AEO2007 forecast, applying the same basic set of assumptions used in AEO2007. For example, the emissions characteristics of an electricity generating plant will be exactly those used in AEO2007. Also, forecasts conducted with NEMS–BT consider the supply-side and demand-side effects on the electric utility industry. Thus, the analysis will account for any factors affecting the type of electricity generation and, in turn, the type and amount of airborne emissions generated by the utility industry.

The NEMS–BT model tracks carbon emissions with a specialized carbon emissions estimation subroutine, producing reasonably accurate results due to the broad coverage of all sectors and the inclusion of interactive effects. Past experience with carbon results from NEMS suggests that emissions estimates are somewhat lower than emissions based on simple average factors. One of the reasons for this divergence is that NEMS tends to predict that energy conservation measures will slow generating capacity growth in future years, and new generating capacity is expected to be more efficient than existing capacity. On the whole, NEMS–BT provides carbon emissions results of reasonable accuracy, at a level consistent with other Federal published results. In addition to providing estimates of the quantitative impacts of GSFL and IRL standards on carbon emissions, DOE may consider the use of monetary values to represent the potential value of such emissions reductions. DOE invites comment on how to estimate such monetary values or on any widely accepted values that might be used in DOE's analyses.

NEMS–BT also reports on SO_2 and NO_X, which DOE has reported in past analyses. The Clean Air Act

[66] Roop, J. M., M. J. Scott, and R. W. Schultz, ''ImSET: Impact of Sector Energy Technologies,'' PNNL–15273. (Pacific Northwest National Laboratory, Richland, WA)(2005).

[67] Lawson, Ann M., Kurt S. Bersani, Mahnaz Fahim-Nader, and Jiemin Guo, ''Benchmark Input-Output Accounts of the U. S. Economy, 1997,'' Survey of Current Business (Dec. 2002), pp. 19–117.

Amendments of 1990[68] set an SO_2 emissions cap on all power generation. The attainment of this target, however, is made flexible among generators through the use of emissions allowances and tradable permits. Although NEMS includes a module for SO_2 allowance trading and delivers a forecast of SO_2 allowance prices, accurate simulation of SO_2 trading implies that physical emissions effects will be zero because emissions will always be at or near the ceiling. However, there may be an SO_2 economic benefit from energy conservation in the form of a lower SO_2 allowance price. Since the impact of any one standard on the allowance price is likely small and highly uncertain, DOE does not plan to monetize the SO_2 benefit.

NEMS–BT also has an algorithm for estimating NO_X emissions from power generation. The impact of these emissions, however, will be affected by the Clean Air Interstate Rule (CAIR), which the EPA issued on March 10, 2005. 70 FR 25162 (May 12, 2005). CAIR will permanently cap emissions of NO_X in 28 eastern States and the District of Columbia. As with SO_2 emissions, a cap on NO_X emissions means that product energy conservation standards may have no physical effect on these emissions. When NO_X emissions are subject to emissions caps, DOE's emissions reduction estimate corresponds to incremental changes in the prices of emissions allowances in cap-and-trade emissions markets rather than physical emissions reductions. Therefore, while the emissions cap may mean that physical emissions reductions will not result from standards, standards could produce an environmental-related economic benefit in the form of lower prices for emissions allowance credits. However, as with SO_2 allowance prices, DOE does not plan to monetize this benefit because the impact on the NO_X allowance price from any single energy conservation standard is likely small and highly uncertain.

With regard to mercury emissions, NEMS–BT has an algorithm for estimating these emissions from power generation, and, as it has done in the past, DOE is able to report an estimate of the physical quantity of mercury emissions reductions associated with an energy conservation standard. DOE assumed that these emissions would be subject to EPA's Clean Air Mercury Rule[69] (CAMR), which would permanently cap emissions of mercury for new and existing coal-fired plants in all States by 2010. Similar to SO_2 and NO_X, DOE assumed that under such system, energy conservation standards would result in no physical effect on these emissions, but would be expected to result in an environmental-related economic benefit in the form of a lower price for emissions allowance credits. DOE's plan for addressing analysis does not include monetizing the benefits of reduced mercury emissions, because DOE considered that valuation of such impact from any single energy conservation standard would likely be small and highly uncertain.

On February 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in State of *New Jersey, et al.* v. *Environmental Protection Agency,*[70] in which the Court, among other actions, vacated the CAMR referenced above. Accordingly, DOE is considering whether changes are needed to its plan for addressing the issue of mercury emissions in light of the D.C. Circuit's decision. DOE invites public comment on addressing mercury emissions in this rulemaking.

With regard to particulates, these emissions are a special case because they arise not only from direct emissions, but also from complex atmospheric chemical reactions that result from NO_X and SO_2 emissions. DOE does not intend to analyze or report on the particulate emissions from power stations because of the highly complex and uncertain relationship between particulate emissions and particulate concentrations that impact air quality. In sum, the results for the environmental assessment are similar to a complete NEMS run as published in the AEO2007. These results include power-sector emissions for SO_2, NO_X, mercury, and carbon in five-year forecasted increments extrapolated to 2042. The outcome of the analysis for each CSL is reported as a deviation from the AEO2007 reference (base) case.

The Joint Comment stated that DOE should evaluate mercury and particulate emissions as part of the environmental assessment due to their potential impacts on public health. (Joint Comment, No. 9 at p. 4) As discussed above, DOE will analyze and report on mercury emission reductions; however it does not intend to report on particulate emissions.

For more detail on the environmental assessment, refer to the environmental assessment in the ANOPR TSD.

O. Regulatory Impact Analysis

DOE will prepare a draft regulatory impact analysis in compliance with Executive Order 12866, ''Regulatory Planning and Review,'' which will be subject to review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). 58 FR 51735 (Oct. 4, 1993).

As part of the regulatory impact analysis, and as discussed in Section III.K, ''Manufacturer Impact Analysis,'' DOE will identify and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products. Through manufacturer interviews and literature searches, DOE will compile information on burdens from existing and impending regulations affecting the lamps covered under this rulemaking. DOE also seeks input from the public about regulations whose impacts it should consider.

The regulatory impact analysis also will address the potential for non-regulatory approaches to supplant or augment energy conservation standards to improve the efficacy of GSFL and IRL. The NOPR will include a complete quantitative analysis of alternatives to the proposed conservation standards. DOE will use the NES spreadsheet model (as discussed in section III.I, ''National Impact Analysis'') to calculate the NES and NPV for the alternatives to the proposed conservation standards. For more information on the regulatory impact analysis, refer to the regulatory impact analysis report in the ANOPR TSD.

IV. Candidate Energy Conservation Standards Levels

In terms of process, DOE specifies candidate standards levels in the ANOPR, but does not propose a particular standard at this stage of the rulemaking. Table IV.1 and Table IV.2 present the CSLs that are discussed in today's ANOPR for the fluorescent and incandescent reflector lamps product classes directly analyzed. As mentioned earlier, in this ANOPR, DOE analyzes four of the ten product classes of lamps. Section III.C.6 discusses DOE's considered approach for extrapolation of CSLs to other product classes not analyzed.

[68] The Clean Air Act Amendments of 1990 were signed into law as Pub. L. 101–549 on November 15, 1990. The amendment can be viewed at: *http://www.epa.gov/air/caa/.*

[69] 70 FR 28606 (May 18, 2005).

[70] No. 05–1097, 2008 WL 341338, at *1 (D.C. Cir. Feb. 8, 2008).

TABLE IV.1.—SUMMARY OF THE CANDIDATE STANDARD LEVELS FOR GSFL

Candidate standard level	4-Foot medium bipin lamps with CCT ≤ 4,500K	8-Foot single pin slimline amps with CCT ≤ 4,500K	8-Foot recessed Double contact HO lamps with CCT ≤ 4,500K
	lm/W	*lm/W*	*lm/W*
CSL1	82.4	87.3	83.2
CSL2	85.0	92.0	86.1
CSL3	90.0	94.8	87.6
CSL4	92.3	98.2	91.9
CSL5	95.4	101.5	95.3

TABLE IV.2.—SUMMARY OF THE CANDIDATE STANDARD LEVELS FOR IRL

Candidate standard level	Standard-spectrum incandescent reflector lamps
	lm/W
CSL1	$5.0P^{0.27}$
CSL2	$5.5P^{0.27}$
CSL3	$6.2P^{0.27}$

where P = rated wattage of the incandescent lamp

DOE will review the public input it receives in response to this ANOPR and update the analyses appropriately for each product class before issuing the NOPR. DOE also will consider any comments it receives on the CSLs set forth above for GSFL and IRL, and on whether alternative levels would satisfy the EPCA criteria.

For the NOPR, DOE will develop trial standard levels (TSL) for GSFL and IRL from the above CSLs or other higher or lower levels after consideration of public comments. In previous rulemakings, DOE has considered several criteria in developing the TSLs, such as requiring that a CSL have a minimum LCC, maximum NPV, and maximum technologically-feasible efficacy. DOE invites comment on whether any of these criteria are appropriate for this rulemaking, or whether other TSLs are appropriate, perhaps based on technologies or applications that are specific to the lamps being regulated. DOE seeks feedback on the criteria it should use as the basis for the selection of TSLs. This is identified as Issue 10 under ''Issues on Which DOE Seeks Comment'' in Section 0 of this ANOPR.

V. Public Participation

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript from the transcribing reporter.

A. Submission of Comments

DOE began accepting comments, data, and other relevant information regarding all aspects of this ANOPR at the public meeting and will continue to accept comments until no later than April 14, 2008. Please submit comments, data, and information electronically to the following e-mail address: *fluorescent_and_incandescent_lamps.rulemaking@ee.doe.gov*. Please submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EE–2006–STD–0131 and/or RIN number 1904–AA92, and whenever possible carry 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. No telefacsimiles (faxes) will be accepted.

Under 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 shall include all the information believed to be confidential, and the other copy of the document shall have 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.

Factors that DOE considers when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comment

DOE is interested in receiving comments on all aspects of this ANOPR. DOE especially invites comments or data to improve the analyses, including data or information that will respond to the following questions or concerns that were addressed in this ANOPR:

1. Consideration of Additional General Service Fluorescent Lamps

EPCA directs DOE to consider additional GSFL for coverage under 42 U.S.C. 6295(i)(5). In this notice, DOE outlines its preliminary consideration of the expansion of coverage for GSFL under 42 U.S.C. 6295(i)(5), keeping in mind the express exclusions contained in the definitions of ''general service fluorescent lamp'' (42 U.S.C. 6291(30)(B)). DOE requests comment on its planned expansion of coverage. See section II for details on this issue.

2. Amended Definitions

EPCA directs DOE to consider additional GSFL for coverage under 42 U.S.C. 6295(i)(5). In the definition of ''general service fluorescent lamp,'' (42 U.S.C. 6291(30)(B)) EPCA identifies ''colored fluorescent lamps'' as expressly excluded from coverage. Although DOE defined ''colored fluorescent lamp'' in the 1997 test Procedure Final Rule, DOE believes this definition requires updating and, therefore, presents a draft amended definition for comment. DOE also invites comment on whether other

exclusions are ambiguous or require modification.

One element of EPCA's definitions for ''fluorescent lamp'' and ''incandescent reflector lamp'' is a lamp's ''rated wattage,'' which helps to determine which lamps are subject to standards. (42 U.S.C. 6291(30)((A), (C)(ii) and (F), and 6295(i)(1)) In addition, energy conservation standards for general service incandescent lamps prescribed by EISA 2007 require lamps of particular lumen outputs to have certain maximum rated wattages. (42 U.S.C. 6295(i)(1)(B) In this rulemaking, DOE plans to update its definition of rated wattage to current industry references, and to apply this definition to those lamps where rated wattage is not defined (e.g., 8-foot single pin slimline lamps and incandescent lamps). DOE seeks comment on its planned modification to the definition of ''rated wattage,'' a term which applies to both covered fluorescent and incandescent lamps. See section II for details on all of these issues.

3. Product Classes

DOE requests comment on its planned revisions to the product classes for GSFL and IRL, including the use of CCT in the GSFL product classes and the separate treatment of modified-spectrum lamps for IRL. Details about DOE's planned product classes are presented in section III.A.2.

4. Scaling to Product Classes Not Analyzed

DOE is inviting comment on the selected representative product classes where it concentrates its analytical effort (see section III.C.2), and on the extrapolation of findings from the representative product classes to others that were not analyzed (see section III.C.6). DOE invites comment on appropriate scaling methods it should follow, particularly for the draft scaling factors discussed in section III.C.6 for 2-foot U-shaped GSFL, GSFL with a higher CCT, and modified-spectrum IRL.

5. Screening of Design Options

In determining which design options to consider for the engineering analysis, DOE applies four statutory screening criteria to a set of potential technologies that may improve efficacy (i.e., technology options). One of those screening criteria is ''practicability to manufacture, install, and service.'' DOE invites comment on whether certain technology options discussed in section III.B fail to meet this criterion. Some manufacturers have expressed some concern about integrating certain technology options into high-volume production lines within a limited time-frame (i.e., the statutory three-year compliance period). DOE invites comment on this issue and, if appropriate, to provide possible solutions to help resolve the issue. See section III.B and section III.K for details.

6. Operating Hours

DOE used the U.S. Lighting Market Characterization Volume I and the EIA's RECS, CBECS, and MECS to develop a national distribution of average operating hours for lamp types and end-use sectors. DOE requests comment on whether the average operating hours derived are a reasonable representation of these end-uses. See section III.D.1 for details.

7. General Service Fluorescent Energy Consumption

In today's **Federal Register**, DOE is also publishing a test procedure NOPR for fluorescent and incandescent lamps. In that NOPR, DOE proposes to continue to use low-frequency ballast testing for all GSFL except for those lamp types that can only be tested on high-frequency ballasts. While DOE uses the test procedure to confirm that manufacturers have met the minimum requirements, in this ANOPR, DOE considers the operation of fluorescent lamps on several different ballast types for the LCC and NIA analyses (i.e., DOE uses average system power ratings of GSFL operating on electronic and magnetic ballasts). This approach enables the economic evaluation of the CSLs to more accurately reflect how fluorescent lamps are operated in the field. DOE invites comment on this approach, as well as the calculated system power ratings it derived for the lamp-and-ballast combinations using published data. Detail on the system power ratings can be found in Chapter 5 of the TSD.

8. Life-Cycle Cost Calculation

In order to determine the life-cycle cost savings of lamp designs with unequal lifetimes, DOE used an analysis period corresponding to the lifetime of the baseline lamp. To account for the remaining life of the equipment at the end of the analysis period, DOE calculated a residual value by linearly prorating the initial cost of the equipment. DOE invites comment on its usage of residual values in the life-cycle cost analysis and on other possible approaches to calculating life-cycle costs for product with different lifetimes.

9. Installation Costs

In order to determine the complete installed cost for the LCC analysis, DOE developed estimates of commercial sector installation costs for IRL and GSFL. DOE seeks comment on the average labor rates and times for each lamp type. See Chapter 8 of the TSD for details.

10. Base-Case Market-Share Matrices in 2012

DOE has developed a base-case to represent the distribution of lamp systems and their efficacies currently in the marketplace, and thereby determine the proportion of consumers affected by a particular energy conservation standard level. DOE developed base-case efficacy distributions for GSFL and IRL based on a combination of interviews with lighting experts, historical shipments information, and available product data. DOE requests comment on the resultant base-case product distributions. See section III.H for details.

11. Shipment Forecasts

A key input into the shipment forecasts of GSFL and IRL is the assumed market growth. For commercial GSFL and IRL, DOE uses a growth rate of 1.6 percent based on CBECS floor space growth projections. For residential IRL, DOE uses a 1.3 percent growth rate from the RECS residential building growth projection. DOE invites comment on the data sources, estimates, and implementation of these growth rates. In addition, the shipment forecasts impact the total national lumen output of each lamp type. DOE invites comment on the national lumen output projection in both the base case and standards case. Specifically, DOE invites comment on whether any adjustments are necessary to respond to consumer actions resulting in over-lighting or under-lighting. See Chapter 9 of the TSD and section III.H for details.

12. Base-Case and Standards-Case Forecasted Efficiencies

Forecasts of average market efficacy and energy consumption, in both the base case and standards case, are fundamental inputs to the NES and NPV calculations. Estimates of the market's selection of lamp and lamp-and-ballast designs, in turn, drive the forecasts for average efficacy and energy consumption. As a sensitivity to the NES and NPV calculations, DOE developed standards-case scenarios to test the upper and lower bounds of the NES and NPV results. DOE invites comment on these standards-case

scenarios it developed estimating market behavior in response to a standard, such as roll-up and shift in the GSFL market or the 65W BR lamp substitution scenario. See section III.H for details.

13. Trial Standard Levels

For the NOPR, DOE will develop trial standard levels (TSLs) based on the candidate standard levels for GSFL and IRL. DOE is considering several criteria in developing the TSLs, including, but not limited to, minimum LCC, maximum NPV, and maximum technologically-feasible efficacy. These TSLs may include combinations of CSLs and the interaction between product classes such as 4-foot medium bipin and 8-foot single pin slimline fluorescent lamps or standard-spectrum and modified-spectrum IRL. From the list of TSLs developed, DOE will select one as its proposed standard for the NOPR. DOE invites comment on the criteria it should use as the basis for the selection of TSLs. See section III.H for details.

14. Lamp Production Equipment Conversion Timeframe

Manufacturers of high-volume lamps expressed concern as to their ability to retool, invest in, or replace equipment within the statutorily-required three-year compliance period, such that they may continue to offer the volume lamps for sale at a new standard level. DOE invites comment on this issue, and welcomes recommendations on how best to mitigate any equipment conversion issues.

VI. Regulatory Review and Procedural Requirements

DOE submitted this ANOPR for review to OMB under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). If DOE later proposes new or revised energy conservation standards for GSFL or IRL, and if the proposed rule constitutes a significant regulatory action, DOE would prepare and submit to OMB for review the assessment of costs and benefits required by section 6(a)(3) of the Executive Order. The Executive Order requires agencies to identify the specific market failure or other specific problem that it intends to address that warrants new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. (Executive Order 12866, § 1(b)(1)). DOE presumes that a perfectly functioning market would result in efficiency levels that maximize benefits to all affected persons. Consequently, without a market failure or other specific problem, a regulation would not be expected to result in net benefits to consumers and the nation. However, DOE also notes that whether it establishes standards for these products is determined by the statutory criteria expressed in EPCA. Even in the absence of a market failure or other specific problem, DOE nonetheless may be required to establish standards under existing law.

DOE's preliminary analysis for GSFL and IRL explicitly accounts for the percentage of consumers that already purchase more efficient equipment and takes these consumers into account when determining the national energy savings associated with various candidate standard levels. The preliminary analysis suggests that accounting for the market value of energy savings alone (i.e., excluding any possible ''externality'' benefits such as those noted below) would produce enough benefits to yield net benefits across a wide array of products and circumstances. DOE requests additional data on, and suggestions for testing the existence and extent of potential market failure to complete an assessment of the significance of these failures and, thus, the net benefits of regulation. In particular DOE seeks to verify the estimates of the percentage of consumers of all product types purchasing efficient equipment and the extent to which consumers will continue to purchase more-efficient equipment in future years.

DOE believes that there is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the lighting market. If this is in fact the case, DOE would expect the efficiency for lighting products to be randomly distributed across key variables such as electricity prices and usage levels. Although DOE has already identified the percentage of consumers that already purchase more efficient lighting products, DOE does not correlate the consumer's usage pattern and electricity price with the efficiency of the purchased product. Therefore, DOE seeks data on the efficiency levels of existing lamps in use by how often it is utilized (e.g., how many hours the product is used) and its associated electricity price (and/or geographic region of the country). DOE plans to use these data to test the extent to which purchasers of this equipment behave as if they are unaware of the costs associated with their energy consumption.

Specifically, with respect to lighting products, DOE believes several factors contribute to the lack of consumer information. In the residential sector, consumer purchases are often based on wattage rather than lumen output which may result in consumers not purchasing, or rejecting higher-efficacy or energy-saving lamp designs. For example, consumers may not recognize a higher-efficacy, reduced-wattage lamp as fulfilling the same utility as their higher-wattage lamp though both lamps may have similar lumen outputs. For this reason, these higher-efficiency products may be unduly rejected in the marketplace. In addition, in the commercial and industrial sectors, the complexity of GSFL systems may introduce high information costs. GSFL systems are composed of both lamps and ballasts that may have a multitude of varying properties such as lamp wattage, lumen output, lifetime, and ballast factor. These many numerous variables impose high information costs which may prevent purchasers from selecting the most cost-effective GSFL system. DOE seeks comment on additional knowledge of the Federal Energy Star program, and the program's potential as a resource for increasing knowledge of the availability and benefits of energy-efficient lamps in the lighting consumer market.

A related issue is the problem of asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services). In the case of lamps, in many instances the party responsible for the lamp purchase may not be the one who pays the cost to operate it. For example, in the commercial and industrial sectors, building owners and developers may make purchase decisions about lighting fixtures which include ballasts and lamps, but it may be the tenants who pay the utility bills. Although renters often have the opportunity to purchase the replacement lamps, they are severely limited in their choices by prior fixture and ballast selections. If there were no transactions costs, it would be in the building developers' and owners' interests to install lighting fixtures that renters would choose on their own. For example, a tenant who knowingly faces higher utility bills from low-efficiency lighting would be willing to pay less in rent, and the building owner would indirectly bear the higher utility cost. However, this information is not costless, and it may not be in the interest of the renter to take the time to develop it, or, in the case of the building owner who installs the lamp system, to convey that information to the renter.

To the extent that asymmetric information and/or high transactions costs are problems, one would expect to find certain outcomes with respect to commercial and industrial lighting energy efficiency. For example, other things equal, one would not expect to see higher rents for office space with high-efficiency lighting systems. Conversely, if there were symmetric information, one would expect higher energy efficiency lighting in commercial space where the rent includes utilities, as compared to those where the tenant pays the utility bills separately.

Of course, there are likely to be certain ''external'' benefits resulting from the improved efficiency of units that are not captured by the users of such equipment. These include both environmental and energy security-related externalities that are not already reflected in energy prices, such as reduced emissions of greenhouse gases and reduced use of natural gas and oil for electricity generation. DOE invites comments on the weight that should be given to these factors in DOE's determination of the maximum efficiency level at which the total benefits are likely to exceed the total costs resulting from a DOE standard.

As previously stated, DOE generally seeks data that might enable it to conduct tests of market failure for products under consideration for standard-setting. For example, given adequate data, there are ways to test for the extent of market failure for commercial GSFL. One would expect the owners of fluorescent lamps who also pay for their electricity consumption to purchase lamps that exhibit higher energy efficiency compared to lamps whose owners do not pay for the electricity usage, other things equal. To test for this form of market failure, DOE needs data on energy efficiency of such units and whether the owner of the equipment is also the one who pays the operating costs. DOE is also interested in other potential tests of market failure and data that would enable such tests.

In addition, various other analyses and procedures may apply to such future rulemaking action, including those required by the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321 et seq.); the Unfunded Mandates Act of 1995 (Pub. L. 104–4); the Paperwork Reduction Act (44 U.S.C. 3501 et seq.); the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); and certain Executive Orders.

The draft of today's action and any other documents submitted to OMB for review are part of the rulemaking record and are available for public review at the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's advance notice of proposed rulemaking.

Issued in Washington, DC, on February 21, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–4018 Filed 3–12–08; 8:45 am]

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Federal Register

Thursday,
March 13, 2008

Part III

Securities and Exchange Commission

17 CFR Part 248

Part 248—Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Personal Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–57427; IC–28178; IA–2712; File No. S7–06–08]

RIN 3235–AK08

Part 248—Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Personal Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to Regulation S–P, which implements certain provisions of the Gramm-Leach-Bliley Act (''GLBA'') and the Fair Credit Reporting Act (''FCRA'') for entities regulated by the Commission. The proposed amendments would set forth more specific requirements for safeguarding information and responding to information security breaches, and broaden the scope of the information covered by Regulation S–P's safeguarding and disposal provisions. They also would extend the application of the disposal provisions to natural persons associated with brokers, dealers, investment advisers registered with the Commission (''registered investment advisers'') and transfer agents registered with the Commission (''registered transfer agents''), and would extend the application of the safeguarding provisions to registered transfer agents. Finally, the proposed amendments would permit a limited transfer of information to a nonaffiliated third party without the required notice and opt out when personnel move from one broker-dealer or registered investment adviser to another.

DATES: Comments must be received on or before May 12, 2008.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–06–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File Number S7–06–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Brice Prince, Special Counsel, Office of the Chief Counsel, Division of Trading and Markets, (202) 551–5550; or Penelope Saltzman, Acting Assistant Director, or Vincent Meehan, Senior Counsel, Office of Regulatory Policy, Division of Investment Management, (202) 551–6792, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is proposing amendments to Regulation S–P [1] under Title V of the GLBA,[2] the FCRA,[3] the Securities Exchange Act of 1934 (the ''Exchange Act''),[4] the Investment Company Act of 1940 (the ''Investment Company Act''),[5] and the Investment Advisers Act of 1940 (the ''Investment Advisers Act'').[6]

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I. Background

A. Statutory Requirements and Current Regulation S–P Mandates

Subtitle A of Title V of the GLBA requires every financial institution to inform its customers about its privacy policies and practices, and limits the circumstances in which a financial institution may disclose nonpublic personal information about a consumer to a nonaffiliated third party without first giving the consumer an opportunity to opt out of the disclosure.[7] In enacting the legislation, Congress also specifically directed the Commission and other federal financial regulators to establish and implement information safeguarding standards requiring financial institutions subject to their jurisdiction to adopt administrative, technical and physical information safeguards.[8] The GLBA specified that these standards were to ''insure the

[1] 17 CFR part 248. Unless otherwise noted, all references to rules under Regulation S–P will be to Part 248 of the Code of Federal Regulations (17 CFR 248).

[2] 15 U.S.C. 6801–6827.

[3] 15 U.S.C. 1681w.

[4] 15 U.S.C. 78a.

[5] 15 U.S.C. 80a.

[6] 15 U.S.C. 80b.

[7] *See* 15 U.S.C. 6802(a) and (b). The GLBA and Regulation S–P draw a distinction between ''consumers'' and ''customers.'' A ''consumer'' is defined in Section 3(g)(1) of Regulation S–P to mean an individual who obtains a financial product or service that is to be used primarily for personal, family, or household purposes. *See* 17 CFR 248.3(g)(1). A ''customer'' is defined in Section 3(j) of Regulation S–P as a consumer who has a continuing relationship with the financial institution. *See* 17 CFR 248.3(j). The distinction between customer and consumer determines the notices that a financial institution must provide. Pursuant to Sections 4 and 5 of Regulation S–P, a financial institution must provide *customers* with an initial notice describing the institution's privacy policies when a customer relationship is formed and at least annually throughout the customer relationship. In contrast, if a *consumer* is not a customer, a financial institution must only provide a notice if it intends to share nonpublic personal information about the consumer with a nonaffiliated third party (outside of certain exceptions). *See* 17 CFR 248.4 and 248.5.

[8] The GLBA directed the Commission, the Federal Trade Commission (''FTC'') and state insurance authorities to implement the safeguarding standards by rule. *See* 15 U.S.C. 6805(b)(2). The GLBA directed the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (''FDIC'') and the Office of Thrift Supervision (collectively, the ''Banking Agencies'') and the National Credit Union Administration (''NCUA'') to implement the safeguarding standards by regulation or by guidelines. *See* 15 U.S.C. 6805(b)(1).

security and confidentiality of customer records and information,'' ''protect against any anticipated threats or hazards to the security or integrity'' of those records, and protect against unauthorized access to or use of those records or information, which ''could result in substantial harm or inconvenience to any customer.'' [9]

In response to these directives, we adopted Regulation S–P in 2000.[10] Section 30(a) of Regulation S–P (the ''safeguards rule'') requires institutions to safeguard customer records and information,[11] while other sections of the regulation implement the notice and opt out provisions of the GLBA.[12] The safeguards rule currently requires institutions to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information. The safeguards must be reasonably designed to meet the GLBA's objectives.[13] This approach provides flexibility for institutions to safeguard customer records and information in accordance with their own privacy policies and practices and business models. The safeguards rule and the notice and opt out provisions currently apply to brokers, dealers, registered investment advisers, and investment companies.[14]

Pursuant to the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), the Commission amended Regulation S–P in 2004 to protect against the improper disposal of consumer report information.[15] Section 30(b) of Regulation S–P (the ''disposal rule'') currently applies to the institutions subject to the other provisions of Regulation S–P, except that it excludes notice-registered broker-dealers and includes registered transfer agents.

B. Challenges Posed by Information Security Breaches

In recent years, we have become concerned with the increasing number of information security breaches that have come to light and the potential for identity theft and other misuse of personal financial information. Once seemingly confined mainly to commercial banks and retailers, this problem has spread throughout the business community, including the securities industry.[16]

In the last two years, we have seen a significant increase in information security breaches involving institutions we regulate. Perhaps most disturbing is the increase in incidents involving the takeover of online brokerage accounts, including the use of the accounts by foreign nationals as part of ''pump-and-dump'' schemes.[17] The financial

[9] 15 U.S.C. 6801(b).

[10] *See Privacy of Consumer Financial Information (Regulation S–P)*, Exchange Act Release No. 42974, Investment Company Act (''ICA'') Release No. 24543, Investment Advisers Act (''IAA'') Release No. 1883 (June 22, 2000), 65 FR 40334 (June 29, 2000). Pursuant to the GLBA directive, Regulation S–P is consistent with and comparable to the financial privacy rules adopted by other federal financial regulators in 2000. *See* FTC, *Privacy of Consumer Financial Information*, 65 FR 33646 (May 24, 2000); Banking Agencies, *Privacy of Consumer Financial Information*, 65 FR 35162 (June 1, 2000); and NCUA, *Privacy of Consumer Financial Information; Requirements for Insurance*, 65 FR 31722 (May 18, 2000). *See also* 15 U.S.C. 6804(a)(2) (directing federal financial regulators to consult and coordinate to assure, to the extent possible, that each agency's regulations are consistent and comparable with the regulations prescribed by the other agencies).

In 2001, we amended Regulation S–P to permit futures commission merchants and introducing brokers that are registered by notice as broker-dealers in order to conduct business in security futures products under Section 15(b)(11)(A) of the Exchange Act (''notice-registered broker-dealers'') to comply with Regulation S–P by complying with financial privacy rules that the Commodity Futures Trading Commission (''CFTC'') adopted that year. *See* 17 CFR 248.2(b); *Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934*, Exchange Act Release No. 44730 (Aug. 21, 2001), 66 FR 45138 (Aug. 27, 2001); *see also* CFTC, *Privacy of Consumer Financial Information*, 66 FR 21236 (Apr. 27, 2001).

[11] 17 CFR 248.30(a).

[12] *See* 17 CFR 248.1–248.18. As described above, the GLBA and Regulation S–P require brokers, dealers, investment advisers registered with the Commission, and investment companies to provide an annual notice of their privacy policies and practices to their customers (and notice to consumers before sharing their nonpublic personal information with nonaffiliated third parties outside certain exceptions). *See supra* note 7; 15 U.S.C. 6803(a); 17 CFR 248.4; 17 CFR 248.5. In general, the privacy notices must describe the institutions' policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties. 15 U.S.C. 6803; 17 CFR 248.6. The notices also must provide a consumer a reasonable opportunity to direct the institution generally not to share nonpublic personal information about the consumer (that is, to ''opt out'') with nonaffiliated third parties. 15 U.S.C. 6802(b); 17 CFR 248.7. (The privacy notice also must provide, where applicable under the FCRA, a notice and an opportunity for a consumer to opt out of certain information sharing among affiliates.) Sections 13, 14, and 15 of Regulation S–P (17 CFR 248.13, 17 CFR 248.14, and 17 CFR 248.15) set out exceptions from these general notice and opt out requirements under the GLBA. Section 13 includes exceptions for sharing information with other financial institutions under joint marketing agreements and with certain service providers. Section 14 includes exceptions for sharing information for everyday business purposes, such as maintaining or servicing accounts. Section 15 includes exceptions for disclosures made with the consent or at the direction of a consumer, disclosures for particular purposes such as protecting against fraud, disclosures to consumer reporting agencies, and disclosures to law enforcement agencies. In March 2007, the Commission, together with the Banking Agencies, the CFTC, the FTC, and the NCUA, published for public comment in the **Federal Register** a proposed model privacy form that financial institutions could use for their privacy notices to consumers required by the GLBA. *See Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act*, Exchange Act Release No. 55497, IAA Release No. 2598, ICA Release No. 27755 (Mar. 20, 2007), 72 FR 14940 (Mar. 29, 2007) (''Interagency Model Privacy Form Proposal'').

[13] Specifically, the safeguards must be reasonably designed to insure the security and confidentiality of customer records and information, protect against anticipated threats to the security or integrity of those records and information, and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer. *See supra* note 9 and accompanying text.

[14] Regulation S–P applies to investment companies as the term is defined in Section 3 of the Investment Company Act (15 U.S.C. 80a–3), whether or not the investment company is registered with the Commission. *See* 17 CFR 248.3(r). Thus, a business development company, which is an investment company but is not required to register as such with the Commission, is subject to Regulation S–P. In this release, institutions to which Regulation S–P currently applies, or to which the proposed amendments would apply, are sometimes referred to as ''covered institutions.''

[15] 17 CFR 248.30(b). Section 216 of the FACT Act amended the FCRA by adding Section 628 (codified at 15 U.S.C. 1681w), which directed the Commission and other federal financial regulators to adopt regulations for the proper disposal of consumer information, and provides that any person who maintains or possesses consumer information or any compilation of consumer information derived from a consumer report for a business purpose must properly dispose of the information. *See Disposal of Consumer Report Information*, Exchange Act Release No. 50781, IAA Release No. 2332, ICA Release No. 26685 (Dec. 2, 2004), 69 FR 71322 (Dec. 8, 2004) (''Disposal Rule Adopting Release''). When we adopted the disposal rule, we also amended Regulation S–P to require that the policies and procedures institutions must adopt under the safeguards rule be in writing.

The disposal rule requires transfer agents registered with the Commission, as well as brokers and dealers other than notice-registered broker-dealers, investment advisers registered with the Commission, and investment companies that maintain or possess ''consumer report information'' for a business purpose, to take ''reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.''

In order to provide clarity, the Disposal Rule Adopting Release included five examples intended to provide guidance on disposal measures that would be deemed reasonable under the disposal rule. *See Disposal Rule Adopting Release* at section II.A.2.

[16] *See* Press Release, NASD, *NASD Warns Investors to Protect Online Account Information, Brokerages Also Reminded of Obligation to Protect Customer Information from New Threats* (July 28, 2005), *http://www.finra.org/PressRoom/NewsReleases/2005NewsReleases/P014775* (last visited Nov. 6, 2007). *See also In re NEXT Financial Group, Inc.*, Exchange Act Release No. 56316 (Aug. 24, 2007), *http://www.sec.gov/litigation/admin/2007/34-56316.pdf*, and Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Aug. 24, 2007) (alleging violations of the notice and opt out provisions of Regulation S–P and the safeguards rule in connection with recruiting registered representatives), *http://www.sec.gov/litigation/admin/2007/34-56316-o.pdf*.

[17] While some account takeovers may have been facilitated by investors failing to take adequate precautions against security threats such as

Continued

services sector also is a popular target for online targeted attacks, and ''phishing'' attacks in which fraudsters set up an Internet site designed to mimic a legitimate site and induce random Internet users to disclose personal information.[18] In other recent incidents, registered representatives of broker-dealers disposed of information and records about clients or prospective clients in accessible areas, from which journalists were able to remove them. Sensitive securities-related data also has been lost or stolen as a result of other incidents.[19]

Many firms in the securities industry are aware of these problems and have appropriate safeguards in place to address them.[20] We are concerned, however, that some firms do not regularly reevaluate and update their safeguarding programs to deal with these increasingly sophisticated methods of attack.[21] For this reason, and in light of the increase in reported security breaches and the potential for identity theft among the institutions we regulate, we believe that our previous approach, requiring safeguards that must be reasonably designed to meet the GLBA's objectives, merits revisiting.[22]

We also are concerned that while the information protected under the safeguards rule and the disposal rule includes certain personal information, it does not include other information that could be used to access investors' financial information if obtained by an unauthorized user. Finally we want to address other issues under Regulation S–P that have come to our attention, including the application of the regulation to situations in which a representative of one broker-dealer or registered investment adviser moves to another firm. Accordingly, today we are proposing amendments to the safeguards and disposal rules that are designed to address these concerns.

II. Discussion

To help prevent and address security breaches in the securities industry and thereby better protect investor information, we propose to amend Regulation S–P in four principal ways. First, we propose to require more specific standards under the safeguards rule, including standards that would apply to data security breach incidents. Second, we propose to amend the scope of the information covered by the safeguards and disposal rules and to broaden the types of institutions and persons covered by the rules. Third, we propose to require institutions subject to the safeguards and disposal rules to maintain written records of their policies and procedures and their compliance with those policies and procedures. Finally, we are taking this opportunity to propose a new exception from Regulation S–P's notice and opt-out requirements to allow investors more easily to follow a representative who moves from one brokerage or advisory firm to another.

A. Information Security and Security Breach Response Requirements

To help prevent and address security breaches at the institutions we regulate, we propose to require more specific standards for safeguarding personal information, including standards for responding to data security breaches. When we adopted Regulation S–P in 2001, the safeguards rule simply required institutions to adopt policies and procedures to address the safeguarding objectives stated in the GLBA. Following our adoption of the rule, the FTC and the Banking Agencies issued regulations with more detailed standards for safeguarding customer

''keylogger'' programs and ''phishing'' attacks, many online brokerage firms have successfully reduced their exposure to account takeovers by improving their authentication and monitoring procedures. The Commission has been active in this area, and has brought several enforcement cases involving defendants in foreign jurisdictions. *See, e.g.*, Litigation Release No. 20037 (Mar. 12, 2007), available at *http://www.sec.gov/litigation/litreleases/2007/lr20037.htm* (three Indian nationals charged with participating in an alleged fraudulent scheme to manipulate the prices of at least fourteen securities through the unauthorized use of other people's online brokerage accounts); and Litigation Release No. 19949 (Dec. 19, 2006), available at *http://www.sec.gov/litigation/litreleases/2006/lr19949.htm* (emergency asset freeze obtained; complaint alleged an alleged Estonia-based account intrusion scheme that targeted online brokerage accounts in the U.S. to manipulate the markets).

[18] In 2006, Symantec Corporation, a seller of information security and information management software, reported that in the first half of 2006, 84 percent of tracked phishing sites targeted the financial sector and 9 of the top 10 brands phished this period were from the financial sector. Because the financial services sector is a logical target for attackers increasingly motivated by financial gain, that sector was also the second most frequent target of Internet-based attacks (after home users). *See* Symantec, *Symantec Internet Security Threat Report, Trends for January 06–June 06*, at 9, 23 (Sept. 2006), *http://www.symantec.com/specprog/threatreport/ent-whitepaper_symantec_internet_security_threat_report_x_09_2006.en-us.pdf* (last visited Nov. 6, 2007) (''Symantec September 2006 Internet Security Threat Report''). Reportedly, employees of financial services firms ''are increasingly being invited to visit Web sites or download programs by people pretending to be colleagues or peers,'' followed by attack programs on the sites or in downloads that ''then open tunnels into the corporate network.'' More recently, although financial services-related spam reportedly ''made up 21 percent of all spam in the first six months of 2007, making it the second most common type of spam during this period,'' there was a 30-percent decline in stock market ''pump and dump'' spam ''due to a decline in spam touting penny stocks that was triggered by actions taken by the United States Securities and Exchange Commission, which limited the profitability of this type of spam by suspending trading of the stocks that are touted.'' *See Symantec, Symantec Internet Security Threat Report, Trends for January–June 07, Volume XII*, at 107 (Sept. 2007), *http://eval.symantec.com/mktginfo/enterprise/white_papers/ent-whitepaper_internet_security_threat_report_xii_09_2007.en-us.pdf* (last visited Nov. 6, 2007) (citing Commission Press Release 2007–34, *SEC Suspends Trading Of 35 Companies Touted In Spam E-mail Campaigns* (Mar. 8, 2007), available at *http://www.sec.gov/news/press/2007/2007-34.htm*).

[19] For example, in April 2005, a shipping company lost a computer backup tape containing account information for more than 200,000 broker-dealer customers. The broker-dealer voluntarily notified its affected customers, although the data was compressed and the tape was thought to have been destroyed. In December 2005, a laptop computer containing unencrypted information that included names and account numbers of 158,000 customers and the names and Social Security numbers of 68,000 adviser personnel was stolen from a registered investment adviser, and in March 2006, a laptop computer containing the names, addresses, Social Security numbers, dates of birth, and other employment-related information of as many as 196,000 retirement plan participants was stolen from a benefits plan administration subsidiary of a registered investment adviser. In both cases, the laptops were taken from vehicles by thieves who appear to have stolen them for their value as computer hardware rather than for the information contained on them. The registered investment adviser voluntarily notified the more than 200,000 clients and financial advisers whose information was compromised, while the benefits plan administrator voluntarily notified the nearly 200,000 retirement plan participants whose information was compromised, and offered to pay for a year of credit monitoring for each of them.

[20] Some institutions regulated by the Commission have already taken steps to strengthen their policies and procedures for safeguarding investors' information, such as by offering investors the use of password-generating tokens for online brokerage accounts. We also note that some firms have been sharing information about suspicious activity with one another for the purpose of combating identity theft. To the extent it might involve sharing nonpublic personal information about consumers of the firms, Regulation S–P does not prohibit such information sharing because Section 15(a)(2)(ii) of Regulation S–P permits firms to disclose nonpublic personal information to a nonaffiliated third party for the purpose of protecting against fraud without first giving consumers notice of and an opportunity to opt out of the disclosures.

[21] According to a September 2007 report from Deloitte Touche Tohmatsu, for example, 37 percent of 169 surveyed financial institutions do not have an information security strategy in place, and 33 percent of these institutions do not conduct vulnerability testing, or only do so on an ad hoc basis. *See* Deloitte Touche Tohmatsu, *2007 Global Security Survey*, at 12, 36 (Sept. 2007), *http://www.deloitte.com/dtt/cda/doc/content/dtt_gfsi_GlobalSecuritySurvey_20070901%281%29.pdf* (last visited Nov. 6, 2007).

[22] In 2004 we sought comment on whether to revise our safeguards rule to require institutions to address certain elements in designating their safeguarding policies and procedures. *See Disposal of Consumer Report Information,* Exchange Act Release No. 50361, IAA Release No. 2293, ICA Release No. 20596 (Sept. 14, 2004), 69 FR 56304 (Sept. 20, 2004) (''Disposal Rule Proposing Release''), at section II.B. At that time we decided not to revise the safeguards rule, but noted we would consider the comments we received in the event we proposed any amendment to the rule. *See Disposal Rule Adopting Release, supra* note 15, at section II.B. *See also infra* note 31.

records and information applicable to the institutions they regulate.[23] We believe these standards include necessary elements that institutions should address when adopting and implementing safeguarding policies and procedures. We have therefore looked to the other agencies' standards in developing our proposal and tailored them, where appropriate, to develop proposed standards for the institutions we regulate.

1. Revised Safeguarding Policies and Procedures

As noted above, the safeguards rule requires institutions to adopt written policies and procedures that address administrative, technical and physical safeguards to protect customer records and information. The proposed amendments would further develop this requirement by requiring each institution subject to the safeguards rule to develop, implement, and maintain a comprehensive ''information security program,'' including written policies and procedures that provide administrative, technical, and physical safeguards for protecting personal information, and for responding to unauthorized access to or use of personal information.[24] This program would have to be appropriate to the institution's size and complexity, the nature and scope of its activities, and the sensitivity of any personal information at issue.[25] Consistent with current requirements for safeguarding policies and procedures, the information security program also would have to be reasonably designed to: (i) Ensure the security and confidentiality of personal information; (ii) protect against any anticipated threats or hazards to the security or integrity of personal information; and (iii) protect against unauthorized access to or use of personal information that could result in substantial harm or inconvenience to any consumer, employee, investor or securityholder who is a natural person.[26] Although the term ''substantial harm or inconvenience'' is currently used in the safeguards rule, it is not defined. We propose to define the term to mean ''personal injury, or more than trivial financial loss, expenditure of effort or loss of time.''[27] This definition is intended to include harms other than identity theft that may result from failure to safeguard sensitive information about an individual. For example, a hacker could use confidential information about an individual for extortion by threatening to make the information public unless the individual agrees to the hacker's demands. ''Substantial harm or inconvenience'' would *not* include ''unintentional access to personal information by an unauthorized person that results only in trivial financial loss, expenditure of effort or loss of time,'' such as if use of the information results in an institution deciding to change the individual's account number or password.[28] The rule would provide an example of what would not constitute harm or inconvenience that rises to the level of ''substantial,'' which should help clarify the scope of what would constitute ''substantial harm or inconvenience.''

The proposed amendments also would specify particular elements that a program meeting the requirements of Regulation S–P must include.[29] These elements are intended to provide firms in the securities industry with detailed standards for the policies and procedures that a well-designed information security program should include to address recent identity theft-related incidents such as firms in the securities industry losing data tapes and laptop computers and failing to dispose properly of sensitive personal information, and hackers hijacking online brokerage accounts.[30] These elements also are intended to maintain consistency with information safeguarding guidelines and rules adopted by the Banking Agencies and

[23] The Banking Agencies issued their guidelines for safeguarding customer records and information in 2001. *See Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness,* 66 FR 8616 (Feb. 1, 2001) (''Banking Agencies'' Security Guidelines''). The FTC adopted its safeguards rule in 2002. *See Standards for Safeguarding Customer Information,* 67 FR 36484 (May 23, 2002) (''FTC Safeguards Rule''). The Banking Agencies also have jointly issued guidance on responding to incidents of unauthorized access or use of customer information. *See Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice,* 70 FR 15736 (Mar. 29, 2005) (''Banking Agencies'' Incident Response Guidance''). More recently, through the Federal Financial Institutions Examination Council (''FFIEC''), the Banking Agencies jointly issued guidance on the authentication of customers in an Internet banking environment, and the Banking Agencies and the FTC jointly issued final rules and guidelines for identity theft ''red flags'' programs to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. *See* FFIEC, *Authentication in an Internet Banking Environment* (July 27, 2006), available at *www.ffiec.gov/pdf/authentication_guidance.pdf* (''Authentication Guidance''); Banking Agencies and FTC, *Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003,* 72 FR 63718 (Nov. 9, 2007) (''Final Red Flag Rules''). *See also* Banking Agencies and FTC, *Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003,* 71 FR 40785 (July 18, 2006) (''Proposed Red Flag Guidelines''). In March of this year, the FTC also published a brochure on data security, Protecting Personal Information: A Guide for Business (available at *http://www.ftc.gov/infosecurity/*), and the FDIC issued a *Supervisory Policy on Identity Theft,* FIL–32–2007 (Apr. 11, 2007), available at *http://www.fdic.gov/news/news/financial/2007/fil07032a.html.*

[24] As amended, Section 30 would be titled, ''Information security programs for personal information; records of compliance.''

[25] *See* proposed paragraph (a)(1) of Section 30. The term ''information security program'' would mean the administrative, technical, or physical safeguards used to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle personal information. *See* proposed paragraph (d)(6) of Section 30.

[26] *See* proposed paragraph (a)(2) of Section 30. *Compare* 17 CFR 248.30(a)(1)–(3).

[27] *See* proposed paragraph (d)(12) of Section 30. ''Substantial harm or inconvenience'' would include theft, fraud, harassment, impersonation, intimidation, damaged reputation, impaired eligibility for credit, or the unauthorized use of the information identified with an individual to obtain a financial product or service, or to access, log into, effect a transaction in, or otherwise use the individual's account.

[28] *See* proposed paragraph (d)(12)(ii) of Section 30. Thus, for example the proposed definition would not encompass a firm's occasional, unintentional delivery of an individual's account statement to an incorrect address if the institution determined that the information was highly unlikely to be misused. This determination would have to be made promptly after the institution becomes aware of an incident of unauthorized access to sensitive personal information, and documented in writing. *See* proposed paragraph (a)(4)(iii) of Section 30.

[29] Many of these elements are addressed by widely accepted information security standards. *See, e.g.,* National Institute of Standards and Technology (''NIST''), Special Publication 800 series (Computer Security), for example *Generally Accepted Principals and Practices for Securing Information Technology Systems* (SP 800–14) (Sept. 1996), *Guide to Intrusion Detection and Prevention Systems* (IDPS) (SP 800–94) (Feb. 2007), and *Guide to Secure Web Services* (SP 800–95) (Aug. 2007) (all available at *http://csrc.nist.gov/publications/PubsSPs.html*), and bulletins dealing with computer security published by the NIST's Information Technology Laboratory (ITL), for example *Secure Web Servers: Protecting Web Sites That Are Accessed By The Public* (ITL January 2008) (available at *http://csrc.nist.gov/publications/PubsITLSB.html*); *Federal Information System Controls Audit Manual,* General Accounting Office, Accounting and Information Management Division, *Federal Information System Controls Audit Manual,* GAO/AIMD–12.19.6 (known as ''FISCAM'') (Jan. 1999) (available at *http://www.gao.gov/special.pubs/ai12.19.6.pdf*); International Organization for Standardization, *Code of Practice for Information Security Management* (ISO/IEC 27002:2005) (known among information security professionals as the ''British Standard,'' and formerly designated BS ISO/IEC 17799:2005 and BS 7799–1:2005) (available for purchase at *http://www.standardsdirect.org/iso17799.htm* and at *http://www.bsi-global.com/en/Shop/Publication-Detail/?pid=000000000030166440*); and Information Systems Audit and Control Association/IT Governance Institute, *Control Objectives for Information and Related Technology* (known as ''COBIT'') (last updated, and published as version 4.1, May 2007) (available at *http://www.isaca.org*).

[30] *See supra* notes 16–19 and accompanying text.

FTC.[31] In addition, these elements are consistent with policies and procedures we understand many institutions in the securities industry have already adopted. We understand that large and complex organizations generally have written policies that address information safeguarding procedures at several layers, from an organization-wide policy statement to detailed procedures that address particular controls.[32]

Institutions subject to the rule would be required to:

(i) Designate in writing an employee or employees to coordinate the information security program;[33]

(ii) Identify in writing reasonably foreseeable security risks that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of personal information or personal information systems;[34]

(iii) Design and document in writing and implement information safeguards to control the identified risks;[35]

(iv) Regularly test or otherwise monitor and document in writing the effectiveness of the safeguards' key controls, systems, and procedures, including the effectiveness of access controls on personal information systems, controls to detect, prevent and respond to attacks, or intrusions by unauthorized persons, and employee training and supervision;[36]

(v) Train staff to implement the information security program;[37]

(vi) Oversee service providers by taking reasonable steps to select and retain service providers capable of maintaining appropriate safeguards for the personal information at issue, and require service providers by contract to implement and maintain appropriate safeguards (and document such oversight in writing);[38] and

(vii) Evaluate and adjust their information security programs to reflect the results of the testing and monitoring, relevant technology changes, material changes to operations or business arrangements, and any other circumstances that the institution knows or reasonably believes may have a material impact on the program.[39]

The term ''service provider'' would mean any person or entity that receives, maintains, processes, or otherwise is permitted access to personal information through its provision of services directly to a person subject to the rule.[40] We understand that in large financial complexes, a particular affiliate may be responsible for providing a particular service for all affiliates in the complex. In that circumstance, each financial institution subject to Regulation S–P would be responsible for taking reasonable steps to ensure that the service provider is capable of maintaining appropriate safeguards and of overseeing the service provider's implementation, maintenance, evaluation, and modifications of appropriate safeguards for the institution's personal information. Under the proposed amendments, we anticipate that a covered institution's reasonable steps to evaluate the information safeguards of service providers could include the use of a third-party review of those safeguards such as a Statement of Auditing Standards No. 70 (''SAS 70'') report, a SysTrust report, or a WebTrust report.[41]

We request comment on the proposed specific standards for safeguarding personal information.

- Would these standards provide sufficient direction to institutions? Are there particular standards that should be more or less prescriptive? For example, should institutions be required to designate an employee or employees to coordinate the information security program by name, or should institutions be permitted to make these designations by position or office?
- Would additional standards be appropriate or are certain standards unnecessary? Should the proposed standards be modified to more closely or less closely resemble standards prescribed by the Banking Agencies or the FTC? For the securities industry, are there any other standards that a well-designed information security program should address? Are there any other standards that would provide more flexibility to covered institutions?
- We also invite comment on the proposed requirement that entities assess the sufficiency of safeguards in place, to control reasonably foreseeable risks. Should the rules include more detailed standards and specifications for access controls? Should the requirement specify factors such as those identified in the Banking Agencies' guidance regarding authentication in an Internet banking environment or include policies and procedures such as those in the Banking Agencies and the FTC's proposed or final ''red flag'' requirements?[42] For example, should we require that covered institutions implement multifactor authentication, layered security, or other controls for high-risk transactions involving access to customer information or the movement of funds to third parties? Should we require that covered institutions include in their information security programs ''red flag'' elements

[31] *See* Banking Agencies' Security Guidelines and FTC Safeguards Rule, *supra* note 23. As noted above, we sought comment on whether to revise our safeguards rule in 2004. *See supra* note 22. At that time, several commenters noted that Rule 206(4)–7 under the Investment Advisers Act (17 CFR 275.206(4)–7) and Rule 38a–1 under the Investment Company Act (17 CFR 270.38a–1) require registered investment advisers and registered investment companies to have written policies and procedures reasonably designed to prevent violation of the federal securities laws, including safeguards for the protection of customer records and information under Regulation S–P. These rules also require registered investment advisers and funds to review, no less frequently than annually, the adequacy of these policies and procedures. *See* Comment Letter of the Investment Counsel Association of America (Oct. 20, 2004), at p. 3; Comment Letter of the Investment Company Institute (Oct. 20, 2004) at p. 2. Each of these letters is available at *http://www.sec.gov/comments/s73304.shtml.* We do not intend for the proposed amendments to alter or conflict with these requirements.

[32] *See Disposal Rule Proposing Release, supra* note 22, at 69 FR 56308 & n.29.

[33] *See* proposed paragraph (a)(3)(i) of Section 30. Of course, the employee or employees designated to coordinate an institution's information security program would need to have sufficient authority and access to the institution's managers, officers and directors to effectively implement the program and modify it as necessary.

[34] *See* proposed paragraph (a)(3)(ii) of Section 30. The term ''personal information system'' would mean any method used to access, collect, store, use, transmit, protect or dispose of personal information. *See* proposed paragraph (d)(9) of Section 30.

[35] *See* proposed paragraph (a)(3)(iii) of Section 30.

[36] *See* proposed paragraph (a)(3)(iv) of Section 30.

[37] *See* proposed paragraph (a)(3)(v) of Section 30.

[38] *See* proposed paragraph (a)(3)(vi) of Section 30.

[39] *See* proposed paragraph (a)(3)(vii) of Section 30. This requirement is similar to the requirement in the Banking Agencies' Security Guidelines that institutions covered by those guidelines monitor, evaluate, and adjust, as appropriate, their information security program in light of any relevant changes in technology, the sensitivity of their customer information, internal or external threats to information, and their own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems. *See supra* note 23, Banking Agencies' Security Guidelines, 66 FR at 8634, 8635–36, 8637, 8639, 8641. The ''material impact'' standard in proposed paragraph (a)(3)(iii) is intended to require adjustment of a covered institution's information security program only when a reasonable coordinator of the program would consider adjusting the program important in light of changing circumstances.

[40] *See* proposed paragraph (d)(11) of Section 30.

[41] *See* Codification of Accounting Standards and Procedures, Statement on Auditing Standards No. 70, Reports on Processing of Transactions by Service Organizations (American Inst. of Certified Public Accountants). *See also* description and comparison of these reports at *http://infotech.aicpa.org/Resources/System+Security+and+Reliability/System+Reliability/Principles+of+a+Reliable+System/SAS+No+70+SysTrust+and+WebTrust+A+Comparison.htm.*

[42] *See* Authentication Guidance, Proposed Red Flag Guidance, and Final Red Flag Rules, *supra* note 23. The Authentication Guidance has been credited with helping to curtail online banking fraud, but has been characterized as not adequately addressing authentication in the context of telephone banking. *See* Daniel Wolfe, *How New Authentication Systems are Altering Fraud Picture,* Amer. Banker (Dec. 26, 2007).

that would be relevant to detecting, preventing and mitigating identity theft in connection with the opening of accounts or existing accounts, or in connection with particular types of accounts associated with a reasonably foreseeable risk of identity theft? Should we require that covered institutions adopt policies and procedures for evaluating changes of address followed closely by an account change or transaction, or for processing address discrepancy notices from consumer reporting agencies? If the rule were to include more detailed standards and specifications for access controls, how should these apply to business conducted by telephone?

• Commenters are invited to discuss the proposed definition of ''substantial harm or inconvenience.'' Are there circumstances that commenters believe would create substantial harm or inconvenience to individuals that would not meet the proposed definition? If so, how should the definition be revised to address these circumstances?

• Commenters are invited to discuss the proposed requirements for written documentation of compliance with the proposed safeguarding provisions.

• Commenters are invited to discuss the proposed definition of ''service provider.'' They also are invited to discuss whether, if the proposed amendments are adopted, they should include or be accompanied by guidance on the use of outside evaluations of third-party service providers. For example, should the Commission provide guidance similar to that provided by the FFIEC on the appropriate use of SAS 70 reports in evaluating the information safeguards of service providers? [43]

2. Data Security Breach Response

Because of the potential for harm or inconvenience to individuals when a data security breach occurs, we are proposing that information security programs include procedures for responding to incidents of unauthorized access to or use of personal information. These procedures would include notice to affected individuals if misuse of sensitive personal information has occurred or is reasonably possible. The procedures would also include notice to the Commission (or for certain broker-dealers, their designated examining authority [44]) under circumstances in which an individual identified with the information has suffered substantial harm or inconvenience or an unauthorized person has intentionally obtained access to or used sensitive personal information. The proposed rules that would require prompt notice of information security breach incidents to individuals, as well as the Commission or designated examining authorities, are intended to facilitate swift and appropriate action to minimize the impact of the security breach.

The data security breach response provisions of the proposed amendments include elements intended to provide firms in the securities industry with detailed standards for responding to a breach so as to protect against unauthorized use of compromised data. The proposed standards would specify procedures a covered institution's information security program would need to include. These procedures would be required to be written to provide clarity for firm personnel and to facilitate Commission and SRO examination and inspection. The proposed standards are intended to ensure that covered institutions adopt plans for responding to an information security breach incident so as to minimize the risk of identity theft or other significant investor harm or inconvenience from the incident. These proposed procedures also are intended to be consistent with security breach notification guidelines adopted by the Banking Agencies.[45]

Under the proposed amendments, institutions subject to the rule would be required to have written procedures to:

(i) Assess any incident involving unauthorized access or use, and identify in writing what personal information systems and what types of personal information may have been compromised; [46]

(ii) Take steps to contain and control the incident to prevent further unauthorized access or use and document all such steps taken in writing; [47]

(iii) Promptly conduct a reasonable investigation and determine in writing the likelihood that the information has been or will be misused after the institution becomes aware of any unauthorized access to sensitive personal information; [48] and

(iv) Notify individuals with whom the information is identified as soon as possible (and document the provision of such notification in writing) if the institution determines that misuse of the information has occurred or is reasonably possible.[49]

We propose to define the term, ''sensitive personal information,'' to mean ''any personal information, or any combination of components of personal information, that would allow an unauthorized person to use, log into, or access an individual's account, or to establish a new account using the individual's identifying information,'' including the individual's Social Security number, or any one of the individual's name, telephone number, street address, e-mail address, or online user name, in combination with any one

[43] The FFIEC provided the following guidance on the use of SAS 70 reports in the oversight of third-party service providers (''TSPs'') by financial institutions regulated by FFIEC member agencies:

Financial institutions should ensure TSPs implement and maintain controls sufficient to appropriately mitigate risk. In higher-risk relationships the institution by contract may prescribe minimum control and reporting standards, obtain the right to require changes to standards as external and internal environments change, and obtain access to the TSP for institution or independent third-party evaluations of the TSP's performance against the standard. In lower risk relationships the institution may prescribe the use of standardized reports, such as trust services reports or a Statement of Auditing Standards 70 (SAS 70) report.

* * * * *

Financial institutions should carefully and critically evaluate whether a SAS 70 report adequately supports their oversight responsibilities. The report may not provide a thorough test of security controls and security monitoring unless requested by the TSP. It may not address the effectiveness of the security process in continually mitigating changing risks. Additionally, the SAS 70 report may not address whether the TSP is meeting the institution's specific risk mitigation requirements. Therefore, the contracting oversight exercised by financial institutions may require additional tests, evaluations, and reports to appropriately oversee the security program of the service provider.

FFIEC, *FFIEC IT Examination Handbook, Information Security Booklet—July 2006,* at 77, 78 (available at *http://www.ffiec.gov/ffiecinfobase/booklets/information_security/information_security.pdf*).

[44] A broker-dealer's designated examining authority is the self-regulatory organization (''SRO'') of which the broker-dealer is a member, or, if the broker-dealer is a member of more than one SRO, the SRO designated by the Commission pursuant to 17 CFR 240.17d–1 as responsible for examination of the member for compliance with applicable financial responsibility rules (including the Commission's customer account protection rules at 17 CFR 240.15c3–3).

[45] *See* Banking Agencies' Incident Response Guidance, *supra* note 23.

[46] *See* proposed paragraph (a)(4)(i) of Section 30.

[47] *See* proposed paragraph (a)(4)(ii) of Section 30.

[48] *See* proposed paragraph (a)(4)(iii) of Section 30.

[49] *See* proposed paragraph (a)(4)(iv) of Section 30. Notification could be delayed, however, if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and requests in writing a delay in notification. We propose to require notification of individuals only if misuse of the compromised information has occurred or is reasonably possible to avoid requiring notification in circumstances in which there is no significant risk of substantial harm or inconvenience. If covered institutions were required to notify individuals of every instance of unauthorized access or use, such as if an employee accidentally opened and quickly closed an electronic account record, individuals could receive an excessive number of data breach notifications and become desensitized to incidents that pose a real risk of identity theft.

of the individual's account number, credit or debit card number, driver's license number, credit card expiration date or security code, mother's maiden name, password, personal identification number, biometric authentication record, or other authenticating information.[50] This definition is intended to cover the types of information that would be most useful to an identity thief, and to which unauthorized access would create a reasonable possibility of substantial harm or inconvenience to an affected individual.

The amendments also would require an institution to provide notice to the Commission as soon as possible after the institution becomes aware of any incident of unauthorized access to or use of personal information in which there is a significant risk that an individual identified with the information might suffer substantial harm or inconvenience, or in which an unauthorized person has intentionally obtained access to or used sensitive personal information.[51] This requirement would allow Commission and SRO investigators or examiners to review the notices to determine if an immediate investigative or examination response would be appropriate. In this regard, it is crucial that institutions respond promptly to any follow-up requests for records or information from our staff or the staff of the designated examining authority.[52] Under the proposed amendments, a prompt response in accordance with existing Commission guidance on the timely production of records would be particularly important in circumstances involving ongoing misuse of sensitive personal information.

The regulatory notification requirement in the Banking Agencies' guidance requires a report to the appropriate regulator as soon as possible after the institution becomes aware of an incident involving unauthorized access to or use of sensitive customer information.[53] Our proposed notice requirement differs from the Banking Agencies' approach in that it would require notice to the Commission (or a designated examining authority) when an incident of unauthorized access to or use of personal information poses a significant risk that an individual identified with the information might suffer substantial harm or inconvenience, or in which an unauthorized person has intentionally obtained access to or used sensitive personal information. The proposed notice requirement is intended to avoid notice to the Commission in every case of unauthorized access, and to focus scrutiny on information security breaches that present a greater potential likelihood for harm. We believe that this approach would help conserve institutions', as well as the Commission's, administrative resources by allowing minor incidents to be addressed in a way that is commensurate with the risk they present. The information to be included in the notice would allow the Commission or a broker-dealer's designated examining authority to evaluate whether any legal action against a would-be identity thief or other action is warranted in light of the circumstances. A broker-dealer, other than a notice-registered broker dealer, would be required to notify the appropriate designated examining authority on proposed Form SP–30. An investment company or registered investment adviser or transfer agent would be required to notify the Commission on proposed Form SP–30.[54]

Proposed Form SP–30 would require the institution to disclose information that the Commission (or the designated examining authority) needs to understand the nature of the unauthorized access or misuse of personal information and the institution's intended response to the incident.[55] Accordingly, in addition to identifying and contact information for the covered institution, the form would request a description of the incident, when it occurred and what offices or parts of the registrant's business were affected. The form also would require disclosure of any third-party service providers that were involved, the type of services provided and, if the service provider is an affiliate, the nature of the affiliation. This information would help examiners to assess the information security policies and procedures of the service provider. In addition, the form would require a description of any customer account losses.

Under the proposed amendments, if a covered institution determined that an unauthorized person had obtained access to or used sensitive personal information, and that misuse of the information had occurred or was reasonably possible, the institution also would be required to provide notification, in a clear and conspicuous manner, to each individual identified with the information.[56] The proposed requirements for notices to individuals are intended to give investors information that would help them protect themselves against identity theft. They also are intended to be consistent with similar requirements in the Banking Agencies' Incident Response Guidance.[57]

The notices to affected individuals that would be required by the proposed amendments would have to:

(i) Describe the incident and the type of information that was compromised, and what was done to protect the individual's information from further unauthorized access or use;[58]

(ii) Include a toll-free telephone number or other contact information for further information and assistance from the institution;[59]

(iii) Recommend that the individual review account statements and immediately report any suspicious activity to the institution;[60] and

(iv) Include information about FTC guidance regarding the steps an individual can take to protect against identity theft, a statement encouraging the individual to report any incidents of identity theft to the FTC, and the FTC's Web site address and toll-free telephone number for obtaining identity theft guidance and reporting suspected incidents of identity theft.[61]

[50] *See* proposed paragraph (d)(10) of Section 30.

[51] *See* proposed paragraph (a)(4)(v) of Section 30.

[52] *See generally* 15 U.S.C. 21(a) (investigative requests); 17 CFR 240.17a 4(j) (examinations of broker-dealers); 17 CFR 275.204–2(g) (examinations of investment advisers).

[53] *See* Banking Agencies' Incident Response Guidance, *supra* note 23, at 70 FR 15740–15741 (concluding that the Banking Agencies' standard for notification to regulators should provide an early warning to allow an institution's regulator to assess the effectiveness of an institution's response plan, and, where appropriate, to direct that notice be given to customers if the institution has not already done so).

[54] We anticipate that this form could be downloaded from our Web site and would be required to be filed electronically with the Registrations Branch in the Office of Compliance Inspections and Examinations. While broker-dealers generally would file the form with their designated examining authority rather than the Commission, investment advisers that are dually registered with the Commission as broker-dealers also would file with the Commission and indicate their dual-registrant status on the form.

[55] *See* proposed Form SP–30. Information submitted to the Commission on the form would be accorded confidential treatment to the extent permitted by law. *See, e.g.*, 17 CFR 200.83. We realize that the full amount of losses may not be known at the time an information security breach is discovered, but we would expect covered institutions to make a good faith effort to complete the proposed form to the extent possible.

[56] *See* proposed paragraph (a)(5) of Section 30.

[57] *See* Banking Agencies' Incident Response Guidance, *supra* note 23.

[58] *See* proposed paragraphs (a)(5)(i) and (a)(5)(ii) of Section 30.

[59] *See* proposed paragraph (a)(5)(iii) of Section 30.

[60] *See* proposed paragraphs (a)(5)(iv) and (a)(5)(v) of Section 30.

[61] *See* proposed paragraph (a)(5)(vi) of Section 30.

We request comment on the proposed specific standards relating to incidents of unauthorized access to or misuse of personal information.

• Commenters are invited to discuss the proposed requirements for procedures for responding to incidents of unauthorized access to or use of personal information. Are there any particular steps that may not be necessary, or not necessary in all situations? Are there any other steps that could be taken in response to a security breach that also should be required in some or all situations?

• We request comment on the proposed provisions regarding procedures for notifying the Commission (or a broker-dealer's designated examining authority) of incidents in which an individual identified with compromised information has suffered substantial harm or inconvenience, or an unauthorized person has intentionally obtained access to or used sensitive personal information.

• For example, should firms be required to provide notice only if the information compromised in an incident is identified with a certain number of individuals? Should the rule include a numerical or other threshold for when notice to the Commission (or to a broker-dealer's designated examining authority) is required? If so, how would a threshold work for smaller institutions that may be far more likely than larger institutions to meet the threshold? Will the proposed standard provide a sufficient early warning to the Commission, or should the Commission broaden the circumstances under which notices would be required to be provided to the Commission (or to a broker-dealer's designated examining authority), such as the standard adopted by the Banking Agencies? Commenters should explain their views.

• Is the proposed definition of ''sensitive personal information'' sufficient? Are there particular types of information that should or should not be included?

• We request comment on proposed Form SP–30. Is the form easy to understand and use? For example, is the form clear, or would additional guidance, such as instructions or further explanation of particular questions or terms be helpful? Would it be easier or more cost-effective for firms if the rule specified the information they are required to provide rather than provide a form? Would the form be more useful if it were in a tabular format? Commenters should be specific regarding changes they believe should be made to the content or format of the proposed form.

• Similarly, we invite comment on the proposed provisions regarding procedures for notifying individuals of incidents of unauthorized use or access if an institution determines that an unauthorized person has obtained access to or used the information and that misuse of sensitive personal information has occurred or is reasonably possible. Is the information in the proposed notice to individuals appropriate? Is there additional information that institutions should include, or information, proposed to be included, that should be eliminated? Is the proposed threshold for notice appropriate? If not, are there alternative thresholds for notice to individuals that would be more appropriate? If so, commenters should explain their views.

• Commenters are invited to discuss the proposed requirements for written documentation of compliance with the proposed incident response provisions.

B. Scope of the Safeguards and Disposal Rules

1. Information Covered by the Safeguards and Disposal Rules

The Commission adopted the safeguards and disposal rules at different times under different statutes—respectively, the GLBA and the FACT Act—that differ in the scope of information they cover. As noted above, Regulation S–P implements the GLBA privacy provisions governing requirements for notice and opt out before an institution can share certain information with nonaffiliates and for safeguarding information. The regulation's notice and opt out provisions limit institutions from sharing ''nonpublic personal information'' about consumers and customers as defined in the GLBA and in Regulation S–P, with nonaffiliated third parties.[62] As required under the GLBA, the safeguards rule requires covered institutions to maintain written policies and procedures to protect ''customer records and information,''[63] which is not defined in the GLBA or in Regulation S–P. The disposal rule requires institutions to properly dispose of ''consumer report information,'' a third term, which Regulation S–P defines consistent with the FACT Act provisions.[64] Each of these terms includes a different set of information, although the terms include some of the same information.[65] Each term also does *not* include some information that, if obtained by an unauthorized user, could permit access to personal financial information about an institution's customers. We preliminarily believe that in order to provide better protection against the unauthorized disclosure of this personal financial information, the scope of information protected by both the safeguards rule and the disposal rule should be broader. Broadening the scope of information covered by the safeguards and disposal rules would more appropriately implement Section 525 of the GLBA. Section 525 directs the Commission to revise its regulations as necessary to ensure that covered institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of ''customer financial information.'' Section 521 of Title V of the GLBA prohibits persons from obtaining or requesting a person to obtain, customer information by making false or fraudulent statements to an officer, employee, agent, or customer of a financial institution.[66] In furtherance of these prohibitions, the GLBA directs the Commission and the other federal financial regulators to review their regulations and to revise them as necessary to ensure that financial institutions have policies, procedures and controls in place to prevent the unauthorized disclosure of ''customer financial information'' and to deter and detect the activity described in Section 521.[67] Applying both the safeguards and disposal rules to a consistent set of information also could reduce any burden that may have been created by the application of the safeguards and disposal rules to different information.[68]

[62] *See* 15 U.S.C. 6802(a), (b). ''Nonpublic personal information'' is generally defined in the GLBA and Regulation S–P as encompassing personally identifiable financial information, as well as any list, description, or other grouping of consumers (and publicly available information pertaining to them) derived using any personally identifiable financial information that is not publicly available, subject to certain exceptions. *See* 15 U.S.C. 6809(4); 17 CFR 248.3(t) and 248.3(u). *See supra* note 12 for a discussion of the notice and opt out provisions.

[63] *See* 17 CFR 248.30; 15 U.S.C. 6801(b)(1).

[64] 17 CFR 248.30(b)(2). Section 628(a)(1) of the FCRA directed the Commission to adopt rules requiring the proper disposal of ''consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose.'' 15 U.S.C. 1681w(a)(1). Regulation S–P uses the term ''consumer report information'' and defines it to mean a record in any form about an individual ''that is a consumer report or is derived from a consumer report.'' 17 CFR 248.30(b)(1)(ii). ''Consumer report'' has the same meaning as in Section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681(d)). 17 CFR 248.30(b)(1)(i).

[65] *See* Disposal Rule Adopting Release, *supra* note 15, at 69 FR 71323 n.13.

[66] *See* 15 U.S.C. 6821(a), (b).

[67] *See* 15 U.S.C. 6825.

[68] *See* David Annecharico, Note, *Online Transactions: Squaring the Gramm-Leach-Bliley Act*

Continued

Accordingly, we propose to amend the safeguards and disposal rules so that both protect ''personal information,'' and to define that term to encompass any record containing either ''nonpublic personal information'' or ''consumer report information.''[69] As noted above, each of these terms is defined in Regulation S–P.[70] The term ''consumer report information'' would continue to mean any record about an individual, whether in paper, electronic or other form, that is a consumer report or is derived from a consumer report, as well as a compilation of such records, but not including information that does not identify individuals, such as aggregate information or blind data.[71] The proposed amendments would leave the meaning of the term ''consumer report'' unchanged from the definition set forth in Section 603(d) of the FCRA.[72] Section 603(d) defines ''consumer report'' in general as encompassing communications of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, reputation or particular other factors used in connection with establishing the consumer's eligibility for credit or insurance, or for employment purposes or other authorized purposes, subject to certain exclusions.[73]

In addition to nonpublic personal information and consumer report information, ''personal information'' also would include information identified with any consumer, or with any employee, investor, or securityholder who is a natural person,[74] in paper, electronic or other form, that is handled by the institution or maintained on the institution's behalf.[75] Thus, for example, the definition would include records of employee user names and passwords maintained by a brokerage firm, and records about securityholders maintained by a transfer agent. We believe safeguarding employee user names and passwords promotes information security because unauthorized access to this information could facilitate unauthorized access to a firm's network and its clients' personal information.[76] Safeguarding information about investors and securityholders, such as maintained by registered transfer agents, is necessary to protect investors who may, directly or indirectly, do business with the Commission's regulated entities even though they may not be ''consumers'' or ''customers'' of those entities as those terms are defined for purposes of Regulation S–P.[77] We also propose to make a conforming change to the definition of ''personally identifiable financial information'' by including within the definition information that is handled or maintained by a covered institution or on its behalf, and that is identified with any consumer, or with any employee, investor, or securityholder who is a natural person.[78] We preliminarily believe that this change would be appropriate in the public interest and for the protection of investors because it would help protect information identified with an investor who may not be a ''consumer'' or ''customer'' of a covered institution.

To better protect investors'' and securityholders' information from unauthorized disclosure, the proposed amendments would apply the safeguards and disposal rules to nonpublic personal information or consumer report information that is identified with any individual consumer, employee, investor or securityholder and handled or maintained by or on behalf of the institution. The proposal to include personal information and consumer report information about employees of covered institutions is intended to reduce the risk that a would-be identity thief could access investor information by impersonating an employee or employing ''social engineering'' techniques or bribery.

Including consumer report information within the definition of ''personal information'' (to which the safeguards rule would apply) would be consistent with the congressional intent behind making consumer report information subject to the disposal requirements set forth in the FACT Act.[79] Furthermore, the proposed scope of protection appears to be consistent with the practices of many covered institutions that currently protect employee information, consumer report information, and nonpublic personal information about consumers and customers in the same manner.[80]

We invite comment on the proposed definition of ''personal information.''

- Should the safeguards rule extend to consumer report information that is not nonpublic personal information?
- Should the disposal rule extend to nonpublic personal information that is not consumer report information?
- To what extent do institutions currently take the same measures in disposing of consumer report information, customer records and information, nonpublic personal information about consumers and customers, and information other than consumer report information that is identified with employees, investors, or securityholders who are not consumers or customers? To the extent that measures are different, what is the basis for those differences?
- Is the proposed definition of ''personal information,'' which includes all records containing either consumer report information or nonpublic personal information, broad enough to encompass the information that needs to be protected? If not, how should we expand the definition? Are there any aspects of the proposed definition that, in the context of the information security requirements discussed below, may be over-inclusive with regard to particular types of entities? If so, how should we tailor the definition?
- The proposed definition of ''personal information'' encompasses

Privacy Provisions With the FTC Fair Information Practice Principles, 6 N.C. Banking Inst. 637, 662 (2002), available at *http://www.unc.edu/ncbank/Articles%20and%20Notes%20PDFs/Volume%206/DavidAnnecharico%5Bpp637-664%5D.pdf* (''To require financial institutions to treat the security of consumer information on par with customer information may be cost effective and efficient. It could merely mean storing consumer information within the already mandated secure storage systems that are being used to store customer information.'').

[69] Proposed paragraph (d)(8) of Section 30.

[70] *See* 17 CFR 248.3(t)(1) (definition of ''nonpublic personal information''); 17 CFR 248.30(b)(ii) (definition of ''consumer report information'').

[71] *See* proposed paragraph (c)(4) of Section 30 and current paragraph (b)(ii) of Section 30 (definition governing current disposal requirements).

[72] *See* proposed paragraph (d)(3) of Section 30.

[73] *See* 15 U.S.C. 1681a(d).

[74] This element of the definition would exclude information identified only with persons other than natural persons, such as corporations. The GLBA limits the protections provided under subtitle A of the privacy provisions to ''consumers,'' who are *individuals* who obtain from a financial institution financial products or services to be used for personal, family or household purposes. 15 U.S.C. 6809(9). The FACT Act defines a ''consumer'' to mean an individual. 15 U.S.C. 1681a(c).

[75] *See* proposed paragraph (d)(8) of Section 30.

[76] *See supra* note 17 and accompanying text.

[77] As discussed *supra* at note 7, Regulation S–P defines the terms ''consumer'' and ''customer'' at 17 CFR 248.3(g) and 248.3(j), respectively.

[78] *See* proposed new paragraph (u)(1)(iv) of Section 3. The proposed amendments also would include technical, conforming changes to references to Section 30 in Sections 1(b) and 2(b) of Regulation S–P.

[79] The disposal rule was intended to reduce the risk of fraud or related crimes, including identity theft, by ensuring that records containing sensitive financial or personal information are appropriately redacted or destroyed before being discarded. *See* 108 Cong. Rec. S13,889 (Nov. 4, 2003) (statement of Sen. Nelson).

[80] Based on our staff's informal discussions with industry representatives about Regulation S–P issues, as well as the estimated costs and benefits of the proposed amendments we believe that many covered institutions currently protect both kinds of information in the same way out of prudence and for reasons of operational efficiency. *See infra* section V.B.

information identified with any consumer, or with any employee, investor, or securityholder who is a natural person. Are there any other persons whose information should be protected under the safeguards rule, or should the safeguards rule cover only information identified with individuals who are customers of a financial institution?

• Should the proposed definition of ''personal information'' be expanded to include information identified with non-natural persons, such as corporate clients? Commenters should explain their views.

2. Institutions Covered by the Safeguards Rule

As discussed above, the safeguards rule currently applies to brokers, dealers, registered investment advisers, and investment companies. The disposal rule currently applies to those entities as well as to registered transfer agents. We propose to extend the safeguards rule to apply to registered transfer agents.[81] These institutions, like those currently subject to both the safeguards and disposal rules, may maintain personal information such as Social Security numbers, account numbers, passwords, account balances, and records of securities transactions and positions. Unauthorized access to or misuse of such information could result in substantial harm and inconvenience to the individuals identified with the information. The proposed amendments thus would require that covered institutions that may receive personal information in the course of effecting, processing or otherwise supporting securities transactions must protect that information by maintaining appropriate safeguards in addition to taking measures to properly dispose of the information.[82] Registered transfer agents may maintain sensitive personal information about investors, the unauthorized access to or use of which could cause investors substantial inconvenience or harm. Therefore, we preliminarily believe that extending the safeguards rule to registered transfer agents would be appropriate in the public interest and for the protection of investors.[83]

The proposed amendments also would limit the scope of broker-dealers covered by the safeguards rule to brokers or dealers other than those registered by notice with the Commission under Section 15(b)(11) of the Exchange Act.[84] Notice-registered broker-dealers must comply with the privacy rules, including rules requiring the safeguarding of customer records and information, adopted by the CFTC.[85] Excluding notice-registered broker-dealers from the scope of the Commission's safeguards rule would clarify that both sets of rules do not apply to notice-registered broker-dealers, and that the CFTC would have primary responsibility for oversight of those broker-dealers in this area.

We seek comment on the proposed scope of the safeguards rule.

• Should registered transfer agents be subject to the safeguards rule? To what extent are registered transfer agents expected to possess, or lack, the type of information that could be used to commit identity theft or otherwise cause individuals substantial harm or inconvenience?[86] Are there special issues that registered transfer agents might have in implementing or meeting the requirements of the safeguards rule?

• Should the Commission propose to extend the safeguards and disposal rules to self-regulatory organizations or other types of institutions in the securities industry? If so, which ones?

• Should notice-registered broker-dealers be excluded from the scope of the proposed amended safeguards rule? If not, why not?

3. Persons Covered by the Disposal Rule

As noted above, the disposal rule currently applies to broker-dealers, investment companies, registered investment advisers and registered transfer agents. We propose to extend the disposal rule to apply to natural persons who are associated persons of a broker or dealer, supervised persons of a registered investment adviser, and associated persons of a registered transfer agent.[87] As noted above, we have become concerned that some of these persons, who may work in branches far from the registered entity's main office, may not dispose of sensitive personal financial information consistent with the registered entity's disposal policies. The proposal is intended to make persons associated with a covered institution directly responsible for properly disposing of personal information consistent with the institution's policies.

• We request comment on the proposed extension of the scope of the disposal rule to apply to natural persons who are associated with broker-dealers, supervised persons of registered investment advisers, or who are associated persons of registered transfer agents.

• Are there alternative ways of helping to ensure that these persons would follow the covered institution's disposal policies and properly dispose of personal information?

[81] The term ''transfer agent'' would be defined by proposed paragraph (d)(14) of Section 30 to have the same meaning as in Section 3(a)(25) of the Exchange Act (15 U.S.C. 78c(a)(25)).

As discussed below, we also propose to extend the disposal rule to associated persons of broker-dealers, supervised persons of registered investment advisers, and associated persons of registered transfer agents.

[82] The proposed definition of ''personal information'' would include information about individual investors maintained by registered transfer agents even though transfer agents typically do not have consumers or customers for purposes of Regulation S–P because their clients generally are not individuals, but are the companies in which investors, including individuals, hold shares.

[83] Under Section 17A of the Exchange Act (15 U.S.C. 78q–1) the Commission has authority to prescribe rules and regulations for transfer agents as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of Title I of the Exchange Act.

[84] Proposed paragraph (a)(1) of Section 30. *See* 15 U.S.C. 78*o*(b)(11). The Commodity Futures Modernization Act of 2000 established a system of notice registration under which trading facilities and intermediaries that are already registered with either the Commission or the CFTC may register with the other agency on an expedited basis for the limited purpose of trading security futures products. Under the substituted compliance provision in Section 2(b) of Regulation S–P (17 CFR 248.2(b)), CFTC-regulated futures commission merchants and introducing brokers that are registered by notice with the Commission and in compliance with the financial privacy rules of the CFTC are deemed to be in compliance with Regulation S–P, except with respect to Regulation S–P's disposal rule (currently 17 CFR 248.30(b)). Notice-registered broker-dealers are already excluded from the scope of the disposal rule.

[85] *See* 17 CFR 160.30.

[86] Such information could include address and account information used to disseminate shareholder communications and dividend and interest payments, as well as information collected pursuant to Rule 17Ad–17 under the Exchange Act (17 CFR 240.17Ad–17), which requires transfer agents registered with the Commission to use taxpayer identification numbers or names to search databases for addresses of lost securityholders.

[87] *See* proposed paragraph (b)(1) of Section 30. The term ''associated person of a broker or dealer'' would be defined by proposed paragraph (d)(1) of Section 30 to have the same meaning as in Section 3(a)(18) of the Exchange Act (15 U.S.C. 78c(a)(18)). The term ''supervised person of an investment adviser'' would be defined by proposed paragraph (d)(13) of Section 30 to have the same meaning as in Section 202(a)(25) of the Investment Advisers Act of (15 U.S.C. 80b–2(a)(25)). We are proposing to include ''supervised'' persons of an investment adviser, rather than ''associated'' persons in order to include all employees, including clerical employees, of an investment adviser who may be responsible for disposing of personal information. *See* 15 U.S.C. 80b–2(a)(17) (defining term ''person associated with an investment adviser'' not to include associated persons whose functions are clerical or ministerial). This approach is intended to cover the same range of employees as investment advisers, broker-dealers, and registered transfer agents. The term ''associated person of a transfer agent'' would be defined by proposed paragraph (d)(2) of Section 30 to have the same meaning as in Section 3(a)(49) of the Exchange Act (15 U.S.C. 78c(a)(49).

An additional proposed extension to the scope of the disposal rule is discussed below. *See infra* section II.B.

C. Records of Compliance

We further propose to amend Regulation S–P to require institutions subject to the safeguards and disposal rules to make and preserve written records of their safeguards and disposal policies and procedures. We also propose to require that institutions document that they have complied with the elements required to develop, maintain and implement these policies and procedures for protecting and disposing of personal information, including procedures relating to incidents of unauthorized access to or misuse of personal information. These records would help institutions assess their policies and procedures internally, and help examiners to monitor compliance with the requirements of the amended rules. The periods of time for which the records would have to be preserved would vary by institution, because the requirements would be consistent with existing recordkeeping rules, beginning with when the records were made, and, for records of written policies and procedures, after any change in the policies or procedures they document.[88] Broker-dealers would have to preserve the records for a period of not less than three years, the first two years in an easily accessible place. Registered transfer agents would have to preserve the records for a period of not less than two years, the first year in an easily accessible place. Investment companies would have to preserve the records for a period not less than six years, the first two years in an easily accessible place. Registered investment advisers would have to preserve the records for five years, the first two years in an appropriate office of the investment adviser. We believe that these proposed recordkeeping provisions, while varying among covered institutions, would all result in the maintenance of the proposed records for sufficiently long periods of time and in locations in which they would be useful to examiners. Moreover, we do not believe that shorter or longer maintenance periods would be warranted by any difference between the proposed records and other records that covered institutions currently must maintain for these lengths of time. We also believe that conforming the proposed retention periods to existing requirements would allow covered institutions to minimize their compliance costs by integrating the proposed requirements into their existing recordkeeping systems.[89]

We request comment on the proposed requirements for making and retaining records.

- Are the proposed periods of time for preserving the records appropriate, or should certain records be preserved for different periods of time?
- Would the costs associated with preserving records for periods of time consistent with covered institutions' other recordkeeping requirements be less than they would be if all institutions were required to keep these records for the same period of time?

D. Exception for Limited Information Disclosure When Personnel Leave Their Firms

Finally, we propose to amend Regulation S–P to add a new exception from the notice and opt out requirements to permit limited disclosures of investor information when a registered representative of a broker-dealer or a supervised person of a registered investment adviser moves from one brokerage or advisory firm to another. The proposed exception is intended to allow firms with departing representatives to share limited customer information with the representatives' new firms that could be used to contact clients and offer them a choice about whether to follow a representative to the new firm. At many firms, representatives develop close professional and personal relationships with investors over time. Representatives at such firms likely remember the basic contact information for their clients or have recorded it in their own personal records. Some firms discourage departing representatives from soliciting clients to move to another firm, while others do not. At any firm, departing representatives may have a strong incentive to transfer as much customer information as possible to their new firms, and it has been brought to our attention that, at some firms, information may have been transferred without adequate supervision, in contradiction of privacy notices provided to customers, or potentially in violation of Regulation S–P.[90]

The proposed exception is designed to provide an orderly framework under which firms with departing representatives could share certain limited customer contact information and could supervise the information transfer.[91] The proposed exception would permit one firm to disclose to another only the following information: the customer's name, a general description of the type of account and products held by the customer, and contact information, including address, telephone number and e-mail information.[92] We propose to include this particular information as it would be useful for a representative seeking to maintain contact with investors, but appears unlikely to put an investor at serious risk of identity theft. It also is the type of information an investor would expect a representative to remember. Broker-dealers and registered investment advisers seeking to rely on the exception would have to require their departing representatives to provide to them, not later than the representative's separation from employment, a written record of the information that would be disclosed pursuant to the exception, and broker-dealers and registered investment advisers would be required to preserve such records consistent with the proposed recordkeeping provisions of Section 30.[93] This condition is intended

[88] *See* proposed paragraph (c) of Section 30.

[89] *See* 17 CFR 240.17a–4(b); 240.17Ad–7(b); 270.31a–2(a)(4)–(6); 275.204–2(e)(1).

[90] *See, e.g., In re NEXT Financial Group, Inc., supra* note 16.

[91] In 2004, certain large broker-dealers entered into a protocol under which signatories agreed not to sue one another for recruiting one another's registered representatives, if the representatives take only limited client information to another participating firm. The initial signatories, Citigroup Global Markets/Smith Barney, Merrill Lynch, and UBS Financial Services, were joined more recently by Raymond James, Wachovia Securities and others.

We understand that, under the protocol, the information that a departing representative may take to another firm is limited to each client's name, address, a general description of the type of account and products held by the client, and the client's phone number and e-mail address. This information may be used at the representative's new firm only by the representative, and only for the purpose of soliciting the representative's former clients.

We further understand that there may be some confusion in the securities industry regarding what information may be disclosed to a departing representative's new firm consistent with the limitations in Regulation S–P, and that at times these limitations may cause inconvenience to investors. NASD (now consolidated into FINRA) issued guidance to its member firms regarding the permissible and impermissible use of ''negative response letters'' for bulk transfers of customer accounts and changes in the broker-dealer of record on certain types of accounts (*see* NASD NtM 04–72 (Oct. 2004); NtM 02–57 (Sept. 2002)). More recently, FINRA issued guidance relating to Regulation S–P in the context special considerations firms should use to supervise recommendations of newly associated registered representatives to replace mutual funds and variable products). *See* FINRA, Regulatory Notice 07–36, available at *http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p036445.pdf.* However, our staff reports that scenarios involving representatives moving from one firm to another continue to create uncertainty regarding firms' obligations under Regulation S–P.

[92] *See* proposed paragraph (a)(8)(i) of Section 15.

[93] *See* proposed paragraph (a)(8)(iii) of Section 15 and proposed paragraph (c) of Section 30. For purposes of the proposed exception, the term ''representative'' would be defined to mean a natural person associated with a broker or dealer registered with the Commission, who is registered or approved in compliance with 17 CFR 240.15b7–

to help ensure that firms relying on the exception are appropriately accounting for the information they are disclosing in connection with departures of their representatives.[94]

The exception would be subject to conditions that are designed to limit the potential that the information would result in identity theft or other abuses. The shared information could not include any customer's account number, Social Security number, or securities positions.[95] A representative would not need this type of information to contact investors, although it would be useful to an identity thief, and an investor probably would not expect a representative to remember it. In addition, a representative could solicit only an institution's customers that were the representative's clients. This condition recognizes that an investor might expect to be contacted by a representative with whom the investor has done business before, but not by another person at the representative's new firm.[96]

As noted above, the proposed exception is designed to facilitate the transfer of client contact information that would help broker-dealers and registered investment advisers offer clients the choice of following a departing representative to a new firm. At firms that choose to rely on it, the proposed exception also should reduce potential incentives some representatives may have to take information with them secretly when they leave. By specifically limiting the types of information that could be disclosed to the representative's new firm, the proposed amendments are designed to help firms safeguard more sensitive client information. This limitation also would clarify that a firm may not require or expect a representative from another firm to bring more information than necessary for the representative to solicit former clients. Because the proposed exception is designed to promote investor choice, provide legal certainty, and reduce potential incentives for improper disclosures, we preliminarily believe that it would be necessary or appropriate in the public interest, and is consistent with the protection of investors.

The proposed exception would not limit the disclosure of additional information to a new firm pursuant to a customer's consent or direction.[97] It also would not preclude the disclosure of additional information required in connection with the transfer of a customer's account.[98] Depending on its business organization, its policies regarding departing representatives and the circumstances of a representative's departure, a firm could choose to rely on existing exceptions rather than the proposed new exception.[99] The proposed exception is designed to allow firms that choose to share limited contact information to do so. The proposed exception would not, however, affect firm policies that prohibit the transfer of any customer information other than at the customer's specific direction.

We have chosen to propose this approach as opposed to an alternative approach that would require all firms to include specific notice and opportunity to opt out of this information sharing in their initial and annual privacy notices. Under this alternative, a broker-dealer or registered investment adviser's privacy notice would have to provide specific disclosure regarding the circumstances under which the broker-dealer or adviser would share customer information with another firm when a registered representative or supervised person leaves. We have chosen this approach because, as indicated earlier, many representatives develop close professional and personal relationships with investors. They are likely to remember basic contact information for their clients or have recorded it in their own personal records, and investors would expect representatives to have this information. This type of limited contact information is unlikely to put investors at serious risk of identity theft. Also, we believe that a description of disclosures to a departing representative's new firm would be difficult to distinguish from the description of disclosures made for the purpose of third-party marketing and would further complicate already complex privacy notices.

- Commenters are invited to discuss the proposed new exception. Would it permit the transfer of contact information so as to promote investor choice and convenience? Would it foreclose the transfer of particularly sensitive information that, if misused, could lead to identity theft? Should the transfer of customer contact information be conditioned on the broker-dealer or registered investment adviser receiving the information certifying to the sharing institution that it complies with the safeguards and disposal rules?
- We also invite commenters to share their views on the likely effect of the proposed new exception on competition in recruiting broker-dealer and investment adviser representatives. Are there alternative approaches that would both protect investor information and not unduly restrict the transfer of representatives from one firm to another?
- We seek comment on potential alternative approaches, including requiring specific disclosure. Are investors, particularly new clients to a firm, likely to understand disclosures about information that would be given to a departing representative's new firm in initial or annual privacy notices?[100] Should the availability of the proposed exemption be conditioned on providing investors with specific disclosure regarding whether a covered institution would disclose personal information in connection with a representative's departure?
- The proposed exception would permit broker-dealers and registered investment advisers to transfer limited

1, or a supervised person of an investment adviser as defined in Section 202(a)(25) of the Investment Advisers Act. *See* proposed paragraph (a)(8)(iv) of Section 15.

[94] Most firms seeking to rely on the proposed exception would not need to revise their GLBA privacy notices because they already state in the notices that their disclosures of information not specifically described include disclosures permitted by law, which would include disclosures made pursuant to the proposed exception and the other exceptions provided in Section 15 of Regulation S–P.

[95] *See* proposed paragraph (a)(8)(ii) of Section 15.

[96] *See* proposed paragraph (a)(8)(i) of Section 15 (permitting a representative to solicit customers to whom the representative personally provided a financial product or service on behalf of the institution).

[97] For example, if an investor chooses to move his or her business to the representative's new firm, he or she may consent to having the original firm disclose additional information about the customer's account to the representative's new firm without the firm first having to provide the customer with an opt out. *See* 17 CFR 248.15(a)(1).

[98] If an investor requests or authorizes the transfer of his or her account from the representative's old firm to the representative's new firm, the old firm may disclose additional information as necessary to effect the account transfer. *See* 17 CFR 248.14(a)(1) and 248.14(b)(2)(vi)(B). The exception also would not preclude the disclosure of additional information about the investor if the firm has provided the investor with a privacy notice describing the disclosure and given the investor a reasonable opportunity to opt out of the disclosure, and the customer has not opted out. *See* 17 CFR 248.10. Thus, covered institutions that wish to disclose an investor's nonpublic personal information to a departing representative's new firm without relying on the proposed new exception or without first obtaining consent from the investor to the disclosure or to an account transfer could revise their privacy notices to describe disclosures the firm would make in the context of a representative's move to another broker-dealer or registered investment adviser.

[99] *See* 17 CFR 248.14, 248.15.

[100] We expect that if the Banking Agencies, the FTC and the Commission were to adopt the proposed model privacy form, *see* Interagency Model Privacy Form Proposal, *supra* note 12, the description of the disclosure to a nonaffiliated firm could be included on page 2 of the proposed form in the section defining nonaffiliates.

information to other broker-dealers and registered investment advisers without first providing notice and opt out. Should we make the proposed exception available for information transferred to other types of financial institutions where a departing representative may go? For example, should we permit broker-dealers and registered investment advisers to rely on the exception to share information with investment advisers that are not registered with the Commission?

- Commenters are invited to express their views on the proposed exemption's condition that a departing representative of a covered institution relying on this exemption could solicit only the institution's customers that were the representative's clients.

III. General Request for Comments

We request comment on all aspects of the proposed amendments to Regulation S–P. We particularly urge commenters to suggest other provisions or changes that could enhance the ways in which securities industry participants protect personal information. We encourage commenters to provide empirical data, if available, to support their views.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collections of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[101] The Commission is submitting these amendments to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA.[102] The title for the collections of information is ''Information security programs for personal information; records of compliance.'' The safeguards and disposal rules we propose to amend contain currently approved collections of information under OMB Control No. 3235–0610, the title of which is, ''Rule 248.30, Procedures to safeguard customer records and information; disposal of consumer report information.'' [103] The Commission is proposing to amend Regulation S–P's safeguards and disposal rules, 17 CFR 248.30(a) and (b), pursuant to Sections 501, 504, 505, and 504 of the GLBA,[104] Sections 17, 17A, 23, and 36 of the Exchange Act,[105] Sections 31(a) and 38 of the Investment Company Act,[106] and Sections 204 and 211 of the Investment Advisers Act.[107] Regulation S–P sets forth the Commission's safeguards rule for institutions covered by the regulation. Among other things, the safeguards rule requires covered institutions to adopt administrative, technical, and physical information safeguards to protect customer records and information. Regulation S–P also contains the Commission's disposal rule, which requires institutions to properly dispose of consumer report information possessed for a business purpose by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

The proposed amendments are designed to ensure that covered institutions maintain a reasonable information security program that includes safeguarding policies and procedures that are more specific than those currently required, including policies and procedures for responding to data security breach incidents, for notifying individuals for whom the incidents pose a risk of identity theft, and for reporting certain incidents to the Commission (or to a broker-dealer's designated examining authority) on proposed Form SP–30. The amendments also would broaden the scope of information and the types of institutions and persons covered by the safeguards and disposal rules. Finally, the amendments would create a new exception from Regulation S–P's notice and opt-out requirements for disclosures of limited information in connection with the departure of a representative of a broker-dealer or registered investment adviser. Firms choosing to rely on the exception would be required to keep records of the information disclosed pursuant to it.

The hours and costs associated with these collections of information would consist of reviewing the proposed amendments, collecting and searching for existing policies and procedures, conducting a risk assessment, developing and recording information safeguards appropriate to address risks, training personnel, and adjusting written safeguards on an ongoing basis. Institutions would also have to respond appropriately to incidents of data security breach as may occur on an ongoing basis. If misuse of information has occurred or is reasonably possible, this would include notifying affected individuals. If there is a significant risk that an individual identified with the information might suffer substantial harm or inconvenience, or any unauthorized person has intentionally obtained access to or used sensitive personal information, this would also include notifying the Commission or an appropriate designated examining authority as soon as possible on proposed Form SP–30. Certain of these collections of information also would require disclosure, reporting, and recordkeeping burdens, as analyzed below.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless a currently valid OMB control number is displayed. Responses to these collections of information would not be kept confidential.[108] The collections of information would be mandatory, and would have to be maintained by broker-dealers for not less than three years, the first two years in an easily accessible place, by registered transfer agents for a period of not less than two years, the first year in an easily accessible place, by investment companies for a period not less than six years, the first two years in an easily accessible place, and registered investment advisers would have to preserve the records for five years, the first two years in an appropriate office of the investment adviser.

Information Security and Security Breach Response Requirements

The proposed amendments contain collections of information requirements related to the more specific standards we are proposing for safeguarding personal information, including standards for responding to data security breaches. We believe these proposed collections of information are necessary to help prevent and address security breaches and designed to ensure that covered institutions maintain a reasonable information security program pursuant to the statutory requirements. Covered institutions would have to document in writing steps they would be required to take to develop, implement, and maintain a comprehensive information security program. We estimate that there would be 12,432 respondents to this information collection.[109] Of these

[101] 44 U.S.C. 3501–3520.

[102] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[103] The paperwork burden imposed by Regulation S–P's notice and opt-out requirements, 17 CFR 248.1 to 248.18, is currently approved under a separate OMB control number, OMB Control No. 3235–0537. The proposed amendments would not affect this collection of information.

[104] 15 U.S.C. 6801, 6804, 6805 and 6825.

[105] 15 U.S.C. 78q, 78q–1, 78w, and 78mm.

[106] 15 U.S.C. 80a–30(a), 80a–37.

[107] 15 U.S.C. 80b–4, 80b–11.

[108] Information submitted to the Commission on proposed Form SP–30 would be kept confidential to the extent permitted by law. *See supra* note 55.

[109] This estimate includes 6,016 broker-dealers, 4,733 investment companies representing portions of 813 fund complexes, 77 business development companies, 9,860 registered investment advisers, and 501 registered transfer agents. As discussed in

covered institutions, we estimate that 5,862 are smaller institutions and 6,570 are larger institutions.[110]

Based on limited inquiries of covered institutions, the staff estimates that the amount of time smaller institutions would devote to initial compliance with the proposed amendments would range from 2 to 80 hours with a midpoint of 41 hours.[111] This estimate reflects the following burden hours: 1 hour for the board of directors to designate an information security program coordinator; 1 hour for the program coordinator to review the amendments; 4 hours to assess risks and review procedures; 10 hours to review, revise and implement new safeguards (including any data breach notification procedures); 8 hours to test the effectiveness of the safeguards controls and procedures; 7 hours to train staff; and 10 hours to review service providers' policies and procedures and revise contracts as necessary to require them to maintain appropriate safeguards. The staff estimates that initially it would cost smaller institutions approximately $18,560 to comply with the proposed amendments.[112] Amortized over three years, the estimated annual hourly burden would be 14 hours at a cost of approximately $6,187.

The staff estimates that the amount of time larger institutions would devote to initial compliance with the proposed amendments would range from 40 hours to 400 hours with a midpoint of 220 hours.[113] This estimate reflects the following burden hours: 2 hours for the board of directors to designate an information security program coordinator; 2 hours for the program coordinator to review the amendments; 42 hours to assess risks and review procedures; 60 hours to review, revise and implement new safeguards (including any data breach notification procedures); 60 hours to test the effectiveness of the safeguards controls and procedures; 34 hours to train staff; and 20 hours to review service providers policies and procedures and revise contracts as necessary to require them to maintain appropriate safeguards. The staff estimates that larger institutions would spend approximately $172,732 to comply with the proposed amendments initially.[114] Amortized over three years, the estimated annual hourly burden would be 73 hours at a cost of approximately $57,577.

On an annual, ongoing basis the staff estimates that the amount of time smaller institutions would devote to ongoing compliance with the safeguards and disposal rules, as they are proposed to be amended, would range from 12 hours to 40 hours per year with a midpoint of 26 hours per year. This estimate reflects the following burden hour estimates: 5 hours to regularly test or monitor the safeguards' key controls, systems, and procedures; 3 hours to augment staff training; 3 hours to provide continued oversight of service providers; 3 hours to evaluate and adjust safeguards; 10 hours to respond appropriately to potential incidents of data security breach, including investigating the breach and, as necessary, notifying affected individuals; and 2 hours to notify the Commission or a designated examining authority as soon as possible on proposed Form SP–30, in the event there is a significant risk that an individual identified with the information might suffer substantial harm or inconvenience or an unauthorized person has intentionally obtained access to or used sensitive personal information.[115] We believe that most institutions investigate data security breaches as a matter of good business practice to protect their business operations and the sensitive information they have about employees and clients. Nevertheless, we have estimated additional burden hours because the proposed rule specifies certain elements of the investigation and the notice to affected individuals. We also believe that an institution would have gathered all the information that would have to be disclosed in Form SP–30 in the course of these investigations of data security breaches. Thus, staff estimates for the Form SP–30 collection of information burden reflect only the time it would take to draft the information on the form. Staff estimates that smaller institutions would spend an additional $10,764 per institution per year in connection with these burdens.[116]

The staff also estimates that the amount of time larger institutions would

more detail in the cost-benefit analysis below, the staff estimates that 56 percent of these 17,267 institutions, or 9,670 institutions, have one or more affiliates. The staff estimates, for purposes of this analysis, that each of the affiliated institutions has one corporate affiliate. The staff estimates that these affiliated institutions are likely to bear these paperwork burdens on an organization-wide basis, rather than being incurred by each institution. Based on these estimates, the staff estimates there would be 12,432 respondents to this information collection. (17,267 − (9,670 ÷ 2) = 12,432) These estimates are discussed in more detail in the cost-benefit analysis, *see infra* note 149 and accompanying text.

[110] *See infra* note 154 and accompanying text.

[111] The staff estimate uses the midpoint of the range of hours, although the average number of burden hours could be higher or lower. Our estimates are based on staff contacts with several institutions regarding their current safeguarding and disposal policies and procedures as well as the potential costs of the proposed amendments. Because the staff was able to discuss these issues with only a small number of very large institutions, and our estimates in this analysis are based largely on this information, our estimates may be much higher or lower than the range of actual current costs related to compliance with Regulation S–P and the range of potential costs associated with the proposed amendments.

[112] This estimate is based on a cost of $2,000 for one hour of the board of directors' time (at $2,000/hour) and $16,560 for 40 hours of a program coordinators' time (at $414/hour). Staff believes that the program coordinator would be a senior executive of the institution, such as a chief compliance officer of an investment adviser. For purposes of this PRA analysis, the staff is using salaries for New York-based employees which tend to be higher than the salaries for comparable positions located outside of New York. This conservative approach is intended to capture unforeseen costs and to account for the possibility that a substantial portion of the work would be undertaken in New York. The salary information is derived from data compiled by the Securities Industry and Financial Markets Association. The Commission staff has modified this information to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association, *Report on Management and Professional Earnings in the Securities Industry* (2007); Securities Industry and Financial Markets Association, *Report on Office Salaries in the Securities Industry* (''SIFMA Earnings Reports'').

[113] The staff estimate uses the midpoint of the range of hours, although the average number of burden hours could be higher or lower.

[114] This estimate is based on a cost of $4,000 for 2 hours of board of directors' time (at $2,000/hour) and $168,732 for 218 hours of a group of compliance professionals' time (at $774/hour). The staff believes that this group of compliance professionals would include the program coordinator at a rate of $414 per hour, an in-house attorney at a rate of $295 per hour, and an administrative assistant at a rate of $65 per hour. *See* SIFMA Earnings Reports, *supra* note 112. In total, we estimate that this group of compliance professionals would cost the larger institution $758 per hour. $414 + $295 + $65 = $774.

[115] We estimate that each covered institution that has developed and adopted and is maintaining safeguarding policies and procedures will experience some form of breach of data security each year. *See, e.g.*, Deloitte & Touche LLP and Ponemon Institute LLC, Enterprise@Risk: 2007 Privacy & Data Protection Survey (Dec. 2007), *http://www.deloitte.com/dtt/cda/doc/content/us_risk_s%26P_2007%20Privacy10Dec2007final.pdf* (last visited Dec. 19, 2007) (85% of surveyed privacy and security professionals experienced a reportable breach within the past 12 months). These data security breaches may range from minor breaches (such as an individual who accidentally sees data that he or she does not have authority to view) to more serious breaches. Accordingly, we have estimated that each of these institutions would experience a data security breach that would require notice to the Commission (or a designated examining authority) each year. We understand that the nature of security breaches will vary widely within and among institutions, and that this estimate may be much higher than the actual reporting that would be required under the proposed rule.

[116] This estimate is based on the following calculation: 26 hours per smaller institution per year × $414 per hour = $10,764.

devote to ongoing compliance with the proposed amendments would range from 32 hours to 100 hours with a midpoint of 66 hours per year. This estimate reflects the following burden hour estimates: 12 hours to regularly test or monitor the safeguards' key controls, systems, and procedures; 9 hours to augment staff training; 9 hours to provide continued oversight of service providers; 10 hours to evaluate and adjust safeguards; 20 hours to respond appropriately to potential incidents of data security breach, including investigating the breach and, as necessary, notifying affected individuals; and 6 hours to notify the Commission or a designated examining authority as soon as possible on proposed Form SP–30, in the event there is a significant risk that an individual identified with the information might suffer substantial harm or inconvenience or an unauthorized person has intentionally obtained access to or used sensitive personal information.[117] Staff believes that larger institutions are likely to have more complex business operations and data systems and may experience more sophisticated security attacks than smaller institutions. As a result, staff anticipates that larger institutions are more likely to conduct more complicated investigations that require more detailed explanations on proposed Form SP–30. Staff estimates therefore that larger institutions would take more time to perform investigations and to complete the questions on proposed Form SP–30.[118] The staff estimates that larger institutions would spend approximately an additional $51,084 per institution per year.[119]

Given the estimates set forth above, we estimate that the weighted average initial burden for each respondent would be approximately 136 hours[120] and $100,036.[121] We also estimate that the weighted average ongoing burden for each respondent would be approximately 47 hours[122] and $32,072.[123]

Scope of the Safeguards and Disposal Rules

The amendments also would broaden the scope of information and of the entities covered by the safeguards and disposal rules. These amendments do not contain collections of information beyond those related to the information security and security breach response requirements, analyzed above.

Records of Compliance

The proposed amendments would require that written records required under the disposal and safeguards rules be maintained and preserved by broker-dealers for not less than three years, the first two years in an easily accessible place, by registered transfer agents for a period of not less than two years, the first year in an easily accessible place, by investment companies for a period not less than six years, the first two years in an easily accessible place, and registered investment advisers would have to preserve the records for five years, the first two years in an appropriate office of the investment adviser. Covered institutions are already required pursuant to other Commission rules to maintain and preserve similar records in the same manner, and we do not believe that the currently approved collections of information for these rules would change based on the proposed amendments.[124]

Exception for Limited Information Disclosure When Personnel Leave Their Firms

The proposed amendments would create a new exception from Regulation S–P's notice and opt out requirements that would permit limited disclosures of investor information when a registered representative of a broker-dealer or supervised person of a registered investment adviser moves from one brokerage or advisory firm to another. This exception would require that the departing representative provide the broker, dealer, or registered investment adviser he or she is leaving with a written record of the permissible information that would be disclosed under this exception. Broker-dealers and registered investment advisers also would be required to retain a record of that information consistent with existing record retention requirements. All broker-dealers and registered investment advisers maintain records of their customers and clients, including relevant contact information and type of account. Thus, we estimate that allowing a departing representative to make a copy of this information and requiring the broker-dealer or registered investment adviser to retain a record of that information would not result in an additional measurable burden to the firm.

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Members of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burden hours. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20523, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–06–08. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after the publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–06–08, and be submitted to the Securities and Exchange Commission, Public Reference

[117] *See supra* note 115.

[118] We recognize that the time it takes to perform an investigation of a data security breach and to complete Form SP–30 may vary significantly depending on the nature, size and complexity of an institution's business operations as well as the nature and size of the security breach. Accordingly, the actual time it may take a particular institution to investigate the breach and complete Form SP–30 may vary significantly from staff estimates.

[119] This estimate is based on the following calculation: 66 hours × $774 = $51,084.

[120] This estimate is based on the following calculation: ((5,862 smaller institutions × 41 hours) + (6,570 larger institutions × 220 hours) ÷ 12,432 total institutions = 135.60 hours.

[121] This estimate is based on the following calculation: ((5,862 smaller institutions × $18,560) + (6,570 larger institutions × $172,732)) ÷ 12,432 total institutions = $100,036.03.

[122] This estimate is based on the following calculation: ((5,862 smaller institutions × 26 hours) + (6,570 larger institutions × 66 hours)) ÷ 12,432 total institutions = 47.14 hours.

[123] This estimate is based on the following calculation: ((5,862 smaller institutions × $10,764) + (6,570 larger institutions × $51,084)) ÷ 12,432 total institutions = $32,072.12.

[124] *See* 17 CFR 240.17a–4(b); 240.17Ad–7(b); 270.31a–2(a)(4)–(6); 275.204–2(e)(1).

Room, 100 F Street, NE., Washington, DC 20549.

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed amendments and request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data so we can improve these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered institutions, including registered transfer agents, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

As discussed above, the proposed rule amendments are designed to enhance covered institutions' information security policies and procedures as well as their ability to protect personal information. Under Regulation S–P, covered institutions have been required to safeguard customer records and information since 2001 and to dispose properly of consumer report information since 2005. The proposed amendments would modify Regulation S–P's current safeguards and disposal rules to: (i) Require more specific standards under the safeguards rule, including standards that would apply to data security breach incidents; (ii) broaden the scope of information and the types of institutions and persons covered by the rules; and (iii) require covered institutions to maintain written records of their policies and procedures and their compliance with those policies and procedures. The proposed amendments also would create a new exception from Regulation S–P's notice and opt-out requirements that would not unduly restrict the transfer of representatives from one broker-dealer or registered investment adviser to another while protecting customer information.

A. Costs and Benefits of More Specific Information Security and Security Breach Standards

As noted, since 2001 broker-dealers, investment companies, and registered investment advisers have been required to adopt policies and procedures reasonably designed to insure the security and confidentiality of customer records and information, protect against anticipated threats or hazards, and protect against unauthorized access to or use of customer records and information.[125] The proposed rule amendments would require more specific standards for safeguarding personal information, including standards for responding to data security breaches. The amendments would require covered institutions to develop, implement, and maintain a comprehensive ''information security program'' for protecting personal information and for responding to unauthorized access to or use of personal information that would have to be appropriate to the institution's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information involved. The information security program would have to include seven safeguarding elements, as described above in section II.A. Our proposed amendments also would specifically require that institutions' information security programs include procedures for responding to incidents of unauthorized access to or use of personal information. We believe that these proposed amendments would be consistent with safeguarding guidance and rules issued by the Banking Agencies and the FTC.[126]

1. Benefits of More Specific Information Security and Security Breach Standards

We anticipate that the proposed amendments would benefit covered institutions and investors by providing specific standards for policies and procedures to safeguard investor information, boosting investor confidence and mitigating losses due to security breach incidents, helping to ensure that information security programs are actively managed and regularly updated, and reducing the compliance burden for institutions in the event of a data security breach incident.

One benefit of the proposed information security and security breach standards would be to provide firms in the securities industry with detailed standards for the policies and procedures that a well-designed information security program should include. As already noted, a significant increase in reported information security breaches involving covered institutions, including increasingly sophisticated identity theft attacks directed at the securities industry, have altered the risk environment and brought to our attention the vulnerability of certain of our institutions' information security policies and procedures.[127] We are concerned that some Commission-regulated institutions may not regularly reevaluate and update their safeguarding programs to deal with these increasingly sophisticated methods of attack. As a result, our staff has devoted increased attention to this area.

The current rule's reasonable design standard has permitted institutions flexibility to implement safeguarding policies and procedures tailored to their own privacy policies and practices and their varying business operations. While many institutions have appropriate safeguards in place, some institutions, including some smaller institutions, may have had difficulty keeping up with the changes in the threat environment. Setting out a more specific framework for institutions' continuing obligation to protect customer information, may ease institutions' burden in interpreting our expectations of safeguarding policies and procedures that are ''reasonably designed,'' while retaining much of the current rule's flexibility.

We believe the proposed amendments would be consistent with the Commission's initial statutory mandate under the GLBA to adopt, in 2000, final financial privacy regulations that are consistent and comparable with those adopted by other federal financial regulators.[128] As noted above, after our adoption of Regulation S–P's safeguards rule, the FTC and the Banking Agencies issued regulations with more detailed standards applicable to the institutions they regulate.[129] The Banking Agencies also issued guidance for their institutions on responding to incidents of unauthorized access to or use of customer information.[130] Our proposed amendments include safeguarding elements consistent with the regulatory provisions of these other agencies that Commission-regulated institutions would have to address in their safeguarding policies and procedures.[131]

[125] *See* 15 U.S.C. 6801; 17 CFR 248.30(a). The Commission also required that safeguarding policies and procedures be in writing by July 1, 2005. *See* Disposal Rule Adopting Release, *supra* note 15.

[126] *See supra* note 23 and accompanying text.

[127] *See supra* notes 16–19 and accompanying text.

[128] *See* Section 504(a) of the GLBA (15 U.S.C. 6804(a)).

[129] *See supra* note 23 and accompanying text.

[130] *Id.*

[131] When the FTC adopted its safeguards rule, it stated that an entity that demonstrated compliance with the Banking Agencies' or NCUA's safeguarding standards also would satisfy the FTC rule. The FTC stated, however, that it would not automatically recognize an institution's compliance with other safeguards rules (including Regulation S–P) as satisfying the FTC Safeguards Rule. The FTC stated

Continued

Covered institutions would benefit from having specific standards that are consistent and comparable to those already adopted by the Banking Agencies and the FTC in other ways. For example, covered institutions that have banking affiliates may have already developed policies and procedures consistent with the Banking Agencies' guidance that are applied to all affiliates of the bank. If they do not have the same policies and procedures, these covered institutions would be able to apply the banking affiliate's policies and procedures to the securities businesses with few changes. More specific safeguarding standards also could increase investor confidence in institutions and help mitigate losses that can result from lax safeguarding policies and procedures. Incidents of identity theft have affected a large number of Americans and are difficult and expensive for victims to deal with and correct.[132] Moreover, there is at least anecdotal evidence that the wave of widely-reported incidents of data security breaches have played a role in discouraging a significant number of individuals from conducting business online.[133] The proposed amendments could benefit investors and increase their confidence by providing firms with detailed standards for the processes that a well-designed information security program should include. This could result in enhanced protection for the privacy of investor information, and could decrease incidents of identity theft, thereby mitigating losses due to identity theft and other misuses of sensitive information. We also believe that the increased protection that could result from the proposed amendments could benefit institutions, which frequently incur the costs of fraudulent activity.[134] Thus, if only a small number of security breach incidents were averted because the proposed amendments were adopted, there still could be a significant cost savings to individuals and institutions.[135]

As noted above, we are concerned that some institutions do not regularly reevaluate and update their safeguarding programs. Requiring covered institutions to designate in writing an employee or employees to coordinate their information security programs should foster clearer delegations of authority and responsibility, making it more likely that an institution's programs are regularly reevaluated and updated. Having an information security program coordinator also could contribute to an institution's ability to meet its affirmative and continuing obligation under the GLBA to safeguard customer information.[136] If, for example, elements of a covered institution's information security program were not maintained on a consolidated basis, but were dispersed throughout an institution, we believe having a responsible program coordinator or coordinators should facilitate the institution's awareness of these elements, as well as enable it to better manage and control risks and conduct ongoing evaluations.

We expect that the proposed framework for the initial and ongoing oversight of institutions' information security programs—in the form of formal risk assessments, periodic testing or monitoring of key controls, systems, and procedures, staff training, and relevant evaluations and adjustments—would help to ensure that information security programs are appropriately updated along with relevant changes in technology, new business arrangements, changes in the threat environment, and other circumstances. Finally, the proposed amendment that would require covered institutions to take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards and would require service providers by contract to implement and maintain appropriate safeguards should help to ensure that sensitive personal information is protected when it leaves the institution's custody, while still permitting institutions the flexibility to select appropriate service providers.

The proposed requirement that information security programs include specific procedures for responding to incidents of unauthorized access to or use of personal information is designed to benefit investors and institutions. The requirement would benefit investors who receive notice of an information security breach pursuant to an institution's incident response procedures by allowing those investors to take precautions to the extent they believe necessary.[137] The procedures also would benefit institutions by establishing a national data breach notification requirement for covered institutions.[138] Currently at least 39 states have enacted statutes requiring notification of individuals in the event of a data security breach.[139] This patchwork of overlapping and sometimes inconsistent regulation has created a difficult environment for financial institutions' compliance programs. However, many of the state statutes contain exemptions for entities regulated by federal data security breach regulations.[140] Accordingly, the proposed amendments could benefit covered institutions by significantly reducing the number of requirements with which covered institutions must

that it made this decision because ''such other rules and law do not necessarily provide comparable protection in terms of the safeguards mandated, data covered, and range of circumstances to which protection apply.'' *See Standards for Safeguarding Customer Information*, 67 FR 36484 (May 23, 2003), at text accompanying and following nn.28–33. Compliance with other Regulation S–P provisions, however, currently satisfies other FTC privacy requirements. Thus, we expect that making the safeguarding provisions of Regulation S–P comparable to the FTC's requirements would benefit institutions by, for example, permitting state-registered investment advisers to satisfy the FTC standards by complying with the Commission's safeguards rule, which was drafted to address investment advisory business models.

[132] In 2003 the FTC reported that up to 10 million Americans had been victimized by identity theft over a 12-month period and that these thefts cost businesses and consumers over $52 billion. *See* FTC, Identity Theft Survey Report (Sept. 2003), available at *http://www.ftc.gov/os/2003/09/synovatereport.pdf*.

[133] A July 2005 study found that 48 percent of consumers avoided making purchases on the Internet because they feared their personal information may be stolen. *See* Cyber Security Industry Alliance, Internet Voter Survey, at 9 (June 2005), *https://www.csialliance.org/publications/surveys_and_polls/CSIA_Internet_Security_Survey_June_2005.pdf* (last visited Nov. 6, 2007).

[134] In most cases, financial institutions do not impose the losses associated with fraudulent activity on consumers. *See, e.g.*, Testimony of Oliver I. Ireland, on Behalf of the Financial Services Coordinating Council, H.R. 3997, the ''Financial Data Protection Act of 2005,'' Before the Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services (Nov. 9, 2005), available at *http://www.sia.com/testimony/2005/ireland11-9-05.html*.

[135] One research institution has estimated that the average cost of a data security breach incident per institution is $1.4 million. *See* Ponemon Institute, LLC, 2006 Annual Study: Cost of a Data Breach (Oct. 2006), *http://download.pgp.com/pdfs/Ponemon2-Breach-Survey_061020_F.pdf* (last visited Nov. 6, 2007). In addition, some investigations into data breach incidents have been reported to cost as much as $5 million. *See* Daniel Wolfe, Security Watch, Amer. Banker (Apr. 4, 2007).

[136] *See* 15 U.S.C. 6801(a).

[137] Often victims of identity theft are unaware of the crime until they are denied credit or employment, or are contacted by a debt collector for payment on a debt they did not incur. *See* Identity Theft Task Force, Combating Identity Theft, A Strategic Plan, p. 3 (Apr. 2007), available at *http://www.idtheft.gov/reports/StrategicPlan.pdf*.

[138] Establishing national standards for data breach notification requirements was a recommendation of the Identity Theft Task Force. *Id.* at p. 35.

[139] *See* Government Accountability Office, Personal Information: Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is Limited; However, the Full Extent Is Unknown (Jun. 4, 2007) at p. 2, and National Conference of State Legislatures, State Security Breach Notification Laws (as of Dec. 1, 2007), *http://www.ncsl.org/programs/lis/cip/priv/breachlaws.htm* (last visited Dec. 10, 2007).

[140] *See, e.g.*, Crowell & Moring LLP, State Laws Governing Security Breach Notification (last updated Apr. 2007), *http://www.crowell.com/pdf/SecurityBreachTable.pdf* (last visited Dec. 10, 2007).

comply.[141] As noted, the banking regulators published similar data breach notification guidance in 2005.[142]

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify. In particular, we request comment reflecting institutions' experiences in safeguarding customer information and addressing the security breach incidents discussed above. Commenters are also requested to identify sources of empirical data that could be used for the metrics they propose.

2. Costs of More Specific Information Security and Security Breach Standards

Some institutions would likely incur additional costs in reviewing, implementing, and maintaining more specific information security and security breach standards. Institutions could incur additional costs in reviewing current safeguarding policies and procedures and designing and implementing new ones, if necessary, on an initial basis. Institutions also could incur additional costs on an ongoing basis to maintain up-to-date information security programs and to respond appropriately to any data security breach incidents.

According to Commission filings, approximately 6,016 broker-dealers, 4,733 investment companies comprising portions of 813 fund complexes,[143] 77 business development companies, 9,860 registered investment advisers, and 501 registered transfer agents, or 17,267 covered institutions, would be required to comply with the proposed amendments' more specific information security and security breach standards.[144] As noted, broker-dealers, investment companies, and registered investment advisers have been required to have reasonably designed safeguarding policies and procedures since 2001. In addition, transfer agents have been required to have information security safeguards since 2003, in accordance with the FTC Safeguards Rule.[145] We estimate that 56 percent of all covered institutions, or 9,670 institutions, have one or more financial affiliates (whether these institutions are regulated by the Commission or other federal financial regulators).[146] We estimate that each of the affiliated institutions has one corporate affiliate. Based on limited inquiries of covered institutions, we believe that these affiliated institutions are likely to have developed safeguarding policies and procedures on an organization-wide basis, rather than each affiliate developing policies and procedures on its own.[147] We also believe that the affiliate that developed the affiliated organization's safeguarding policies and procedures is also responsible for maintaining these policies and procedures. We therefore estimate that one-half of the covered affiliated institutions, or 4,835 institutions, have developed, documented, and are maintaining safeguarding policies and procedures, while the other half instead use the policies and procedures developed, documented, and maintained by their affiliate.[148] Accordingly, we estimate that 12,432 covered institutions have developed and adopted safeguarding policies and procedures and are maintaining these policies and procedures in accordance with the current rule.[149]

We expect that these institutions' current costs to maintain safeguarding policies and procedures in compliance with the Commission's safeguards rule vary greatly depending upon the size of the institution, its customer base, the complexity of its business operations, and the extent to which the institution engages in information sharing. Thus, for example, we estimate that small investment advisers with fewer than 10 employees require more limited safeguarding policies and procedures to address a limited scope of information transfer, storage, and disposal. We believe that larger broker-dealers or fund complexes, by contrast, are more likely to have and maintain a more extensive set of information safeguarding policies and procedures, corresponding to these institutions' more complex business activities and information sharing practices.

Of the covered institutions, we estimate that 7,030 registered investment advisers have 10 or fewer employees.[150] We estimate that 942 broker-dealers and investment company complexes are small institutions, and are likely to have no more than 10 employees.[151] Based on Commission filings, we also estimate that 170 transfer agents are smaller institutions that are likely to have no more than 10 employees. We therefore estimate that 8,142 institutions, out of 17,267 covered institutions, are smaller institutions that are likely to have no more than 10 employees.[152] We believe that the institutions that have developed and adopted safeguarding policies and procedures are as likely to be smaller institutions with no more than 10 employees as the total population of covered institutions.[153] Therefore, of 12,432 covered institutions that we estimate have developed and adopted and are maintaining safeguarding policies and procedures, we estimate for purposes of this analysis that 5,862 institutions are smaller institutions,

[141] Under the proposed amendments, for example, using proposed Form SP–30 would satisfy an institution's obligations to notify the Commission or the appropriate designated examining authority. Because many state laws have exceptions from breach notification requirements for institutions subject to federal breach notification requirements, this would streamline institutions' current reporting obligations to numerous state authorities.

[142] *See* Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice, 70 FR 15736 (Mar. 29, 2005), available at *http://www.occ.treas.gov/consumer/Customernoticeguidance.pdf.* The guidance supplements the Interagency Guidelines Establishing Standards for Safeguarding Information which was renamed the Interagency Guidelines Establishing Information Security Standards.

[143] Although the circumstances for every investment company vary, we believe that in general the costs of complying with the proposed rule amendments would be incurred on a per fund complex basis and not on a per fund basis because almost all investment companies are externally managed by affiliated organizations and independent contractors, who, if the proposals are adopted, are likely to review and implement the amended rules on behalf of all of the investment companies they manage. *See, e.g.,* Investment Company Institute, A Guide to Understanding Mutual Funds, at 16, Sept. 2006, available at *http://www.ici.org/pdf/bro_understanding_mfs_p.pdf* (last visited Dec. 3, 2007). Thus, throughout this cost-benefit analysis we estimate the costs of compliance on a per fund complex basis.

[144] This estimate is based on the following calculation: 6,016 + 813 + 77 + 9,860 + 501 = 17,267.

[145] *See supra* note 23.

[146] The estimate that 56 percent of registrants have an affiliate is based upon statistics reported as of December 3, 2007 on Form ADV, the Universal Application for Investment Adviser Regulation, which contains specific questions regarding affiliations between investment advisers and other persons in the financial industry. We estimate that other institutions subject to the safeguards rule would report a rate of affiliation similar to that reported by registered investment advisers. The estimate that 9,670 institutions have an affiliate is based on the following calculation: 17,267 × 0.56 = 9,669.52.

[147] *See supra* note 109.

[148] *This estimate is based on the following calculation:* 9,670 ÷ 2 = 4,835.

[149] *This estimate is based on the following calculation:* (17,267 − 9,670) + 4,835 = 12,432.

[150] *See* Investment Adviser Association, Evolution Revolution, A Profile of the Investment Adviser Profession (2006), available at *http://www.nrs-inc.com/ICAA/EvRev06.pdf.*

[151] As noted below, 915 broker-dealers and 238 investment companies, representing 27 fund complexes, are small entities.

[152] *This estimate is based on the following calculation:* 7,030 + 942 + 170 = 8,142 smaller institutions.

[153] 8,142 ÷ 17,267 = 0.4715.

while 6,570 institutions are larger institutions.[154]

Based on conversations with representatives of covered institutions, and information collected from limited inquiries of covered institutions, we estimate that smaller institutions are currently spending between $5,000 and $1,000,000 per year to comply with the safeguards and disposal rules.[155] We also estimate that larger institutions are spending between $200,000 and $10,000,000 per year to comply with the safeguards and disposal rules. These estimates include costs for dedicated personnel, maintaining up-to-date policies and procedures, enforcing various safeguarding requirements (such as ''clean desk'' requirements), hiring contractors to properly dispose of sensitive information, developing and enforcing access procedures, ongoing staff training, monitoring and reviewing compliance with safeguarding standards, and computer encryption. These estimates also include current spending to comply with state data security breach statutes.[156]

We expect that most covered institutions have information security programs in place that would be consistent with the proposed amendments.[157] We do not have a reliable basis for estimating the number of institutions that would incur additional costs or the extent to which those institutions would have to enhance their policies and procedures, including documentation of the information safeguard program and its elements. Accordingly, we have estimated the range of additional costs that individual firms could incur. We seek comment on the number of firms that have information safeguard programs that would satisfy the proposed amendments, the number of firms that would have to enhance their programs, the extent of those enhancements, and the costs of enhancement.

If the proposed amendments were adopted, covered institutions could incur costs to supplement their current information security programs in some or all of the following ways. First, the institution would be required to review and, as appropriate, revise its current safeguarding policies and procedures, including their data security breach procedures and disposal rule procedures, to comply with the more specific requirements of the proposed amendments. Initially this would require the institutions to: (i) Designate an employee or employees as coordinator for the information security program; (ii) identify in writing reasonably foreseeable security risks that could result in the unauthorized access or compromise of personal information or personal information systems; (iii) review existing or design new safeguards to control these risks; (iv) train staff to implement the safeguards; and (v) test the effectiveness of the safeguards' key controls, including access controls, controls to detect, prevent and respond to incidents of unauthorized access to or use of personal information. Second, an institution also would be required to review its service providers' information safeguards and determine whether its service providers are capable of maintaining appropriate safeguards for personal information, document this finding, and enter into contracts with the service providers to implement and maintain appropriate safeguards.

Third, an institution would be required to review existing safeguarding procedures relating to data security breach incidents. Initially, this could include: (i) Assessing current policies and procedures for responding to data breach incidents; and (ii) designing and implementing written policies and procedures to assess, control, and investigate incidents of unauthorized access or use of sensitive personal information, as well as policies and procedures to notify individuals and the Commission or a broker-dealer's designated examining authority, if necessary.

Fourth, to comply with these amendments on an ongoing basis, institutions would be required to: (i) Regularly test or monitor, and maintain a written record of the effectiveness of their safeguards' key controls, systems and procedures (including an assessment of personal information system access controls, controls designed to detect, prevent and respond to data security breach incidents, and controls related to employee training or supervision); (ii) train staff to implement their information security program; (iii) continue and document their oversight of service providers; and (iv) evaluate and adjust their information security programs in light of testing and monitoring, and changes in technology, business operations or arrangements, and other material circumstances.

Finally, an institution would be required to begin to respond to any data security breach incidents as may occur on an ongoing basis. This would include implementing and following written procedures to: (i) Assess the nature and scope of the incident; (ii) take appropriate steps to contain and control it, and document those steps in writing; (iii) promptly conduct a reasonable investigation and make a written determination of the likelihood that sensitive personal information had been or would be misused; (iv) if misuse of information had occurred or were reasonably likely, notify affected individuals; and (v) if an individual identified with the information had suffered substantial harm or inconvenience, or any unauthorized person had intentionally obtained access to or used sensitive personal information, notify the Commission, or the appropriate designated examining authority as soon as possible on proposed Form SP–30.

We expect these estimated costs would vary significantly depending on the size of the institution, the adequacy of its existing safeguarding policies and procedures, and the nature of the institution's operations. The ''reasonably designed'' standard for information security programs in the proposed rule amendments is consistent with the current safeguards and disposal rules. Thus, we believe it should be relatively straightforward for an institution that does not currently have policies and procedures that apply to specific elements of the proposed amendments to incorporate these elements into its current system of safeguarding policies and procedures. In addition, we estimate that little or no modification to an institution's safeguarding policies and procedures would be required in situations where a covered institution's affiliate developed

[154] $12{,}432 \times 0.4715 = 5{,}861.88$; $12{,}432 - 5{,}862 = 6{,}570$.

[155] *See supra* note 111.

[156] These estimates also include transfer agents' current spending to comply with the FTC Safeguards Rule. As noted, the proposed amendments would apply to every broker or dealer other than a notice-registered broker or dealer, every investment company, and every investment adviser or transfer agent registered with the Commission. *See* proposed paragraph (a)(1) of Section 30.

[157] This belief is consistent with the analysis of the Office of the Comptroller of the Currency and Office of Thrift Supervision when they adopted the Banking Agencies Safeguard Guidelines in 2001. At that time they stated with respect to the institutions they regulated, that ''most if not all institutions already have information security programs in place that are consistent with the Banking Agencies' Security Guidelines. In such cases, little or no modification to an institution's program will be required.'' *See* Banking Agencies' Security Guidelines, *supra* note 23. The statement was made in the analysis of whether the Guidelines would constitute ''a significant regulatory action'' for purposes of Executive Order 12866, which includes an action that would 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. The Board and the FDIC did not prepare an analysis under Executive Order 12866.

its existing safeguarding policies and procedures in compliance with the Banking Agencies' safeguarding guidance or the FTC's rules.

In addition to an institution's size, the adequacy of its safeguards, and its operations, we expect that institutions' information security programs would vary considerably depending on the way in which each collects information, the number and types of entities to which each transfers information, and the ways in which each stores, transfers, and disposes of personal information. Based on conversations with representatives of covered institutions and information collected from limited inquiries of institutions, our staff estimates that the additional initial costs that an institution could incur to comply with the proposed amendments could range from 0 to 10 percent of its current costs of maintaining an information security program. Our staff also estimates that the additional costs an institution could incur for ongoing compliance with the proposed amendments could range from 0 to 5 percent of its current costs.[158] For purposes of the PRA, staff estimates that for a smaller institution, the initial costs could range from between $500 and $100,000, with an approximate cost of $18,560 per smaller institution.[159] Staff also estimates that for a smaller institution, additional ongoing costs could range from between $250 and $50,000, with an approximate cost of $10,764 per smaller institution per year.[160] With respect to a larger institution, again for purposes of the PRA, staff estimates that initial costs could range from between $20,000 and $1 million, with an approximate cost of $172,732 per larger institution.[161] Staff further estimates that for a larger institution, additional ongoing costs could range from between $10,000 and $500,000 per year, with an approximate cost of $51,084 per larger institution per year.[162] We note that an institution that currently incurs the highest estimated costs for its information security program seems likely already to have a comprehensive information security program and therefore would be less likely to require program enhancements to comply with the rule. Accordingly, the high end of the range of estimated costs for institutions may be excessive.

We request comment on our estimated costs and our rationale underlying them, and any aspect of the estimates or other costs that we have not considered. We seek information about particular costs of compliance as well as information as to any overall percentage increase in costs that firms would likely incur as a result of the proposed amendments. We request comment accompanied with statistical or other quantitative information, and comment on the experiences of institutions in addressing the circumstances addressed above. Commenters should identify the metrics of any empirical data that support their cost estimates.

B. Costs and Benefits of Broadened Scope of Information and of Covered Institutions

The proposed rule amendments would broaden the scope of information covered by the safeguards and disposal rules. From the perspective of ease of compliance, we anticipate that institutions would benefit from having a common set of rules that apply to both nonpublic personal information about customers and consumer report information. We also expect that investors would benefit from expanding the scope of information covered by the safeguards and disposal rules because both terms exclude some information that without protections could more easily be used to obtain unauthorized access to investors' personal financial information. Because we expect that this expansion of the scope of information covered by the safeguards and disposal rules would not require modification of institutions' current policies and procedures, or their systems and databases for implementing these policies and procedures, and because many firms currently protect nonpublic personal information about customers and consumer report information in the same way, we expect that the proposal would result in no significant, if any, additional costs to institutions.

The amendments also would expand the scope of the safeguards rule to include registered transfer agents, limit the scope of the safeguards rule to exclude notice-registered broker-dealers, and extend the disposal rule to apply to natural persons. As noted above, bringing registered transfer agents within the scope of our safeguards rule should benefit investors because these institutions maintain sensitive personal information. We included registered transfer agents in our estimate of the costs of the proposed information security and security breach procedures above.[163] Because transfer agents are currently subject to the FTC Safeguards Rule, which, if the proposed amendments were adopted, would be substantially similar to the Commission's safeguards and disposal rules, we do not anticipate that there would be any unique or unusual costs to transfer agents, beyond those discussed above. Similarly, we do not anticipate any costs or benefits resulting from the proposal to exclude notice-registered broker-dealers from Regulation S–P because they would be subject to the CFTC's substantially similar safeguards rules. This proposal would simply clarify that notice-registered broker-dealers need not comply with both Regulation S–P and the CFTC's rules.

We expect that the proposal to include natural persons within the scope of the disposal rule would benefit investors by establishing a system designed to ensure that personal information is disposed of properly by employees, particularly those who may work in branches far from a covered institution's main office. We also believe that this proposal would benefit investors by requiring compliance by natural persons, associated with a covered institution, who are directly responsible for properly disposing of personal information consistent with the institution's policies. We do not expect that this proposal would result in costs to institutions beyond those that would be imposed by the more specific standards analyzed above in section V.A.2. Specifically, we believe that any changes that would be required to covered institutions' policies and procedures or training programs to make it clear that individuals (not just firms) would have responsibility for complying with the disposal rule are captured in our estimates above.

We request comment on these estimates of benefits and costs and our rationale underlying them, and any aspect of the estimates or other benefits or costs that we have not considered. In particular, we request comment accompanied with statistical or other quantitative evidence, and comment on the experiences of institutions in addressing the circumstances addressed above. Commenters should identify the metrics and sources of any empirical data that support their cost estimates.

C. Costs and Benefits of Maintaining Written Records

The proposed amendments would require covered institutions to maintain

[158] While we estimate that additional initial and ongoing costs would vary significantly across wide ranges, we estimate that the average cost per institution would be concentrated in the lower end of those ranges because, as noted, we believe that most institutions have already developed and adopted safeguarding and disposal polices and procedures, and are maintaining these policies and procedures, in accordance (or substantially in accordance) with the proposed rule amendments.

[159] *See supra* note 112 and accompanying text.

[160] *See supra* note 116 and accompanying text.

[161] *See supra* note 114 and accompanying text.

[162] *See supra* note 119 and accompanying text.

[163] *See supra* section V.A.2.

and preserve, in an easily accessible place, written records of the safeguards and disposal policies and procedures. The amendments also would require that institutions document compliance with their policies and procedures, and that records would have to be maintained for a period consistent with current requirements for similar records. We expect that this proposal would benefit investors by enabling the Commission's examination staff to evaluate whether institutions are in compliance with the requirements of the proposed amendments to the safeguards and disposal rules. We anticipate that institutions are unlikely to incur significant costs in maintaining records or documenting compliance to meet the requirements of this proposal because we would expect to establish a date for compliance with these amendments that would permit institutions to document and maintain these records in the normal course of ordinary business. Thus, we do not expect that this proposal would result in costs to institutions beyond those that would be imposed by the more specific standards analyzed above in section V.A.2.

We request comment on these estimates of benefits and costs and our rationale underlying them, and any aspect of the estimates or other benefits or costs that we have not considered. In particular, we request comment accompanied with statistical or other quantitative evidence, and comment on the experiences of institutions in addressing the circumstances addressed above. Commenters should identify the metrics and sources of any empirical data that support their cost estimates.

D. Costs and Benefits of Proposed New Exception

Our proposed amendments would create a new exception from Regulation S–P's notice and opt out requirements for disclosures of limited information in connection with the departure of a representative of a broker-dealer or investment adviser. The proposal should enhance information security by providing a clear framework for transferring limited information from one firm to another in this context. At firms that choose to rely on it, the proposed exception also should reduce potential incentives some representatives may have to take information with them secretly when they leave. In addition, the amendment should promote investor choice regarding whether to follow a departing representative to another firm. Institutions that choose to rely on the proposed exception also should benefit from the greater legal certainty that it would provide. We expect that institutions would incur minimal costs in retaining a written record of the information that would be disclosed in connection with a representative's departure, and expect that for a number of firms such costs are incurred already in the ordinary course of business.[164] Institutions need not provide these disclosures. Thus we anticipate that only those that expect the potential benefits from the disclosure would justify any associated costs would make the disclosures.

We request comment on this cost estimate and our rationale underlying it, and any aspect of the estimates or other costs that we have not considered. In particular, we request comment accompanied with statistical or other quantitative evidence, and the experiences of institutions in addressing the circumstances addressed above. Commenters should identify the metrics and sources of any empirical data that support their cost estimates.

E. Request for Comment

We request comment on all aspects of this cost-benefit analysis, including comment as to whether the estimates we have used in our analysis are reasonable. We welcome comment on any aspect of our analysis, the estimates we have made, and the assumptions we have described. In particular, we request comment as to any costs or benefits we may not have considered here that could result from the adoption of the proposed amendments. We also request comment on the numerical estimates we have made here, and request comment and specific costs and benefits from covered institutions that have experienced any of the situations analyzed above.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to Regulation S–P that seek to strengthen the protections for safeguarding and disposing of sensitive personal information and provide a limited exception to notice and opt out requirements intended to augment investors' ability to choose whether to follow personnel who move from one broker-dealer or registered investment adviser to another. The proposed amendments would: (i) Require covered institutions to adopt more specific standards under the safeguards rule, including standards that would apply to security breach incidents; (ii) broaden the scope of information and the types of institutions and persons covered by the rules; and (iii) require covered institutions to maintain written records of the policies and procedures and their ongoing compliance with those polices and procedures. The proposed amendments also would require covered institutions seeking to rely on the new exception related to departing representatives to maintain a record of the information disclosed under the exception to a representative's new firm.

A. Reasons for the Proposed Action

We have become concerned with the significant increase in the number of information security breaches that have come to light in recent years and the potential created by such breaches for misuse of personal financial information, including identity theft. We are concerned that some firms do not regularly reevaluate and update their safeguarding programs to deal with increasingly sophisticated methods of attack. To help prevent and address security breaches at covered institutions, we propose to require more specific standards for safeguarding personal information, including standards for responding to data security breaches. In order to provide better protection against unauthorized disclosure of personal financial information, we believe that the scope of information covered by the current safeguards and disposal rules should be broader.

We also propose a new exception to Regulation S–P's notice and opt out requirements to permit limited disclosures of investor information when a registered representative of a broker-dealer or a supervised person of an investment adviser moves from one brokerage or advisory firm to another. The proposed exception should provide legal certainty to firms that choose to rely on it and reduce incentives some representatives may have to take information with them secretly when they leave. We believe this amendment also would help to augment investors' ability to choose whether or not to follow a departing representative to another firm.

B. Objectives of the Proposed Action

The overall objectives of the proposed amendments are to: (i) Strengthen the protections for safeguarding and disposing of sensitive personal information; and (ii) provide a limited exception to Regulation S–P's notice and opt out requirements that would preserve investors' ability to choose whether to follow personnel who move

[164] *See supra* note 91 and accompanying text.

from one broker-dealer or investment adviser to another. We believe that the proposed amendments would help to:

- Prevent and mitigate information security breach incidents;
- Ensure that sensitive financial information is not disposed of improperly;
- Ensure that firms regularly review and update their safeguarding policies and procedures;
- Ensure that the full range of appropriate information and all relevant types of institutions regulated by the Commission are covered by Regulation S–P's requirements; and
- Enhance information security at firms choosing to rely on a new exemption for disclosures of limited information when representatives move from one firm to another by providing a clear framework for such disclosures and promote investor choice regarding whether or not to follow a departing representative to another firm.

C. Legal Basis

The amendments to Regulation S–P are proposed pursuant to the authority set forth in Sections 501, 504, 505, and 525 of the GLBA, Section 628(a)(1) of the FCRA, Sections 17, 17A, 23, and 36 of the Exchange Act, Sections 31(a) and 38 of the Investment Company Act, and Sections 204 and 211 of the Investment Advisers Act.[165]

D. Small Entities Subject to the Proposed Rule Amendments

The proposed amendments to Regulation S–P would affect brokers, dealers, registered investment advisers, investment companies, and registered transfer agents, including entities that are considered to be a small business or small organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act. For purposes of the Regulatory Flexibility Act, under the Exchange Act a broker or dealer is a small entity if it: (i) Had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year; and (ii) is not affiliated with any person that is not a small entity.[166] A registered transfer agent is a small entity if it: (i) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months; (ii) transferred items only of issuers that are small entities; (iii) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year; and (iv) is not affiliated with any person that is not a small entity.[167] Under the Investment Company Act, investment companies are considered small entities if they, together with other funds in the same group of related funds, have net assets of $50 million or less as of the end of its most recent fiscal year.[168] Under the Investment Advisers Act, a small entity is an investment adviser that: (i) Manages less than $25 million in assets; (ii) has total assets of less than $5 million on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that has had total assets of $5 million or more on the last day of the most recent fiscal year.[169]

Based on Commission filings, we estimate that 894 broker-dealers, 153 registered transfer agents, 203 investment companies, and 760 registered investment advisers may be considered small entities.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments to Regulation S–P would require more specific compliance requirements and create new reporting requirements for institutions that experience a breach of information security. The proposed amendments also would introduce new mandatory recordkeeping requirements.

Under the proposed amendments to Regulation S–P, covered institutions would have to develop, implement, and maintain a comprehensive ''information security program'' for protecting personal information and responding to unauthorized access to or use of personal information. We expect that some covered institutions, including covered institutions that are small entities, would be required to supplement their current costs by the costs involved in reviewing and, as appropriate, revising their current safeguarding policies and procedures, including their data security breach response procedures and disposal rule procedures, to comply with the more specific requirements of the proposed amendments. Initially this would require institutions to: (i) Designate an employee or employees as coordinator for their information security program; (ii) identify in writing reasonably foreseeable security risks that could result in the unauthorized or compromise of personal information or personal information systems; (iii) create a written record of their design and implementation of their safeguards to control identified risks; (iv) train staff to implement their information security program; and (v) oversee service providers and document that oversight in writing.

Institutions also would have to review existing safeguarding procedures relating to data security breach incidents. This would include: (i) Assessing current policies and procedures for responding to data breach incidents; and (ii) designing and implementing written policies and procedures to assess, control, and investigate incidents of unauthorized access or use of sensitive personal information, as well as policies and procedures for, under certain conditions, notifying individuals and the Commission or, in the case of a broker-dealer, the appropriate designated examining authority.

To comply with these amendments on an ongoing basis, institutions would have to implement procedures to: (i) Regularly test or monitor, and maintain a written record of the effectiveness of their safeguards' key controls, systems and procedures (including access controls, controls related to data security breach incidents, and controls related to employee training and supervision); (ii) augment staff training as necessary; (iii) provide continued oversight of service providers; and (iv) regularly evaluate and adjust their information security program in light of their regular testing and monitoring, changes in technology, their business operations or arrangements, and other material circumstances.

Institutions also would have to respond appropriately to incidents of data security breach as may occur on an ongoing basis. This would include following their written procedures to: (i) Assess the nature and scope of the incident; (ii) take appropriate steps to contain and control the incident; (iii) promptly conduct a reasonable investigation and make a written determination of the likelihood that sensitive personal information has been or will be misused; (iv) if misuse of information has occurred or is reasonably likely, notify affected individuals as soon as possible; and (v) if an individual identified with the information has suffered substantial

[165] 15 U.S.C. 6801, 6804, 6805, and 6825; 15 U.S.C. 1681w(a)(1); 15 U.S.C. 78q, 78q–1, 78w, and 78mm; 15 U.S.C. 80a–30(a), 80a–37; and 15 U.S.C. 80b–4, 80b–11.

[166] 17 CFR 240.0–10.

[167] *Id.*

[168] 17 CFR 270.0–10.

[169] 17 CFR 275.0–7.

harm or inconvenience, or any unauthorized person has intentionally obtained access to or used sensitive personal information, notify the Commission or an appropriate designated examining authority as soon as possible on proposed Form SP–30.

Overall, we expect there would be incremental costs associated with the proposed amendments to Regulation S–P. Some proportion of large or small institutions would be likely to experience some increase in costs to comply with the proposed amendments if they are adopted.

More specifically, we estimate that with respect to the more specific safeguarding elements, covered institutions would incur one-time costs that could include the costs of assessment and revision of safeguarding standards, staff training, and reviewing and entering into contracts with service providers.[170] We also estimate that the ongoing, long-term costs associated with the proposed amendments could include costs of regularly testing or monitoring the safeguards, augmenting staff training, providing continued oversight of service providers, evaluating and adjusting safeguards, and responding appropriately to incidents of data security breach.[171]

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed amendments could have an effect that we have not considered. We also request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

F. Duplicative, Overlapping, or Conflicting Federal Rules

As discussed above, the proposed amendments would impose requirements that covered institutions maintain and document a written information security program. The proposed amendments also would require reporting to individuals and appropriate regulators after certain serious data breach incidents. Covered institutions are subject to requirements elsewhere under the federal securities laws and rules of the self-regulatory organizations that require them to adopt written policies and procedures that may relate to some similar issues.[172] The proposed amendments to Regulation S–P, however, would not require covered institutions to maintain duplicate copies of records covered by the rule, and an institution's information security program would not have to be maintained in a single location. Moreover, although the proposed amendments would require covered institutions to keep certain records that may be required under existing recordkeeping rules, the purposes of the requirements are different, and institutions need not maintain duplicates of the records themselves.[173] We believe, therefore, that any duplication of regulatory requirements would be limited and would not impose significant additional costs on covered institutions including small entities. We believe there are no other federal rules that duplicate, overlap, or conflict with the proposed reporting requirements.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

(i) Establishing different compliance or reporting standards that take into account the resources available to small entities;

(ii) The clarification, consolidation, or simplification of the reporting and compliance requirements under the rule for small entities;

(iii) Use of performance rather than design standards; and

(iv) Exempting small entities from coverage of the rule, or any part of the rule.

With regard to the first alternative, we have proposed amendments to Regulation S–P that would continue to permit institutions substantial flexibility to design safeguarding policies and procedures appropriate for their size and complexity, the nature and scope of their activities, and the sensitivity of the personal information at issue. We nevertheless believe it necessary to provide a more specific framework of elements that every institution should consider and address, regardless of its size. The proposed amendments to Regulation S–P arise from our concern with the increasing number of information security breaches that have come to light in recent years, particularly those involving institutions regulated by the Commission. Establishing different compliance or reporting requirements for small entities could lead to less favorable protections for these entities' customers and compromise the effectiveness of the proposed amendments.

With regard to the second alternative, we believe that the proposed amendments should, by their operation, simplify reporting and compliance requirements for small entities. Small covered institutions are likely to maintain personal information on fewer individuals than large covered institutions, and they are likely to have relatively simple personal information systems. Under proposed paragraph (a)(1) of Section 30, the information security programs that would be required by the proposed amendments would have to be appropriate to a covered institution's size and complexity, and the nature and scope of its activities. Accordingly, we believe that the requirements of the proposed amendment already would be simplified for small entities. We also believe that the requirements of the proposed amendments could not be further simplified, or clarified or consolidated, without compromising the investor protection objectives the proposed amendments are designed to achieve.

With regard to the third alternative, the proposed amendments are for the most part performance based. Rather than specifying the types of policies and procedures or the technologies that an institution would be required to use to safeguard personal information, the proposed amendments would require the institution to assess the types of risks that it is likely to face and to address those in the manner the institution believes most appropriate. With respect to the specific requirements regarding notifications in the event of a data security breach, we have proposed that institutions provide only the information that seems most relevant for the Commission, a self-regulatory organization, or a consumer to know in order to adequately assess the potential damage that could result from the breach and to develop an appropriate response.

Finally, with regard to alternative four, we believe that an exemption for small entities would not be appropriate.

[170] *See supra* section IV.A.3.

[171] *Id.*

[172] *See, e.g.*, 15 U.S.C. 80b–4a (requiring each adviser registered with the Commission to have written policies and procedures reasonably designed to prevent misuse of material non-public information by the adviser or persons associated with the adviser); and NASD Rule 3010 (requiring each broker-dealer to establish and maintain written procedures to supervise the types of business it is engaged in and to supervise the activities of registered representatives and associated persons, which could include registered investment advisers).

[173] *See, e.g.*, 17 CFR 240.17a–3 (requiring broker-dealers to make and keep, among other things, blotters or other records of original entry, securities position records, and order tickets) and 17 CFR 270.31a–1(b)(11) (requiring investment companies to maintain, among other things, minute books of directors' meetings and ''files of all advisory material received from the investment adviser'').

Small entities are as vulnerable as large ones to the types of data security breach incidents we are trying to address. We believe that the specific elements we have proposed must be considered and incorporated into the policies and procedures of all covered institutions, regardless of their size, to mitigate the potential for fraud or other substantial harm or inconvenience to investors. Exempting small entities from coverage of the proposed amendments or any part of the proposed amendments could compromise the effectiveness of the proposed amendments and harm investors by lowering standards for safeguarding investor information maintained by small covered institutions. Excluding small entities from requirements that would be applicable to larger covered institutions also could create competitive disparities between large and small entities, for example by undermining investor confidence in the security of information maintained by small covered institutions.

We request comment on whether it is feasible or necessary for small entities to have special requirements or timetables for, or exemptions from, compliance with the proposed amendments. In particular, could any of the proposed amendments be altered in order to ease the regulatory burden on small entities, without sacrificing the effectiveness of the proposed amendments?

H. Request for Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposed amendments; (ii) the existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed amendments. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments. Comments should be submitted to the Commission at the addresses previously indicated.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider the impact any new rule would have on competition.[174] In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of Title I of the Exchange Act. The proposed amendments to Regulation S–P would: (i) Require more specific standards under the safeguards rule, including standards that would apply to data security breach incidents; (ii) broaden the scope of information and the types of institutions and persons covered by the safeguards and disposal rules; and (iii) require covered institutions to maintain written records of their policies and procedures and their compliance with those policies and procedures. The proposed amendments also would create a new exception from Regulation S–P's notice and opt-out requirements for firms to transfer limited investor information regarding clients of departing representatives to those representatives' new firms.

Other financial institutions are currently subject to substantially similar safeguarding and data breach response requirements under rules adopted by the Banking Agencies and the FTC. Under the proposed amendments, all financial institutions would have to bear similar costs in implementing substantially similar rules thus enhancing competition. We expect that the proposed amendment to create the new exception for firms to transfer limited investor information regarding clients of departing representatives to those representatives' new firms would not limit and might promote competition in the securities industry by providing legal certainty for firms that choose to rely on it and by facilitating the transition for customers who choose to follow a departing representative to a new firm.

In addition, Exchange Act Section 3(f), Investment Company Act Section 2(c), and Investment Advisers Act Section 202(c) require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[175] Our analysis on competition is discussed above. As discussed above, the proposed amendments could result in additional costs for covered institutions, which could affect the efficiency of these institutions. On the other hand, the amendments could promote investor confidence and bring new investors to these institutions. In the long term, the proposed amendments also could help reduce covered institutions' costs by mitigating the frequency and consequences of information security breaches. We do not believe the proposed amendments would have a significant effect on capital formation, although if the proposals lead to better information security practices at covered institutions, potential investors could feel more comfortable investing money in the capital markets. As a result, we expect that the potential additional expense of compliance with these proposed rule amendments would have little, if any, adverse effect on efficiency, competition, and capital formation.

We request comment as to whether our estimates of the burdens the proposed amendments would have on covered institutions are reasonable. We welcome comment on any aspect of this analysis, and specifically request comment on any effect the proposed amendments might have on the promotion of efficiency, competition, and capital formation that we have not considered. Would the proposed amendments or their resulting costs affect the efficiency, competition, and capital formation of covered institutions and their businesses? Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [176] we must advise OMB as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' if, upon adoption, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We

[174] 15 U.S.C. 78w(a)(2).

[175] 15 U.S.C. 78c(f); 15 U.S.C. 80a–2(c); and 15 U.S.C. 80b–2(c).

[176] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of titles 5 and 15 of the United States Code, and as a note to 5 U.S.C. 601).

request comment on the potential impact of the proposed regulation on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Statutory Authority

The Commission is proposing to amend Regulation S–P pursuant to authority set forth in Sections 501, 504, 505 and 525 of the GLBA (15 U.S.C. 6801, 6804, 6805 and 6825), Section 628(a)(1) of the FCRA (15 U.S.C. 1681w(a)(1)), Sections 17, 17A, 23, and 36 of the Exchange Act (15 U.S.C. 78q, 78q–1, 78w, and 78mm), Sections 31(a) and 38 of the Investment Company Act (15 U.S.C. 80a–30(a) and 80a–37), and Sections 204 and 211 of the Investment Advisers Act (15 U.S.C. 80b–4 and 80b–11).

X. Text of Proposed Rules and Rule Amendments

List of Subjects in 17 CFR Part 248

Brokers, Dealers, Investment advisers, Investment companies, Privacy, Reporting and recordkeeping requirements, Transfer agents.

For the reasons set out in the preamble, the Commission proposes to amend 17 CFR part 248 as follows.

1. Revise the heading of part 248 to read as follows:

PART 248—REGULATION S–P: PRIVACY OF CONSUMER FINANCIAL INFORMATION AND SAFEGUARDING PERSONAL INFORMATION

2. Revise the authority citation for part 248 to read as follows:

Authority: 15 U.S.C. 78q, 78q–1, 78w, 78mm, 80a–30(a), 80a–37, 80b–4, 80b–11, 1681w(a)(1), 6801–6809, and 6825.

3. Section 248.1(b) is amended by removing ''(b)'' from the reference to ''§ 248.30(b)'' in the first sentence of the paragraph.

4. Section 248.2(b) is amended by removing ''(b)'' from the reference to ''§ 248.30(b)'' in the first sentence.

5. Section 248.3(u) is amended by:

a. Removing ''or'' at the end of paragraph (u)(1)(ii);

b. Removing the period at the end of paragraph (u)(1)(iii) and in its place adding ''; or''; and

d. Adding paragraph (u)(1)(iv) to read as follows:

§ 248.3 Definitions.

* * * * *

(u) * * *

(1) * * *

(iv) Handled or maintained by you or on your behalf that is identified with any consumer, or with any employee, investor, or securityholder who is a natural person.

* * * * *

6. Remove the heading of subpart A of part 248 and add in its place the following undesignated center heading: ''Privacy and Opt Out Notices''.

7. Remove the heading of subpart B of part 248 and add in its place the following undesignated center heading: ''Limits on Disclosures''.

8. Remove the heading of subpart C of part 248 and add in its place the following undesignated center heading: ''Exceptions''.

9. Section 248.15 is amended by:

a. Removing the word ''or'' at the end of paragraph (a)(6);

b. Removing the period at the end of paragraph (a)(7)(iii) and in its place adding ''; or''; and

c. Adding paragraph (a)(8).

The addition reads as follows:

§ 248.15 Other exceptions to notice and opt out requirements.

(a) * * *

(8) To a broker, dealer, or investment adviser registered with the Commission in order to allow one of your representatives who leaves you to become the representative of another broker, dealer, or registered investment adviser to solicit customers to whom the representative personally provided a financial product or service on your behalf, provided:

(i) The information is limited to a customer's name, a general description of the type of account and products held by the customer, and the customer's contact information, including the customer's address, telephone number, and email information;

(ii) The information does not include any customer's account number, Social Security number, or securities positions; and

(iii) You require your departing representative to provide to you, not later than the representative's separation from employment with you, a written record of the information that will be disclosed pursuant to this exception, and you maintain and preserve such records under § 248.30(c).

(iv) For purposes of this section, representative means:

(A) A natural person associated with a broker or dealer registered with the Commission, who is registered or approved in compliance with § 240.15b7–1 of this chapter; or

(B) A supervised person of an investment adviser as defined in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(25)).

10. Remove the heading of subpart D of part 248 and add in its place the following undesignated center heading: ''Relation to Other Laws; Effective Date''.

11. Amend part 248 by adding the undesignated center heading, ''Information Security Programs'' before § 248.30, and revising § 248.30 to read as follows:

INFORMATION SECURITY PROGRAMS

§ 248.30 Information security programs for personal information; records of compliance.

(a) *Information security programs.*—(1) *General requirements.* Every broker or dealer other than a notice-registered broker or dealer, every investment company, and every investment adviser or transfer agent registered with the Commission, must develop, implement, and maintain a comprehensive information security program. Your program must include written policies and procedures that provide administrative, technical, and physical safeguards for protecting personal information, and for responding to unauthorized access to or use of personal information. Your program also must be appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any personal information at issue.

(2) *Objectives.* Your information security program must be reasonably designed to:

(i) Ensure the security and confidentiality of personal information;

(ii) Protect against any anticipated threats or hazards to the security or integrity of personal information; and

(iii) Protect against unauthorized access to or use of personal information that could result in substantial harm or inconvenience to any consumer, employee, investor or securityholder who is a natural person.

(3) *Safeguards.* In order to develop, implement, and maintain your information security program, you must:

(i) Designate in writing an employee or employees to coordinate your information security program;

(ii) Identify in writing reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information and personal information systems that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information or systems;

(iii) Design and implement safeguards to control the risks you identify, and maintain a written record of your design;

(iv) Regularly test or otherwise monitor, and maintain a written record

of the effectiveness of the safeguards' key controls, systems, and procedures, including the effectiveness of:

(A) Access controls on personal information systems;

(B) Controls to detect, prevent and respond to incidents of unauthorized access to or use of personal information; and

(C) Employee training and supervision relating to your information security program.

(v) Train staff to implement your information security program;

(vi) Oversee service providers, and document in writing that in your oversight you are:

(A) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the personal information at issue; and

(B) Requiring your service providers by contract to implement and maintain appropriate safeguards; and

(vii) Evaluate and adjust your information security program accordingly in light of:

(A) The results of the testing and monitoring required by paragraph (a)(3)(iv) of this section;

(B) Relevant changes in technology;

(C) Any material changes to your operations or business arrangements; and

(D) Any other circumstances that you know or reasonably believe may have a material impact on your information security program.

(4) *Procedures for responding to unauthorized access or use.* At a minimum, your information security program must include written procedures to:

(i) Assess the nature and scope of any incident involving unauthorized access to or use of personal information, and maintain a written record of the personal information systems and types of personal information that may have been accessed or misused;

(ii) Take appropriate steps to contain and control the incident to prevent further unauthorized access to or use of personal information and maintain a written record of the steps you take;

(iii) After becoming aware of an incident of unauthorized access to sensitive personal information, promptly conduct a reasonable investigation, determine the likelihood that the information has been or will be misused, and maintain a written record of your determination;

(iv) If you determine that misuse of the information has occurred or is reasonably possible, notify each individual with whom the information is identified as soon as possible in accordance with paragraph (a)(5) of this section and maintain a written record that you provided notification; provided however that if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and requests in writing that you delay notification, you may delay notification until it no longer interferes with the criminal investigation; and

(v) If you are a broker or dealer other than a notice-registered broker or dealer, provide written notice on Form SP–30 to your designated examining authority (*see* 17 CFR 240.17d–1), and, if you are an investment company or an investment adviser or transfer agent registered with the Commission, provide written notice on Form SP–30 to the principal office of the Commission, as soon as possible after you become aware of any incident of unauthorized access to or use of personal information in which:

(A) There is a significant risk that an individual identified with the information might suffer substantial harm or inconvenience; or

(B) An unauthorized person has intentionally obtained access to or used sensitive personal information.

(5) *Notifying individuals of unauthorized access or use.* If you determine that an unauthorized person has obtained access to or used sensitive personal information, and you determine that misuse of the information has occurred or is reasonably possible, you must notify each individual with whom the information is identified in a clear and conspicuous manner and by a means designed to ensure that the individual can reasonably be expected to receive it. The notice must:

(i) Describe in general terms the incident and the type of sensitive personal information that was the subject of unauthorized access or use;

(ii) Describe what you have done to protect the individual's information from further unauthorized access or use;

(iii) Include a toll-free telephone number to call, or if you do not have any toll-free number, include a telephone number to call and the address and the name of a specific office to write for further information and assistance;

(iv) If the individual has an account with you, recommend that the individual review account statements and immediately report any suspicious activity to you; and

(v) Include information about the availability of online guidance from the FTC regarding steps an individual can take to protect against identity theft, a statement encouraging the individual to report any incidents of identity theft to the FTC, and the FTC's Web site address and toll-free telephone number that individuals may use to obtain the identity theft guidance and report suspected incidents of identity theft.

(b) *Disposal of personal information.*—(1) *Standard.* Every broker or dealer other than a notice-registered broker or dealer, every investment company, every investment adviser or transfer agent registered with the Commission, and every natural person who is an associated person of a broker or dealer, a supervised person of an investment adviser registered with the Commission, or an associated person of a transfer agent registered with the Commission, that maintains or otherwise possesses personal information for a business purpose must properly dispose of the information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(2) *Written policies, procedures and records.* Every broker or dealer, other than a notice-registered broker or dealer, every investment company, and every investment adviser and transfer agent registered with the Commission must:

(i) Adopt written policies and procedures that address the proper disposal of personal information according to the requirements of paragraph (b)(1) of this section; and

(ii) Document in writing its proper disposal of personal information in compliance with paragraph (b)(1) of this section.

(3) *Relation to other laws.* Nothing in this paragraph (b) shall be construed:

(i) To require any broker, dealer, investment company, investment adviser, transfer agent, associated person of a broker or dealer, supervised person of an investment adviser, or associated person of a transfer agent, to maintain or destroy any record pertaining to an individual that is not imposed under other law; or

(ii) To alter or affect any requirement imposed under any other provision of law to maintain or destroy records.

(c) *Recordkeeping.* (1) Every broker or dealer other than a notice-registered broker or dealer, every investment company, and every investment adviser or transfer agent registered with the Commission, must make and maintain the records and written policies and procedures required under paragraphs (a) and (b)(2) of this section. Every broker or dealer other than a notice-registered broker or dealer, and every investment adviser registered with the Commission seeking to rely on the

exception in § 248.15(a)(8) must make and maintain the records required by § 248.15(a)(8)(iii).

(2) Starting from when the record was made, or from when the written policy or procedure was last modified, the records and written policies and procedures required under paragraphs (a) and (b)(2) of this section, and the records made pursuant to § 248.15(a)(8)(iii), must be preserved in accordance with:

(i) 17 CFR 240.17a–4(b) by a broker or dealer other than a notice-registered broker or dealer;

(ii) 240.17Ad–7(b) by a transfer agent registered with the Commission;

(iii) 270.31a–2(a)(4)–(6) by an investment company; and

(iv) 275.204–2(e)(1) by an investment adviser registered with the Commission.

(d) *Definitions.* As used in this § 248.30, unless the context otherwise requires:

(1) *Associated person of a broker or dealer* has the same meaning as in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)).

(2) *Associated person of a transfer agent* has the same meaning as in section 3(a)(49) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(49)).

(3) *Consumer report* has the same meaning as in section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

(4) *Consumer report information* means any record about an individual, whether in paper, electronic or other form, that is a consumer report or is derived from a consumer report. Consumer report information also means a compilation of such records. Consumer report information does not include information that does not identify individuals, such as aggregate information or blind data.

(5) *Disposal* means:

(i) The discarding or abandonment of personal information; or

(ii) The sale, donation, or transfer of any medium, including computer equipment, on which personal information is stored.

(6) *Information security program* means the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle personal information.

(7) *Notice-registered broker or dealer* means a broker or dealer registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).

(8) *Personal information* means any record containing consumer report information, or nonpublic personal information as defined in § 248.3(t), that is identified with any consumer, or with any employee, investor, or securityholder who is a natural person, whether in paper, electronic, or other form, that is handled or maintained by you or on your behalf.

(9) *Personal information system* means any method used to access, collect, store, use, transmit, protect, or dispose of personal information.

(10) *Sensitive personal information* means personal information, or any combination of components of personal information, that would allow an unauthorized person to use, log into, or access an individual's account, or to establish a new account using the individual's identifying information, including the individual's:

(i) Social Security number; or

(ii) Name, telephone number, street address, e-mail address, or online user name, in combination with the individual's account number, credit or debit card number, driver's license number, credit card expiration date or security code, mother's maiden name, password, personal identification number, biometric record, or other authenticating information.

(11) *Service provider* means any person or entity that receives, maintains, processes, or otherwise is permitted access to personal information through its provision of services directly to a broker, dealer, investment company, or investment adviser or transfer agent registered with the Commission.

(12) (i) *Substantial harm or inconvenience* means personal injury, or more than trivial financial loss, expenditure of effort or loss of time, including theft, fraud, harassment, impersonation, intimidation, damaged reputation, impaired eligibility for credit, or the unauthorized use of information identified with an individual to obtain a financial product or service, or to access, log into, effect a transaction in, or otherwise use the individual's account.

(ii) Substantial harm or inconvenience does not include unintentional access to personal information by an unauthorized person that results only in trivial financial loss, expenditure of effort or loss of time, such as if use of the information results only in your deciding to change the individual's account number or password.

(13) *Supervised person of an investment adviser* has the same meaning as in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(25)).

(14) *Transfer agent* has the same meaning as in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25)).

12. Redesignate Appendix A to part 248 as Appendix B to part 248, and revise its heading to read as follows:

Appendix B to part 248—Sample Clauses

13. Add new Appendix A to part 248 to read as follows:

Appendix A to Part 248—Forms

(1) *Availability of Forms.* Any person may obtain a copy of Form S–P or Form SP–30 prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Any person also may view the forms on the Commission Web site as follows:

(a) Form S–P at: [Web site URL];

(b) Form SP–30 at: [Web site URL].

(2) *Form S–P.* Use of Form S–P by brokers, dealers, and investment companies, and by investment advisers registered with the Commission, constitutes compliance with the notice content requirements of §§ 248.6 and 248.7.

(3) *Form SP–30.* Form SP–30 must be used pursuant to § 248.30(a)(4)(v) as the notice of an incident of unauthorized access to or use of personal information to be filed with the appropriate designated examining authority by brokers or dealers other than notice-registered brokers or dealers, and to be filed with the Commission by investment companies, and by investment advisers and transfer agents registered with the Commission.

14. Add Form SP–30 (referenced in paragraph (3) of Appendix A to part 248) to read as follows:

Note: The text of Form SP–30 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM SP–30

SECURITY INCIDENT REPORTING FORM

(Pursuant to § 248.30(a)(4)(v) of Regulation S–P (17 CFR 248.30(a)(4)(v))

1. Provide identifying information (IARD/CRD number, CIK,* business name, principal business and mailing addresses, and telephone number).

* CIK stands for ''Central Index Key,'' which is the unique number the Commission assigns to each entity that submits filings to it.

2. Provide contact employee (name, title, address, and telephone number).

3. Type of Institution:

____Broker-Dealer
____Investment Adviser
____Investment Adviser/Broker-Dealer (Dual Registrant)
____Investment Company
____Transfer Agent

4. Describe the security incident (*e.g.*, unauthorized use of your customers' online trading accounts, unauthorized use of your employee's password to access sensitive personal information maintained on one of your databases, or unauthorized access to your files on an investment company's shareholders):

(a) Provide the date(s) of the incident;

(b) List Registrant's offices, divisions or branches involved;

(c) Describe personal information system(s) compromised;

(d) Describe the incident and identify anyone you reasonably believe accessed or used personal information without authorization or compromised the personal information system(s).

5. Provide information on third-party service provider(s) involved:

(a) Identify any third-party service provider involved;

(b) Describe the services provided;

(c) If the service provider is an affiliate, describe the affiliation;

(d) Describe the involvement of the service provider(s) in the incident.

6. Describe steps taken or that you plan to take to assess the incident.

7. Provide the number of individuals whose information appears to have been compromised:_____

8. Describe steps you have taken or plan to take to prevent improper use of any personal information that was or may be compromised by the incident.

9. Do you intend to notify affected individuals?

(a) If yes, when?

(b) If no, why not?

10. Describe any steps you have taken or any plan to review your policies and procedures in light of this incident.

11. Describe Customer account losses (to the extent known).

(a) Number of Customer Accounts Accessed: _____

(b) Unauthorized Money Transfers

(i) Initial Customer Losses from Actual or Attempted Unauthorized Transfers: $_____

(ii) Mitigation of Customer Losses from Firm's Efforts

(A) Surveillance/Investigative Intervention: $_____

(B) Recoveries from Receiving Parties: $_____

(C) Firm Compensation to Customers: $_____

(iii) Net Customer Losses: $_____

(c) Unauthorized Changes to Securities Portfolio (*e.g.*, Pump and Dump Schemes)

(i) Initial Customer Losses from Actual or Attempted Unauthorized Trading

(A) Value of Accounts Before the Unauthorized Trading: $_____

(B) Value of Accounts After the Unauthorized Trading: $_____

(C) Initial Customer Losses/Gains: $_____

(ii) Did the firm return the affected customer accounts to their positions before the unauthorized trading? Yes/No

(iii) Net Customer Losses/Gains: $_____

Dated: March 4, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–4612 Filed 3–12–08; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Thursday,
March 13, 2008

Part IV

Department of Housing and Urban Development

24 CFR Parts 17 and 180

HUD Office of Hearings and Appeals; Conforming Changes To Reflect Organization Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 17 and 180

[Docket No. FR–5185–F–01]

RIN 2501 AD35

HUD Office of Hearings and Appeals; Conforming Changes To Reflect Organization Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations to reflect the organization of HUD's Office of Hearings and Appeals (OHA). HUD has established the Office of Hearings and Appeals within the Office of the Secretary. As a result of the organization of the OHA, the position of the Chief Administrative Law Judge (Chief ALJ) has been eliminated. This rule makes conforming changes to HUD regulations to reflect this change.

DATES: *Effective Date:* April 14, 2008.

FOR FURTHER INFORMATION CONTACT: David T. Anderson, Director, Office of Hearings and Appeals, Department of Housing and Urban Development, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006; telephone number (202) 254–0000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 847 of Title VIII of the National Defense Authorization Act of Fiscal Year 2006 (Pub. L. 109–613, approved January 6, 2006) (2006 NDA Act) established the Civilian Board of Contract Appeals within the General Services Administration and gave it jurisdiction to decide contract disputes from several civilian agencies. The 2006 NDA Act simultaneously terminated the Boards of Contract Appeals of eight federal agencies, including HUD.

Because of the statutory transfer of contract appeals adjudicatory responsibilities, and to provide for the non-procurement contract dispute functions performed by the HUD Board of Contract Appeals, HUD has established an Office of Hearings and Appeals (OHA) within the Office of the Secretary. OHA consists of two separate divisions, under the supervision of the director of OHA: The existing Office of Administrative Law Judges and the Office of Appeals.

II. This Final Rule

This final rule updates HUD's regulations in 24 CFR part 17, subpart C and 24 CFR part 180, to conform them to the establishment of OHA. Part 17 contains HUD's policies and procedures governing administrative claims, and subpart C of those regulations govern the collection of claims by the government. HUD's regulations at 24 CFR part 180 contain the consolidated hearing procedures for civil rights matters.

These HUD regulations contain outdated references to HUD's Chief Administrative Law Judge. That title and position are now obsolete since the establishment of OHA. This final rule updates the HUD regulations to reflect this change.

III. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for omission of notice and public comment in cases of statements of policy, interpretive rules, rules governing the Department's organization or internal practices, or if a statute expressly provides for omission of notice and comment. In this case, HUD has determined that prior public comment is unnecessary because this rule is exclusively concerned with the internal procedures of OHA. The regulatory amendments made by the final rule are technical and non-substantive in nature, limited to updating the terminology used in HUD's regulations governing administrative hearings. This rule does not affect the rights or obligations of members of the public, and therefore public comment may be omitted pursuant to § 10.1.

IV. Findings and Certifications

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not establish new procedures that would need to be complied with by small entities. Nor does the rule change the procedures that all entities, small and large, must adhere to in the course of certain hearings and appellate review processes. Rather, this final rule makes technical, non-substantive changes to HUD's administrative hearing regulations. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 17 and 180, as follows:

PART 17—ADMINISTRATIVE CLAIMS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

Subpart C—Procedures for the Collection of Claims by the Government

■ 2. The authority citation for subpart C continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

■ 3. Revise the first sentence in § 17.140 to read as follows:

§ 17.140 Miscellaneous provisions: correspondence with the Department.

The employee shall file an original and one copy of a request for a hearing with the Clerk, Office of Hearings and Appeals, 409 3rd Street, SW., 2nd Floor, Washington, DC 20024, on official work days between the hours of 8:45 a.m. and 5:15 p.m. * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 4. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1 3535(d), 3601–3619; 5301–5320, and 6103.

§ 180.200 [Amended]

■ 5. In § 180.200, remove the second sentence.

■ 6. Amend § 180.210 as follows:

■ a. In paragraph (a), revise the reference to ''Chief ALJ'' to read ''Director of the Office of Hearings and Appeals''; and

■ b. Revise paragraph (c), to read as follows:

§ 180.210 Withdrawal or disqualification of ALJ.

* * * * *

(c) *Redesignation of ALJ.* If an ALJ is disqualified, another ALJ shall be designated to preside over further proceedings.

■ 7. In § 180.315(b), revise the next to the last sentence to read as follows:

§ 180.315 Standards of conduct.

* * * * *

(b) * * * An attorney who is suspended or barred from participation may appeal to another ALJ designated by the Director of the Office of Hearings and Appeals. * * *

■ 8. Revise § 180.410(c) to read as follows:

§ 180.410 Charges under the Fair Housing Act.

* * * * *

(c) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), the administrative proceeding shall be dismissed.

* * * * *

■ 9. In § 180.445, revise paragraph (a) and in paragraphs (b)(2) and (c) revise the references to ''Chief ALJ'' to read ''presiding ALJ'' to read as follows:

§ 180.445 Settlement negotiations before a settlement judge.

(a) *Appointment of settlement judge.* The ALJ, upon the motion of a party or upon his or her own motion, may request the Director of the Office of Hearings and Appeals to appoint another ALJ to conduct settlement negotiations. The order shall direct the settlement judge to report to the presiding ALJ within specified time periods.

* * * * *

■ 10. Revise § 180.545(b) and (c) to read as follows:

§ 180.545 Subpoenas.

* * * * *

(b) *Issuance of subpoena.* Upon the written request of a party, the presiding ALJ or other designated ALJ may issue a subpoena requiring the attendance of a witness for the purpose of giving testimony at a deposition or hearing and requiring the production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoenas of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the presiding ALJ, or other designated ALJ as appropriate.

* * * * *

Dated: March 5, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–5021 Filed 3–12–08; 8:45 am]

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Federal Register

Thursday,
March 13, 2008

Part V

The President

Notice of March 11, 2008—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 73, No. 50
Thursday, March 13, 2008

Presidential Documents

Title 3—

The President

Notice of March 11, 2008

Continuation of the National Emergency With Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2008. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2007. This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
March 11, 2008.

[FR Doc. 08–1032
Filed 3–12–08; 9:14 am]
Billing code 3195–01–P

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RULES GOING INTO EFFECT MARCH 13, 2008

ENVIRONMENTAL PROTECTION AGENCY

Direct Final Rule Revising California State Implementation Plan, Monterey Bay Unified Air Pollution Control District etc.; Partial Removal; published 3-13-08

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:

National consensus standards and industry standards; update; published 12-14-07

TREASURY DEPARTMENT

Internal Revenue Service

Substitute for Return; Correction; published 3-13-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West:

Salable Quantities and Allotment Percentages for the 2008-2009 Marketing Year; comments due by 3-17-08; published 2-15-08 [FR E8-02922]

Onions Grown in South Texas;

Increased Assessment Rate; comments due by 3-17-08; published 2-29-08 [FR 08-00898]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Common Crop Insurance Regulations:

Dry Pea Crop Provisions; comments due by 3-18-08; published 1-18-08 [FR E8-00321]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Foreign-Trade Zone 22—Chicago, Illinois:

Application for Subzone Euromarket Designs, Inc. d/b/a/ Crate & Barrel (Home Furnishings); comments due by 3-17-08; published 1-15-08 [FR E8-00552]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Exclusive Economic Zone Off Alaska:

Bering Sea and Aleutian Islands Crab Rationalization Program; comments due by 3-17-08; published 2-15-08 [FR E8-02895]

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Experimental permitting process, exempted fishing permits, and scientific research activity; comments due by 3-20-08; published 12-21-07 [FR E7-24866]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery:

2008 Georges Bank Cod Hook Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch; comments due by 3-18-08; published 3-3-08 [FR E8-04039]

ENERGY DEPARTMENT

Acquisition Regulation; Security Clause; comments due by 3-20-08; published 2-19-08 [FR E8-03012]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Aircraft and aircraft engines—

General aviation aircraft; lead emissions limitation; comments due by 3-17-08; published 11-16-07 [FR E7-22456]

Approval and Promulgation of Air Quality Implementation Plans:

Maine; Conformity of General Federal Actions; comments due by 3-21-08; published 2-20-08 [FR E8-02884]

Approval and Promulgation of Air Quality Implementation:

Massachusetts; Certification of Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District; comments due by 3-17-08; published 2-15-08 [FR E8-02745]

Approval and Promulgation of Air Quality Implementation Plans:

Massachusetts; Certification of Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District; comments due by 3-17-08; published 2-15-08 [FR E8-02746]

Approval and Promulgation of Implementation Plans for Air Quality Planning Purposes:

Georgia: Early Progress Plan for the Atlanta 8-Hour Ozone Nonattainment Area; comments due by 3-21-08; published 2-20-08 [FR E8-02706]

Clarification for Chemical Identification Describing Activated Phosphors; TSCA Inventory Purposes; comments due by 3-17-08; published 1-16-08 [FR E8-00681]

Determinations of Attainment of the Eight-Hour Ozone Standard for Various Ozone Nonattainment Areas in Upstate New York State; comments due by 3-17-08; published 2-14-08 [FR E8-02781]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Pesticide Tolerance; Acetamiprid; comments due by 3-17-08; published 1-16-08 [FR E8-00683]

Proposed Approval of Transuranic Waste Characterization Program; Hanford Site; comments due by 3-17-08; published 1-30-08 [FR E8-01658]

Revisions to California State Implementation Plan:

San Joaquin Valley Unified Air Pollution Control District; comments due by 3-21-08; published 2-20-08 [FR E8-03113]

State Hazardous Waste Management Program Revisions and Approved Hazardous Waste Program Incorporation by Reference:

North Dakota; comments due by 3-17-08; published 2-14-08 [FR E8-02160]

State Hazardous Waste Management Program Revisions and Approved Hazardous Waste Program Incorporation by Reference:

North Dakota; comments due by 3-17-08; published 2-14-08 [FR E8-02158]

FEDERAL COMMUNICATIONS COMMISSION

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; comments due by 3-17-08; published 1-17-08 [FR E8-00759]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Supplemental Applications Proposing Labeling Changes for Approved Drugs, Biologics, and Medical Devices; comments due by 3-17-08; published 1-16-08 [FR E8-00702]

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Importer Security Filing and Additional Carrier Requirements; comments due by 3-18-08; published 2-1-08 [FR E8-01864]

HOMELAND SECURITY DEPARTMENT

Class 9 Bonded Warehouse Procedures; comments due by 3-17-08; published 1-16-08 [FR E8-00522]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Chatham petrel, etc. (six foreign bird species); comments due by 3-17-08; published 12-17-07 [FR E7-24347]

Endangered and Threatened Wildlife and Plants:

Quino Checkerspot Butterfly; Critical Habitat Designation; comments due by 3-17-08; published 1-17-08 [FR 08-00105]

INTERIOR DEPARTMENT

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Pipelines and Pipeline Rights-of-Way, etc.; comments due by 3-17-08; published 2-21-08 [FR E8-03201]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Registration Requirements for Importer and Manufacturers:

Prescription Drug Products Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine; comments due by 3-18-08; published 1-18-08 [FR E8-00774]

LABOR DEPARTMENT

Mine Safety and Health Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 3-17-08; published 1-15-08 [FR E8-00534]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Shipyard employment safety and health standards:

General working conditions; comments due by 3-19-08; published 12-20-07 [FR E7-24073]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Locations and Hours; Changes in NARA Research Room Hours; comments due by 3-17-08; published 2-1-08 [FR E8-01947]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Anti-Counterfeiting Trade Agreement; Request for Public Comments; comments due by 3-21-08; published 2-15-08 [FR E8-02944]

PERSONNEL MANAGEMENT OFFICE

Personnel Records; comments due by 3-18-08; published 1-18-08 [FR E8-00858]

SECURITIES AND EXCHANGE COMMISSION

Disclosure of Divestment by Registered Investment Companies in Accordance with Sudan Accountability Divestment Act of 2007; comments due by 3-17-08; published 2-15-08 [FR E8-02859]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Boeing Model 777 200 et al.; comments due by 3-19-08; published 2-28-08 [FR E8-03765]

Bombardier Model DHC 8 102, et al. Airplanes; comments due by 3-20-08; published 2-19-08 [FR E8-03000]

General Electric Company CF34 1A, 3A, 3A1, 3A2, 3B, and 3B1 Turbofan Engines; comments due by 3-18-08; published 1-18-08 [FR E8-00821]

Lockheed Model L 1011 Series Airplanes; comments due by 3-21-08; published 2-20-08 [FR E8-02996]

McDonnell Douglas Model DC 8 11 et al.; comments due by 3-21-08; published 2-5-08 [FR E8-01989]

Pacific Aerospace Limited Model 750XL Airplanes; comments due by 3-17-08; published 2-15-08 [FR E8-02831]

Class E Airspace; Establishment:

Emporium, PA; comments due by 3-17-08; published 1-30-08 [FR 08-00329]

Lewistown, PA; comments due by 3-17-08; published 1-30-08 [FR 08-00331]

Marienville, PA; comments due by 3-17-08; published 1-30-08 [FR 08-00330]

New Albany, MS; comments due by 3-17-08; published 1-30-08 [FR 08-00322]

Class E Airspace; Proposed Revision:

Anvik, AK; comments due by 3-17-08; published 2-1-08 [FR E8-01845]

Bettles, AK; comments due by 3-17-08; published 2-1-08 [FR E8-01842]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Hours of Service of Drivers; comments due by 3-17-08; published 2-20-08 [FR E8-03073]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Federal Motor Vehicle Safety Standards:

Roof Crush Resistance; comments due by 3-17-08; published 1-30-08 [FR 08-00392]

TREASURY DEPARTMENT

Comptroller of the Currency

Assessment of Fees; comments due by 3-20-08; published 2-19-08 [FR E8-03004]

TREASURY DEPARTMENT

Internal Revenue Service

Guidance on Qualified Tuition Programs Under Section 529; comments due by 3-18-08; published 1-18-08 [FR E8-00859]

Income taxes:

Foreign and domestic losses; treatment; cross-reference; comments due by 3-20-08; published 12-21-07 [FR E7-24896]

Foreign tax credit limitation categories; reduction; cross-reference; comments due by 3-20-08; published 12-21-07 [FR E7-24783]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticulatural area designations:

American viticultural areas establishment regulations; revision; comments due by 3-20-08; published 12-17-07 [FR E7-24364]

Alcohol; viticultural area designations:

Calistoga, Napa County, CA; comments due by 3-20-08; published 12-17-07 [FR E7-24361]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2272/P.L. 110–195

To designate the facility of the United States Postal Service known as the Southpark Station in Alexandria, Louisiana, as the John "Marty" Thiels Southpark Station, in honor and memory of Thiels, a Louisiana postal worker who was killed in the line of duty on October 4, 2007. (Mar. 12, 2008; 122 Stat. 652)

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