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

WHEN: Tuesday, April 15, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 73, No. 57

Monday, March 24, 2008

Agriculture Department
See Rural Housing Service

Antitrust Division
NOTICES
Pursuant to the National Cooperatice Research and Production Act of 1993; Portland Cement Association, 15538

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15524–15528
Meetings:
National Institutes of Health, 15528

Centers for Medicare & Medicaid Services
NOTICES
Reconsideration of Disapproval of Texas State Plan Amendment; Hearing, 15528–15529

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15529–15530

Commerce Department
See Economics and Statistics Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15475–15477

Defense Department
See Navy Department
NOTICES
Arms Sales Notification, 15489–15495
Meetings:
Missile Defense Advisory Committee, 15495–15496
Privacy Act; Systems of Records, 15496–15497

Economics and Statistics Administration
NOTICES
Meetings:
Bureau of Economic Analysis Advisory Committee, 15477

Education Department
PROPOSED RULES
Family Educational Rights and Privacy, 15574–15602

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15498–15501

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Louisiana; Approval of 8-Hour Ozone NAAQS, 15411–15416
Finding of Failure to Submit State Implementation Plans Required for the 1997 8-hour Ozone NAAQS, 15416–15421
National Volatile Organic Compound Emission Standards for Aerosol Coatings, 15421–15425, 15604–15631
Pesticide Tolerance; Pyraclostrobin, 15425–15431
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Louisiana; Approval of 8-hour Ozone NAAQS, 15470
National Volatile Organic Compound Emission Standards for Aerosol Coatings, 15470–15471
NOTICES
Protection of Stratospheric Ozone; Launch of Electronic Reporting System, 15520–15521
Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations, 15521–15522
Revisions to FY 2009 Guidelines for Brownfields Assessment, Cleanup and Revolving Loan Fund Grants, 15522–15523

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness Directives:
Boeing Model 737 300, 400, and 500 Series Airplanes, 15397–15399
Eurocopter France Model EC130 B4 Helicopters, 15395–15397
Goodrich Evacuation Systems Approved Under Technical Standard Orders, Installed on Various Boeing, McDonnel Douglas, and Airbus Transport Category Airplanes, 15399–15409

Federal Communications Commission
RULES
DTV Consumer Education Initiative, 15431–15458
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15523

Federal Deposit Insurance Corporation
PROPOSED RULES
Assessment Dividends, 15459–15468

Federal Energy Regulatory Commission
NOTICES
Amendment of License and Soliciting Comments, Motions to Intervene, and Protests:
Georgia Power Company, 15501
Amendment to Petition for Temporary Waiver of Tariff Provisions and Request for Expedited Action:
Gulfstream Natural Gas System, L.L.C., 15501–15502
Application:
EcoElectrica, L.P., 15511

Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests:
Howell Heflin Hydro, LLC, 15502–15503
Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests:
Alabama Power Co., 15503–15504
Georgia Power Company, 15509–15510
Kentucky Hydro 2, LLC, 15504–15505
Kentucky Hydro 4, LLC, 15505–15506
Kentucky Hydro 8, LLC, 15506–15507
Tom Bevill Hydro, LLC, 15507–15508
Tuttle Creek Hydro, LLC, 15508–15509
Application to Transfer Natural Gas Act Section 3 Authorization and Presidential Permit:
Sword Energy Limited, et al., 15510
Availability of Final Environmental Impact Statement:
Sacramento Municipal Utility District et al.; Upper American River Project and the Chili Bar Project, 15511–15512
Complaint:
MMC Energy, Inc., 15512
Filing:
Self-Certification of Qualifying Status of a Cogeneration Facility; Food Lion 2552 Wilson, NC, 15512–15513
South Carolina Electric & Gas Co., 15513
Intent to File License Application for a New License and Commencing Licensing Proceeding:
Hook Canyon Energy, LLC, 15513–15515
Intent to Prepare Environmental Assessment:
Proposed Love Ranch Relocation Project; TransColorado Gas Transmission Company, 15515–15516
Issuance of Order:
Massie Power, LLC, 15516–15517
Meetings:
PPL Holtwood, LLC, 15517–15518
Petition for Declaratory Order and Soliciting Comments, Motions to Intervene, and Protests:
Central Oregon Irrigation District, 15518–15519

Federal Motor Carrier Safety Administration
PROPOSED RULES
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators: Updated Information, 15471–15472
NOTICES
Demonstration Project on NAFTA Trucking Provisions, 15557–15566
Qualification of Drivers; Exemption Applications; Vision, 15567–15570

Food and Drug Administration
NOTICES
Meetings:
Ophthalmic Devices Panel of the Medical Devices Advisory Committee, 15530

Government Ethics Office
RULES
Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations; Technical Amendments, 15387–15388

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Vaccine Safety Working Group, 15524

Homeland Security Department
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15534–15535
Certification and Funding of State and Local Fair Housing Enforcement Agencies; Request for Comments, 15535–15536

Interior Department
See National Park Service

Internal Revenue Service
RULES
Employment Taxes and Collection of Income Tax at Source; CFR Correction, 15410–15411

International Trade Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15477–15478
Extension of Time Limit for Final Results of the New Shipper Reviews:
Frozen Fish Fillets From Vietnam, 15478–15479
Final Results of Antidumping Duty Administrative Review and Partial Rescission:
Ball Bearings and Parts From Japan, 15481–15482
Certain Frozen Fish Fillets From Vietnam, 15479–15481

International Trade Commission
NOTICES
Investigation:
Certain Spa Cover Lift Frames, 15537–15538

Justice Department
See Antitrust Division
See Justice Programs Office

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15538–15539

Labor Department
See Labor Statistics Bureau
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Labor Statistics Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15539–15540

Mine Safety and Health Administration
NOTICES
Petitions for Modification, 15540–15541

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15530–15531
Government-Owned Inventions; Availability for Licensing, 15531–15533

Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 15533–15534

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Vessels in the Bering Sea and Aleutian Islands Trawl Limited Access Fishery in the Eastern Aleutian District, 15458
NOTICES
Endangered and Threatened Species:
Take of Anadromous Fish, 15482–15483
Marine Mammals; Pinniped Removal Authority; Partial Approval of Application, 15483–15488
Meetings:
Gulf of Mexico Fishery Management Council, 15488
South Atlantic Fishery Management Council, 15488–15489

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 15536–15537

Navy Department
NOTICES
Privacy Act; Systems of Records, 15497–15498

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15542–15543
Meetings:
Advisory Committee on Reactor Safeguards, 15543
Request for Qualified Candidates for the Advisory Committee on Reactor Safeguards, 15543–15544

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15541–15542

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 15545–15546

Rural Housing Service
NOTICES
USDA Rural Development Voucher Program, 15473–15475

Securities and Exchange Commission
NOTICES
Order Approving and Declaring Effective an Amendment to the Plan for Allocating Regulatory Responsibility:
American Stock Exchange LLC et al.; Correction, 15571
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 15546–15548
Chicago Stock Exchange, Inc., 15548
Depository Trust Co., 15548–15550
NYSE Arca, Inc., 15550–15554
Philadelphia Stock Exchange, Inc., 15554–15555
Suspension of trading—
NeoTactix Corporation et al., 15556

Small Business Administration
PROPOSED RULES
Meetings:
Lender Oversight and Credit Risk Management Program, 15468–15469
NOTICES
Disaster Declaration:
Missouri, 15556
Tennessee, 15556

State Department
RULES
International Arms Traffic in Arms Regulations, Sri Lanka; Amendment, 15409–15410
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Glass of the Alchemists: Lead Crystal-Gold Rub, 15557

Trade Representative, Office of United States
NOTICES
WTO Dispute Settlement Proceeding Regarding China; Request for Comments, 15544–15545

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
RULES
Petitions Filed on Behalf of Temporary Workers Subject to or Exempt From Annual Numerical Limitation, 15389–15395

Western Area Power Administration
NOTICES
Transmission and Ancillary Services Rates:
Salt Lake City Area Integrated Projects Firm Power, Colorado River Storage Project, 15519–15520

Separate Parts In This Issue

Part II
Education Department, 15574–15602

Part III
Environmental Protection Agency, 15604–15631

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2634 15387
2635 15387

8 CFR
214 15389

12 CFR
Proposed Rules:
327 15459

13 CFR
Proposed Rules:
120 15468

14 CFR
39 (3 documents) 15395, 15397, 15399

22 CFR
126 15409

26 CFR
31 15410

34 CFR
Proposed Rules:
99 15574

40 CFR
51 15604
52 (2 documents) 15411, 15416
59 (2 documents) 15421, 15604
180 15425
Proposed Rules:
52 15470
59 15470

47 CFR
15 15431
27 15431
54 15431
73 15431
76 15431

49 CFR
Proposed Rules:
380 15471
383 15471
384 15471

50 CFR
679 15458

Rules and Regulations

Federal Register
Vol. 73, No. 57
Monday, March 24, 2008

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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RINs 3209–AA00 and 3209–AA04

Technical Updating Amendments to Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is updating its executive branch regulation on financial disclosure to reflect the retroactive statutory increase of the reporting thresholds for gifts and travel reimbursements. As a matter of regulatory policy, OGE is also raising the widely attended gatherings nonsponsor gifts exception dollar ceiling under the executive branchwide standards of ethical conduct regulation, but this change is not retroactive. Finally, OGE is also correcting a typographical error in an unrelated provision of the financial disclosure regulation.

DATES: This rule is effective March 24, 2008. The amendments to 5 CFR 2634.304 and 2634.907 (as set forth in amendatory paragraphs 2 and 4) are retroactively applicable as of January 1, 2008.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics; Telephone: 202–482–9300; TDD: 202–482–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending pertinent sections of its executive branchwide ethics regulations on financial disclosure and standards of ethical conduct, as codified at 5 CFR parts 2634 and 2635, in order to update certain reporting and other thresholds, as well as to correct one typographical error in the wording of an unrelated section of part 2634 (§ 2634.803(d)).

Increased Gifts and Travel Reimbursements Reporting Thresholds

First, OGE is revising its executive branch financial disclosure regulation at 5 CFR part 2634, applicable as of January 1, 2008 to reflect the increased reporting thresholds for gifts, reimbursements and travel expenses for both the public and confidential executive branch financial disclosure systems. These increases conform to the statutorily mandated public disclosure reporting thresholds under section 102(a)(2)(A) & (B) of the Ethics in Government Act as amended, 5 U.S.C. app. section 102(a)(2)(A) & (B), and are extended to confidential disclosure reporting by OGE's regulation. Under the Ethics Act, the gifts and reimbursements reporting thresholds are tied to the dollar amount for the ''minimal value'' threshold for foreign gifts as the General Services Administration (GSA) periodically redefines it.

In a recent rulemaking, GSA raised ''minimal value'' under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to ''$335 or less'' (from the prior level of $305 or less) for the three-year period 2008–2010. See 73 FR 7475 (February 8, 2008), revising (retroactively applicable as of January 1, 2008) the foreign gifts minimal value definition as codified at 41 CFR 102–42.10.

Accordingly, applicable as of that same date, OGE is increasing the thresholds for reporting of gifts and travel reimbursements from any one source in 5 CFR 2634.304 and 2634.907(g) (and as illustrated in the examples following those sections, including appropriate adjustments to gift values therein) of its executive branch financial disclosure regulation to ''more than $335'' for the aggregation threshold for reporting and ''$134 or less'' for the de minimis exception for gifts and reimbursements which do not have to be counted towards the aggregate threshold. As noted, these regulatory increases just reflect the underlying statutory increases applicable as of January 1 of this year.

OGE will continue to adjust the gifts and travel reimbursements reporting thresholds in its part 2634 regulation in the future as needed in light of GSA's redefinition of ''minimal value'' every three years for foreign gifts purposes. See OGE's prior three-year adjustment of those regulatory reporting thresholds, as published at 70 FR 12111–12112 (March 11, 2005) (for 2005–2007, the aggregate reporting level was more than $305, with a $122 or less de minimis exception).

Increased Dollar Ceiling for the Exception for Nonsponsor Gifts of Free Attendance at Widely Attended Gatherings

In addition, OGE is increasing from $305 to $335 the exception ceiling for nonsponsor gifts of free attendance at widely attended gatherings under the executive branch standards of ethical conduct regulation, as codified at 5 CFR 2635.204(g)(2) (and as illustrated in the examples following paragraph (g); a sum total value in one example is also being adjusted accordingly). This separate regulatory change is effective upon publication in the **Federal Register**, on March 24, 2008. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is based in part on the financial disclosure gifts reporting threshold. See 60 FR 31416 (June 15, 1995) and 61 FR 42968 (August 20, 1996). The nonsponsor gift ceiling was last raised in the March 2005 OGE rulemaking noted in the preceding paragraph above. Thus, it is reasonable to again increase the nonsponsor gift ceiling to match the further increase in the gifts/travel reimbursements reporting thresholds. The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these technical updating amendments. The notice, comment and delayed effective date provisions are being waived in part because these technical amendments concern matters of agency organization, practice and procedure. Further, it is in the public interest that correct and up-

to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements is based on a statutory formula and also lessens the reporting burden somewhat. Therefore, that regulatory revision is being made retroactively effective January 1, 2008, when the change became effective under the Ethics Act.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking itself does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating these technical amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed ''significant'' thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: March 11, 2008.

Robert I. Cusick,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2635 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart C—Contents of Public Reports

§ 2634.304 [Amended]

■ 2. Applicable January 1, 2008, § 2634.304 is amended by:

■ A. Removing the dollar amount ''$305'' in paragraphs (a) and (b) and in examples 1 and 4 following paragraph (d) and adding in its place in each instance the dollar amount ''$335'';

■ B. Removing the dollar amount ''$122'' in paragraph (d) and in examples 1 and 2 following paragraph (d) and adding in its place in each instance the dollar amount ''$134'';

■ C. Removing the dollar amount ''$145'' in example 1 following paragraph (d) and adding in its place the dollar amount ''$185'';

■ D. Removing the dollar amounts ''$150'' and ''$305'' in example 3 following paragraph (d) and adding in their place the dollar amounts ''$170'' and ''$335'', respectively; and

■ E. Removing the dollar amounts ''$285'' and ''$300'' in the example to paragraph (f)(1) and adding in their place the dollar amounts ''$385'' and ''$400'', respectively.

Subpart H—Ethics Agreements

§ 2634.803 [Corrected]

■ 3. The first sentence of paragraph (d) of § 2634.803 is corrected by adding the word ''an'' between the words ''into'' and ''ethics''.

Subpart I—Confidential Financial Disclosure Reports

§ 2634.907 [Amended]

■ 4. Applicable January 1, 2008, § 2634.907 is amended by:

■ A. Removing the dollar amount ''$305'' in paragraphs (g)(1) and (g)(2) and in the example to paragraph (g) and adding in its place in each instance the dollar amount ''$335''; and

■ B. Removing the dollar amount ''$122'' in paragraph (g)(3) and in the example to paragraph (g) and adding in its place in each instance the dollar amount ''$134''.

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 5. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Gifts From Outside Sources

§ 2635.204 [Amended]

■ 6. Section 2635.204 is amended by:

■ A. Removing the dollar amount ''$305'' in paragraph (g)(2) and in examples 1 and 2 (in the latter of which it appears twice) following paragraph (g)(6) and adding in its place in each instance the dollar amount ''$335''; and

■ B. Removing the dollar amount ''$610'' in example 2 following paragraph (g)(6) and adding in its place the dollar amount ''$670''.

[FR Doc. E8–5484 Filed 3–21–08; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2434–07; DHS Docket No. USCIS–2007–0060]

RIN 1615–AB68

Petitions Filed on Behalf of H–1B Temporary Workers Subject to or Exempt From the Annual Numerical Limitation

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Homeland Security is amending its regulations governing petitions filed on behalf of alien workers subject to the annual numerical limitations applicable to the H nonimmigrant classification. This rule precludes a petitioner from filing more than one petition based on the H–1B nonimmigrant classification on behalf of the same alien temporary worker in a given fiscal year if the alien is subject to a numerical limitation or is exempt from a numerical limitation by virtue of having earned a master's or higher degree from a U.S. institution of higher education. Additionally, this rule makes accommodations for petitioners seeking to file petitions on the first day on which filings will be accepted for the next fiscal year on behalf of alien workers subject to the annual numerical limitation or U.S. master's or higher degree holders exempt from this limitation. This rule also clarifies the treatment of H nonimmigrant petitions incorrectly claiming an exemption from the numerical limitations. Finally, the rule removes from the regulations unnecessary language regarding the annual numerical limitation applicable to the H–1B nonimmigrant classification. These changes are necessary to clarify the regulations and further ensure the fair and orderly adjudication of petitions subject to numerical limitations.

DATES: *Effective date:* This rule is effective March 24, 2008.

Comment Date: Written comments must be submitted on or before May 23, 2008.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2007–0060 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at *rfs.regs@dhs.gov.* Include DHS Docket No. USCIS–2007–0060 in the subject line of the message.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2007–0060 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Patricia Jepsen, Adjudications Officer, Business and Trade Services, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2007–0060. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background

The ability of employers to fill available U.S. jobs on a timely basis with alien temporary workers otherwise eligible for the H–1B nonimmigrant classification generally depends on when they filed petitions for such workers and the number of such petitions that USCIS has approved with respect to the relevant fiscal year (i.e., October 1 through September 30). With a few exceptions, the total number of aliens who may be accorded H–1B nonimmigrant status during any fiscal year currently may not exceed 65,000 (referred to as the ''cap'' or ''numerical limitation''). *See* Immigration and Nationality Act (INA) sec. 214(g), 8 U.S.C. 1184(g). USCIS may only accord status to qualified aliens in the order in which the H–1B petitions are filed. *See* INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3). This interim final rule will improve USCIS' ability to administer the cap by modifying the filing procedures for H–1B petitions submitted by employers on behalf of aliens.

A. The H–1B Petition Process

An H–1B nonimmigrant is an alien employed to perform services in a specialty occupation, services related to a Department of Defense cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. INA sec. 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H); 8 CFR 214.2(h)(4). To qualify as a specialty occupation, the position must meet one of the following requirements: (1) The minimum entry requirement for the position normally is a bachelor's or higher degree or its equivalent; (2) the degree requirement is common to the industry or the position is so complex or unique that it can be performed only by an individual with a degree; (3) the employer normally requires a degree or its equivalent for the position; or (4) the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with attainment of a bachelor's or higher degree. 8 CFR 214.2(h)(4)(iii)(A).

Before employing an H–1B temporary worker, a U.S. employer first must file an H–1B petition with USCIS on behalf of the worker on Form I–129, ''Petition for a Nonimmigrant Worker'' together with the forms, ''H Classification Supplement to Form I–129'' and ''H–1B Data Collection and Filing Fee Exemption Supplement.'' The worker must be named on the petition. 8 CFR 214.2(h)(2)(iii). For a petition filed on behalf of a temporary worker in a

specialty occupation, the employer also must file a Labor Condition Application (LCA) that has been certified by the Department of Labor (DOL). 8 CFR 214.2(h)(4)(i)(B)(1). The LCA specifies the job, salary, length, and geographic location of employment. The petitioner must pay several different fees with the H–1B petition. The base filing fee is $320. 8 CFR 103.7(b)(1) (listing Form I–129 filing fee). In addition, a petition filed by an employer with 26 or more full-time employees must pay a $1,500 fee; a petition filed by an employer with 25 or fewer full-time employees must pay a $750 fee. INA 214(c)(9)(B), 8 U.S.C. 1184(c)(9)(B). Most employers filing an initial H–1B petition, and H–1B employers filing a petition on behalf of an alien currently employed as an H–1B temporary worker by another employer, must pay a fraud prevention and detection fee of $500. INA 214(c)(12)(A) and (C). Finally, an employer requesting expedited processing of the H–1B petition must pay an extra $1,000 premium processing fee with the expedited processing request. INA 286(u), 8 U.S.C. 1356(u); 8 CFR 103.2(f)(2). These fees are not refundable. 8 CFR 103.2(a)(1).

Once USCIS accepts the H–1B petition, it adjudicates the petition and issues a written decision notifying the petitioner whether USCIS requires additional information before it can issue a decision or whether the petition is approved or denied. 8 CFR 103.2(a)(8) and 214.2(h)(9) and (10). USCIS may revoke a petition that has been previously approved, even after expiration of the petition. 8 CFR 214.2(h)(11). A petitioning employer, following receipt of the written decision, may appeal to USCIS the denial or revocation of a petition. 8 CFR 214.2(h)(12). An approved H–1B petition is valid for a period of up to three years.[1] *See* 8 CFR 214.2(h)(9)(iii)(A)(1). Prior to the expiration of the initial H–1B petition, the petitioning employer may apply for an extension of stay, or a different employer may petition on behalf of the temporary worker. 8 CFR 214.2(h)(2)(i)(D) and (15)(ii)(B). However, any such extension only may only be granted for a period of time such that the total period of the temporary worker's admission does not exceed six years.[2] INA sec. 214(g)(4), 8 U.S.C. 1184(g)(4); 8 CFR 214.2(h)(13)(iii)(A). At the end of the six-year period, such alien must either seek permanent resident status or depart the United States.[3] *See* 8 CFR 214.2(h)(13)(iii)(A). The alien may be eligible for a new six-year period of admission in H–1B nonimmigrant status if he or she remains outside the United States for at least one year. *Id.*

B. H–1B Nonimmigrants Subject to the 65,000 Cap

Most aliens seeking H–1B nonimmigrant classification are subject to the 65,000 cap. Exempt from the 65,000 cap are aliens who: (1) Are employed at, or have received offers of employment from, an institution of higher education, or a related or affiliated nonprofit entity; (2) are employed at, or have received offers of employment from, a nonprofit research organization or a governmental research organization; or (3) have earned a master's or higher degree from a U.S. institution of higher education. INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5). A cap of 20,000 applies to the exemption based on an alien's U.S. master's or higher degree (''20,000 cap on master's degree exemptions''). INA sec. 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C). Based on the employer's answers to the questions on the ''H–1B Data Collection and Filing Fee Exemption Supplement'' to Form I–129, USCIS determines whether the alien beneficiary qualifies for one of the exemptions.

The spouses and children of H–1B aliens, classified as H–4 nonimmigrants, are exempt from the 65,000 or 20,000 cap. *See* INA sec. 214(g)(2); 8 U.S.C. 1184(g)(2); 8 CFR 214.2(h)(8)(ii)(A). In addition, USCIS does not apply the 65,000 or 20,000 cap in the following cases: requests for petition extensions or extensions of stay in the United States; and petitions filed on behalf of aliens who are currently in H–1B nonimmigrant status but are seeking to change the terms of current employment, change employers, or work concurrently under a second H–1B petition. Such aliens have already been counted towards the cap(s). *See* INA sec. 214(g)(7), 8 U.S.C. 1184(g)(7); 8 CFR 214.2(h)(8)(ii)(A).

C. Random Selection Process

In order to ensure that the 65,000 and 20,000 caps are not exceeded, USCIS monitors the number of H–1B petitions it receives. The first day on which petitioners may file H–1B petitions can be as early as six months ahead of the employment start date. 8 CFR 214.2(h)(9)(i)(B). Therefore, a petitioner requesting an employment start date of October 1, the first day of the next fiscal year, may file the H–1B petition as early as April 1 of the current fiscal year. When USCIS determines, based on the number of H–1B petitions it has received, that the applicable cap will be reached, it announces to the public the final day on which it will accept such petitions for adjudication in that fiscal year. USCIS refers to this day as the ''final receipt date.'' *See* 8 CFR 214.2(h)(8)(ii)(B). USCIS then randomly selects the number of petitions necessary to reach the cap from the petitions received on the final receipt date. *Id.* If USCIS receives sufficient H–1B petitions to reach the cap for the next fiscal year on the first day that filings may be made, that day is the final receipt date. USCIS then randomly applies all of the cap numbers among the H–1B petitions filed on that day and the following day. *Id.*

Following the random selection process conducted for the 65,000 cap, USCIS rejects any petitions that are not selected or that are received after the final receipt date (or the day following the final receipt date, if applicable). *Id.;* 8 CFR 214.2(h)(8)(ii)(D). With respect to the 20,000 cap, USCIS will count any non-selected or subsequently filed H–1B petitions towards the 65,000 cap. If the 65,000 cap already has been reached, however, USCIS will reject such petitions.

The procedures at 8 CFR 214.2(h)(8)(ii)(B) for assigning cap numbers also apply to other H nonimmigrant petitions that are subject to numerical limitations. *See* 8 CFR 214.2(h)(8)(i). However, because demand for other H categories has not been as great as for the H–1B classification, USCIS has only had to apply the random selection procedures to H–1B petitions subject to the overall 65,000 cap or the 20,000 cap on master's degree exemptions.

D. Random Selection Process Under the 65,000 Cap for Fiscal Year 2008

On Monday, April 2, 2007, the first available filing day for fiscal year (FY) 2008, USCIS received H–1B petitions totaling nearly twice the 65,000 cap. *See* USCIS Update at *http://www.uscis.gov/files/pressrelease/H1BFY08Cap040307.pdf.* This was the first time since the random selection process regulations were promulgated that USCIS received more petitions than

[1] Initial H–1B petitions involving a DOD research and development or co production project may be approved for a period of up to five years. 8 CFR 214.2(h)(9)(iii)(A)(2).

[2] Aliens entering the United States in H–1B status to perform services of an exceptional nature in a research, development and/or co production project administered by the Department of Defense may remain in the United States for a maximum period of ten years. 8 CFR 214.2(h)(13)(iii)(B).

[3] Certain aliens are exempt from the six-year maximum period of admission under sections 104(c) and 106(a) and (b) of the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106–313, 114 Stat. 1251 (2000).

available cap numbers on the first available filing day. USCIS believes that petitioners rushed to file H–1B petitions for FY 2008 on the first available filing day because the cap had been reached very early in the previous fiscal years, and petitioners may have anticipated that a similar shortage of H–1B cap numbers would occur for FY 2008.[4] In order to ensure receipt of a petition by USCIS on April 2, H–1B petitioners incurred significant costs to send their petitions via overnight courier. The huge volume of filings scheduled for delivery on April 2 caused logistical problems for overnight couriers and on the two USCIS service centers where filings could be made.

Using the petitions received on April 2 and April 3, USCIS conducted the random selection process and thereafter rejected all petitions that were not randomly selected. When adjudicating the selected petitions, USCIS found approximately 500 instances where a single beneficiary had been named on at least two petitions filed by the same petitioner in what appears to have been an attempt to increase the chances of being selected in the random selection process. As a general practice, when USCIS approved a petition for a specifically-named individual, it denied any duplicate petitions subsequently adjudicated. Under current procedures, because H–1B cap numbers are allotted per alien, and not per petition, no adverse consequences befall a petitioner that seeks to exploit the system through filing multiple petitions. By statute, USCIS may only allot one cap number per alien beneficiary, regardless of the number of petitions that were filed on the alien's behalf. INA section 214(g)(7), 8 U.S.C. 1184(g)(7).

Based on its experience administering the 65,000 cap, USCIS has determined that the current procedures applicable to petitions filed on behalf of cap-subject aliens pose three problems. First, USCIS has determined that accepting duplicate filings over the course of the fiscal year, as well as for the random selection process, undermines the fair and orderly administration of the cap. When USCIS receives enough H–1B petitions to meet the cap on the first filing day for the coming fiscal year, then conducts an early random selection process, the filing of duplicative petitions increases the odds that USCIS will select at least one of the duplicative petitions for adjudication. Such petitioners thereby gain an unfair advantage over other petitioners participating in the random selection process who filed a single petition for a given beneficiary and job offer. Moreover, the filing of duplicative petitions results in unnecessary adjudications. Such unnecessary adjudications slow the overall processing of H–1B petitions, creating disadvantages for employers and otherwise eligible alien beneficiaries who need to make advance arrangements for the beneficiaries' upcoming employment.

Second, since the current regulations provide that the final receipt date is the first day on which filings will be accepted if the cap is reached on that day, and USCIS understands that petitioners anticipate the cap being reached on the first day for future fiscal years, petitioners feel pressured to file petitions on that day for fear of being excluded from the random selection process. USCIS faces significant logistical difficulties in order to handle such a large number of filings being made on the same day. While the current regulations at 8 CFR 214.2(h)(8)(ii)(B) provide some relief by authorizing USCIS to include in the random selection process petitions filed on the first day and the following day, this relief has proved to be insufficient to alleviate these difficulties.

Third, the filing of duplicate or multiple petitions may result in USCIS making available more than one receipt number to the same beneficiary, making it more difficult for USCIS to achieve an accurate projection of the number of petitions needed to generate the required number of approvals to reach the cap. In turn, USCIS may prematurely determine that the cap has been reached and either subsequently reject timely-filed petitions or close the opportunity for other prospective H–1B employers to file petitions.

E. Cap on Master's Degree Exemptions

Just as with the 65,000 cap, the 20,000 cap on master's degree exemptions has been exhausted earlier and earlier for each fiscal year since the cap exemption was added to the law. *See* Omnibus Appropriations Act for Fiscal Year 2005, Div. J, Tit. IV, section 425, Public Law 108–447, 118 Stat. 2809 (2004) (establishing the master's degree exemption). For FY 2006, the 20,000 cap was reached on January 17, 2006. For FY 2007, the cap was reached on July 26, 2006, less than four months after petition filings began on April 1, 2006. For FY 2008, the cap was reached on May 4, 2007, just over one month after petition filings began on April 2, 2007. For each of these fiscal years, USCIS announced a final receipt date and conducted the random selection process. *See* USCIS Update at *http://www.uscis.gov/files/pressrelease/H1Bfy08CapUpdate050407.pdf.* USCIS rejected any non-selected or subsequently filed petitions since the 65,000 cap on H–1B petitions already had been reached by the time USCIS conducted the random selections.

USCIS believes that the trend of exhausting the 20,000 cap on master's degree exemptions at an earlier date will continue. Should both the 20,000 and 65,000 caps be reached on the same day that numbers become available (e.g., April 1 of the preceding fiscal year), no regulatory mechanism is in place to facilitate administration of the 20,000 cap in relation to the 65,000 cap. In addition, while USCIS is not aware of duplicative or multiple H–1B petitions being filed in past fiscal years on behalf of the same aliens eligible for the master's degree exemption, USCIS anticipates the possibility of such filings for future fiscal years as the H–1B classification becomes increasingly oversubscribed. In fact, USCIS believes that for FY 2009, it is likely that petitioners will rush to file H–1B petitions on behalf of aliens eligible for the master's degree exemption on the first available filing days, in anticipation that there will be a shortage of master's degree exemptions.

The filing of duplicative or multiple H–1B petitions on behalf of an alien eligible for the master's degree exemption would place employers filing such petitions at an unfair advantage over employers filing only a single petition by increasing the chances that one of the duplicative or multiple petitions would be selected. This problem would be exacerbated were the 20,000 cap to be reached prior to or at the same time as the 65,000 cap, since all petitions not selected in the random selection process for the 20,000 cap would be considered twice—at the time of the random selection for the 20,000 cap and, thereafter, for the 65,000 cap. This would reduce the availability of H–1B numbers for single petition filers. The same problem holds true if employers of aliens subject to the master's degree exemption seek to increase the chances of obtaining an H–1B number by filing concurrent petitions for the same aliens under both the master's degree exemption and the 65,000 cap. In its administration of the 65,000 and 20,000 caps, USCIS must remove any potential for unfairness and ensure that the H–1B petitions filed on

[4] Each year, the cap has been reached earlier in the year. In FY07, the cap was reached on 5–26–06 (*see http://www.uscis.gov/files/pressrelease/FY07H1Bcap_060106PR.pdf*). In FY06, the cap was reached on 8–10–05 (*http://www.uscis.gov/files/pressrelease/H–1Bcap_12Aug05pdf*). In FY05, the cap was reached on 10–1–04 (*http://www.uscis.gov/files/pressrelease/H1B_05fnl100104.pdf*).

behalf of aliens subject to either or both caps have an equal chance of being selected.

III. Changes in This Interim Rule

A. Final Receipt Date When Cap Numbers Are Used Up Quickly

This rule provides that USCIS will include petitions filed on all of those first five business days in the random selection process if USCIS receives a sufficient number of petitions to reach the applicable numerical limit (including limits on exemptions) on any one of the five business days on which USCIS may accept petitions. This will eliminate filing problems resulting from a rush of filings made on the first day on which employers may file petitions for the upcoming fiscal year. *See* revised 8 CFR 214.2(h)(8)(ii)(B). USCIS has determined that a filing period of five business days is sufficient to account for a wider range of mail delivery times offered by the various mail delivery providers available to the public.

This rule also provides that, if both the 65,000 and 20,000 caps are reached within the first five business days available for filing H–1B petitions for a given fiscal year, USCIS must first conduct the random selection process for petitions subject to the 20,000 cap on master's degree exemptions before it may begin the random selection process of petitions to be counted towards the 65,000 cap. *See* revised 8 CFR 214.2(h)(8)(ii)(B). After conducting the random selection for petitions subject to the 20,000 cap, USCIS then must add any non-selected petitions to the pool of petitions subject to the 65,000 cap and conduct the random selection process for this combined group of petitions. Therefore, those petitions that otherwise would be eligible for the master's degree exemption that are not selected in the first random selection will have another opportunity to be selected for an H–1B number in the second random selection process. This rule also clarifies that those petitions not selected in either random selection will be rejected. *See id.*

B. Elimination of Multiple Filings

To ensure the fair and equitable distribution of cap numbers, this rule precludes a petitioner (or its authorized representative) from filing, during the course of any fiscal year, more than one H–1B petition on behalf of the same alien beneficiary if such alien is subject to the 65,000 cap or qualifies for the master's degree exemption. *See* new 8 CFR 214.2(h)(2)(i)(G). This preclusion applies even if the petitions are not duplicative.

USCIS recognizes that, by statute, multiple filings of H–1B petitions are contemplated. *See* INA sec. 214(g)(7), 8 U.S.C. 1184(g)(7). Nevertheless, USCIS finds that this rule's preclusion of duplicative H–1B filings is consistent with the statute. Section 214(g)(7) of the INA, 8 U.S.C. 1184(g)(7), states that ''[w]here multiple petitions are approved for 1 alien, that alien shall be counted only once.'' USCIS interprets this statutory language as applying to an alien who has multiple petitions filed on his or her behalf by more than one employer. Therefore, an alien who will be performing H–1B duties on behalf of two separate petitioners will be counted only once against the cap. USCIS does not believe that the statutory language at section 214(g)(7) of the INA, 8 U.S.C. 1184(g)(7), was intended to allow a single employer to file multiple H–1B petitions on behalf of the same alien. Such a broad interpretation would undermine the purpose of the H–1B numerical cap since multiple filings can result in the misallocation of the total available cap numbers.

USCIS recognizes that, on occasion, an employer may extend the same alien two or more job offers for distinct positions and therefore have a legitimate business need to file two or more separate H–1B petitions on behalf of the same alien. This rule precludes this practice if the alien beneficiary is subject to the numerical limitations or qualifies for the master's degree exemption. First, allowing multiple filings by one employer on behalf of the same alien could create a loophole for employers that seek to exploit the random selection process to the competitive disadvantage of other petitioners. Such employers could file multiple petitions on behalf of the same alien under the guise that the petitions are based on different job offers, when the employment positions are in fact the same or only very slightly different.

Second, requiring USCIS adjudicators to distinguish between multiple petitions filed by one employer for one alien based on different job offers and duplicative petitions for one alien for the same, single position would require a significant expenditure of limited USCIS adjudicative resources. USCIS could not make such determinations on the face of the petition, but would need to substantively examine and compare the merits of the petition and any other petition filed by the same employer on behalf of the alien. This would defeat the purpose of the random selection process, which is not intended to be a decision on the merits, but instead, an expeditious way for USCIS to determine which petitions are eligible for consideration on the merits.

Finally, prohibiting employers from filing multiple petitions on behalf of the same alien should have no impact on the unusual situation where an employer may have the same alien in mind for materially distinct employment positions. Once an alien is allocated an H–1B number based on one petition, the employer is able to file an amended petition or a petition for concurrent employment to reflect the different nature of the duties that are associated with the beneficiary's second employment position. Since the alien would have already been counted against the cap, such amended or additional petition would not be affected by the prohibition on multiple petition filings. *See* INA sec. 214(g)(7), 8 U.S.C. 1184(g)(7).

For these reasons, USCIS believes that it must curtail both duplicative and multiple petition filings by the same employer in order to prevent future fairness problems similar to those USCIS experienced with its administration of the FY 2008 random selection process for the 65,000 cap. Accordingly, this rule provides that USCIS will deny all the petitions filed by an employer (or authorized representative) for the same fiscal year with respect to the same alien subject to the 65,000 or 20,000 caps. *See* new 8 CFR 214.2(h)(2)(i)(G). In cases where USCIS does not discover that duplicative or multiple petitions were filed until after approving them, this rule also provides that USCIS may revoke all such petitions if they were approved after this rule becomes effective. *Id.*

This rule does not, however, preclude related employers from filing petitions on behalf of the same alien. USCIS recognizes that an employer and one or more related entities (such as a parent, subsidiary or affiliate) may extend the same alien two or more job offers for distinct positions and therefore have a legitimate business need to file two or more separate H–1B petitions on behalf of the same alien.

For example, a Fortune 500 company may be the parent company of numerous U.S.-based subsidiaries whose business is to engage in either the food, beverage or snack industries. Each line of business may, in turn, be divided into several business units and operate distinct companies (restaurant, bottled beverage plant, cereal manufacturer, etc) with different EIN numbers, addresses, etc. Although all the subsidiaries are ultimately related to the parent company through corporate ownership, this rule does not prohibit different

subsidiaries from filing one H–1B petition each on behalf of the same alien so long as each employer/subsidiary has a legitimate business need to hire such alien for a position within that subsidiaries' corporate structure. Thus, in this example, if the bottled beverage plant owned by the Fortune 500 company and the cereal manufacturing company owned by the same Fortune 500 company are each in need of the services of a Chief Financial Officer, both may file one petition each on behalf of the same alien. A subsidiary should not file an H–1B petition for an alien just to increase the alien's chances of being selected for an H–1B number where that subsidiary has no legitimate need to employ the alien and is, instead, only filing a petition to facilitate the alien's hiring by a different, although related, subsidiary.

USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke for any or each petition if it determines that the employer and related entity(ies) filed a duplicate petition as defined in this regulation. *See* 8 CFR parts 103 and 214.2(h)(11). The burden rests with the employer to establish that it has a legitimate business need to file more than one H–1B petition on behalf of the same alien. If the employer does not meet its burden, USCIS may deny or revoke each petition, as appropriate. Without such authority, a loophole would exist for related employers to file multiple petitions on behalf of the same alien under the guise that the petitions are based on different job offers, when the true purpose of filing the petitions is to secure employment for the alien with a single employer seeking his or her services. As an example, one target of this provision is the unscrupulous employer that establishes or uses shell subsidiaries or affiliates to file additional petitions on behalf of the same alien in order to increase the alien's chances of being allotted an H–1B number. USCIS believes that these consequences are warranted in order to deter unfair filing practices and further ensure the integrity of the H–1B cap counting process.

To date, USCIS has identified the problems resulting from multiple filings only in the context of H–1B petitions. For this reason, this rule limits the bar on multiple petition filings to H–1B petitions.

C. Denial of Petitions After Cap Numbers Are Used

Over the past few years, USCIS has received a significant number of petitions that claim to be exempt from the 65,000 cap, but are determined after the final receipt date or after all cap numbers have been used to be subject to the cap. The current regulations do not specifically address treatment of such petitions. This rule amends the regulations to clarify that such petitions will be denied rather than rejected. See revised 8 CFR 214.2(h)(8)(ii)(B) and (D). USCIS has determined that denial of these petitions is appropriate because USCIS must adjudicate them in order to make a determination on whether the alien beneficiary is subject to the numerical cap. USCIS only rejects filings before an adjudication takes place. See 8 CFR 103.2(a)(7). Because USCIS must adjudicate these petitions, it will not return the petition and refund the filing fee.

D. Technical Changes

1. Removal of References To Cap Numbers

This rule revises 8 CFR 214.2(h)(8)(i)(A) to remove specific references to the H–1B numerical cap. The revised paragraph now generally refers to the numerical limitations set forth in section 214(g)(1) of the INA, 8 U.S.C. 1184(g)(1). USCIS has determined that specifying the cap numbers in the regulations is not necessary and may cause confusion in the future should Congress change the INA.

2. Inclusion of 20,000 Cap

This rule revises 8 CFR 214.2(h)(8)(ii)(B) to clarify that the random selection process applies to the administration of the 20,000 cap on master's degree exemptions. The current provision generally refers to ''numerical limitations,'' ''the numerical limit,'' or ''cap.'' To maintain consistent terminology, this rule also replaces references in 8 CFR 214.2(h)(8)(ii)(B) and (D) to the ''cap'' with the statutory term, ''numerical limitations.''

IV. Regulatory Requirements

A. Administrative Procedure Act

This final rule addresses requirements that are procedural in nature and does not alter the substantive rights of applicants or petitioners for immigration benefits. Accordingly, this final rule is exempt from the notice and comment requirements under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(A). This rule does not change the eligibility rules governing any immigration benefit. It will not confer rights or obligations upon any party. This rule clarifies existing USCIS regulations and modifies the filing requirements for petitioners submitting H–1B petitions.

In addition, USCIS believes that good cause exists to implement this change effective immediately upon publication in the **Federal Register** as an interim final rule without first providing notice and the opportunity for public comment. The APA provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B). The exception excuses notice and comment, in emergency situations, or where ''the delay created by the notice and comment requirements would result in serious damage to important interests.'' *Woods Psychiatric Institute* v. *United States,* 20 Cl. Ct. 324, 333 (Cl. Ct. 1990) *aff'd* 925 F.2d 1454 (Fed. Cir. 1991); *also National Fed'n of Fed. Employees* v. *National Treasury Employees Union,* 671 F.2d 607, 611(D.C. Cir. 1982).

This rule is necessary to preclude the potential for abuse by those petitioners who might seek an unfair advantage in obtaining one of the limited number of H–1B petition approvals. As discussed above, last year was the first year that the 65,000 H–1B cap was reached on the same day that petitioners could begin to file petitions. USCIS believes that the practice of filing multiple petitions in an effort to exploit the random selection process has become more wide-spread over the past year as fears are raised that the 65,000 H–1B cap and 20,000 cap on master's degree exemptions for FY 2009 will be reached on April 1, 2008. Delay in issuing this regulation to consider public comment, would not allow USCIS to ameliorate the problem by removing this loophole in time for the April 1, 2008 filing start date. This would adversely impact a large number of companies, in particular smaller businesses that cannot afford to pay multiple petition fees to secure an H–1B visa for their employees.

Accordingly, USCIS is implementing these amendments as an interim rule effective immediately upon publication in the **Federal Register**. USCIS nevertheless invites comments on this rule and will consider all timely comments in the preparation of a final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small

organizations, and small governmental jurisdictions) when the agency is required ''to publish a general notice of proposed rulemaking for any proposed rule.'' Because this rule is being issued as an interim rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866 (Regulatory Planning and Review)

This rule has been designated as a ''significant regulatory action'' by the Office of Management and Budget (OMB) under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, an analysis of the economic impacts of this rule has been prepared and submitted to the Office of Management and Budget (OMB) for review. This rule imposes no additional costs on the public, or any regulated entity that is subject to its provisions. This rule does not preclude any petitioner from filing a legitimate petition, only the filing of the same petition more than once. The race to meet the filing date of each fiscal year has become a ritual for H–1B petitioners and USCIS expects the 65,000 and 20,000 maximums to be met easily every year. Thus, the volume of applications and fee income are not expected to change from current levels. This rule may result in a fee being collected instead of returned if the prohibition against duplicate petitions is violated, because while in 2007 only the duplicate petition was denied if the first one adjudicated was approved, this rule provides that both petitions will be denied. Nonetheless, all employers and employees that are the subject of a timely filing will have the same chance as all others for their petition to be selected for processing. This rule does not change that. Hence, this rule will benefit both petitioners and alien beneficiaries by making sure that all petitioners have an equal chance to have their petition considered. A copy of the complete analysis is available in the rulemaking docket for this rule at *www.regulations.gov*, under Docket No. USCIS–2007–0060, or by calling the information contact listed above.

F. Executive Order 13132 (Federalism)

This rule would have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule does not impose any new reporting or record-keeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign Officials, Health Professions, Reporting and recordkeeping requirements, Students.

■ Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

■ 2. Section 214.2 is amended by:
■ a. Adding new paragraph (h)(2)(i)(G);
■ b. Revising paragraph (h)(8)(i)(A);
■ c. Revising paragraph (h)(8)(ii)(B); and by
■ d. Revising paragraph (h)(8)(ii)(D).
The addition and revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(G) *Multiple H–1B petitions.* An employer may not file, in the same fiscal year, more than one H–1B petition on behalf of the same alien if the alien is subject to the numerical limitations of section 214(g)(1)(A) of the Act or is exempt from those limitations under section 214(g)(5)(C) of the Act. If an H–1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H–1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. Otherwise, filing more than one H–1B petition by an employer on behalf of the same alien in the same fiscal year will result in the denial or revocation of all such petitions. If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H–1B petition on behalf of the same alien subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H–1B petition on behalf of the same alien, all petitions filed on that alien's behalf by the related entities will be denied or revoked.

* * * * *

(8) * * *

(i) * * *

(A) Aliens classified as H–1B nonimmigrants, excluding those involved in Department of Defense research and development projects or coproduction projects, may not exceed the limits identified in section 214(g)(1)(A) of the Act.

* * * * *

(ii) * * *

(B) When calculating the numerical limitations or the number of exemptions under section 214(g)(5)(C) of the Act for a given fiscal year, USCIS will make numbers available to petitions in the

order in which the petitions are filed. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions (including the number of beneficiaries requested when necessary) received and will notify the public of the date that USCIS has received the necessary number of petitions (the ''final receipt date''). The day the news is published will not control the final receipt date. When necessary to ensure the fair and orderly allocation of numbers in a particular classification subject to a numerical limitation or the exemption under section 214(g)(5)(C) of the Act, USCIS may randomly select from among the petitions received on the final receipt date the remaining number of petitions deemed necessary to generate the numerical limit of approvals. This random selection will be made via computer-generated selection as validated by the Office of Immigration Statistics. Petitions subject to a numerical limitation not randomly selected or that were received after the final receipt date will be rejected. Petitions filed on behalf of aliens otherwise eligible for the exemption under section 214(g)(5)(C) of the Act not randomly selected or that were received after the final receipt date will be rejected if the numerical limitation under 214(g)(1) of the Act has been reached for that fiscal year. Petitions indicating that they are exempt from the numerical limitation but that are determined by USCIS after the final receipt date to be subject to the numerical limit will be denied and filing fees will not be returned or refunded. If the final receipt date is any of the first five business days on which petitions subject to the applicable numerical limit may be received (i.e., if the numerical limit is reached on any one of the first five business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those five business days, conducting the random selection among the petitions subject to the exemption under section 214(g)(5)(C) of the Act first.

* * * * *

(D) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year. Petitions received after the total numbers available in a fiscal year are used stating that the alien beneficiaries are exempt from the numerical limitation will be denied and filing fees will not be returned or refunded if USCIS later determines that such beneficiaries are subject to the numerical limitation.

* * * * *

Dated: March 18, 2008.

Michael Chertoff,

Secretary.

[FR Doc. E8–5906 Filed 3–21–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28229; Directorate Identifier 2006–SW–23–AD; Amendment 39–15434; AD 2008–06–22]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC130 B4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) Model EC 130 B4 helicopters, with certain twist grip assemblies installed, that requires inspecting the pilot and co-pilot collective levers for proper bonding between the twist grip drive tubes and the control pinions and if debonding is present, replacing the collective levers before further flight. This amendment is prompted by one incident in which the engine remained at idle speed although the twist grip had been turned to the flight position. The actions specified by this AD are intended to detect debonding between the twist grip drive tubes and the control pinions on the pilot and co-pilot collective levers to prevent loss of cockpit throttle control of the engine, and subsequent loss of control of the helicopter.

DATES: Effective April 28, 2008.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 2008.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

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

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on May 21, 2007 (72 FR 28456). That action proposed to require, within 110 hours time-in-service (TIS) or 4 months, whichever occurs first, or before installing a collective lever with an affected grip assembly on a helicopter, inspecting the bonding between the twist grip drive tube and the control pinion on both the pilot and co-pilot collective lever. If debonding is present, replacing the collective lever before further flight was proposed.

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on Eurocopter Model EC 130 B4 helicopters, with a twist grip assembly, part number (P/N) 350A27520900, 350A27520901, 350A27520902, or 350A27520903, with a serial number below 64, installed on the pilot's side, and a twist grip assembly, P/N 350A27521201, with a serial number below 67, installed on the co-pilot's side. EASA advises that analysis of an incident that occurred during autorotation training revealed a failure of the twist grip drive tube and control pinion bonded attachment. The engine remained at idle speed although the twist grip had been turned back to the flight position. The autorotation procedure continued to the ground without damage to the helicopter. The failure has been attributed to non-compliant surface preparation during manufacture.

Eurocopter, an EADS Company, has issued Alert Service Bulletin EC130 No. 76A001, dated February 10, 2006, which specifies a check by use of a twist grip adjusting gauge of the bonding between the twist grip drive tube and the control pinion on both the pilot and co-pilot collective lever. EASA classified this service bulletin as mandatory and issued AD No. 2006–0079, dated April

3, 2006, to ensure the continued airworthiness of these helicopters in France.

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

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 73 helicopters of U.S. registry. The debonding inspection will take approximately 0.25 work hours per helicopter and replacing a collective lever will take approximately 2 work hours at an average labor rate of $80 per work hour. If replacement is necessary, required parts will cost approximately:

- $8,651 for a co-pilot twist grip assembly, part number (P/N) 350A27521201;
- $12,542 for a pilot twist grip assembly, P/N 350A27520903;
- $5 for a clamp, P/N ASNA0021;
- $2 for a bolt, P/N 22125BC050014L; and
- $1 for a nut, P/N 22431BC050L.

Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be $10,271, assuming one co-pilot twist grip assembly is replaced in one helicopter, that the twist grip adjusting gage (tool) and spring scale needed are on-site and available, and that the co-pilot twist grip assembly is not covered by warranty, and no pilot twist grip assembly will need to be replaced. The manufacturer has indicated that parts are covered by warranty up to 1,000 hours or 2 years after the purchase of a new helicopter, however, it indicated that labor is not covered by a warranty.

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2008–06–22 Eurocopter France: Amendment 39–15434. Docket No. FAA–2007–28229; Directorate Identifier 2006–SW–23–AD.

Applicability: Model EC130 B4 helicopters, with a twist grip assembly, part number (P/N) 350A27520900, 350A27520901, 350A27520902, or 350A27520903, with a serial number below 64, installed on the pilot's side, and a twist grip assembly, P/N 350A27521201, with a serial number below 67, installed on the co-pilot's side, certificated in any category.

Compliance: Required within 110 hours time-in-service (TIS) or 4 months, whichever occurs first, and before installing a replacement collective lever with an affected twist grip assembly on a helicopter, unless accomplished previously.

To detect a reduced bonding strength of the control pinion on the pilot and co-pilot collective lever drive tubes, which could lead to failure of a twist grip drive tube and control pinion bonded attachment, resulting in loss of engine throttle control and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the pilot and co-pilot collective levers for proper bonding between the twist grip drive tubes and the control pinions in accordance with paragraphs 2.B.1. and 2.B.2. of the Accomplishment Instructions, in Eurocopter, an EADS Company, Alert Service Bulletin EC130 No. 76A001, dated February 10, 2006, except you are neither required to contact the manufacturer nor return a non-compliant collective lever.

(b) If a twist grip turns when applying the 35N load to the twist grip, before further flight, replace the collective lever with an airworthy collective lever that has been inspected in accordance with paragraph (a) of this AD, or a collective lever with a twist grip assembly that is not listed in the Applicability 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, Safety Management Group, ATTN: Ed Cuevas, Aviation Safety Engineer, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) The inspection and replacement, if necessary, shall be done in accordance with the specified portions of Eurocopter, an EADS Company, Alert Service Bulletin EC130 No. 76A001, dated February 10, 2006. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 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.*

(e) This amendment becomes effective on April 28, 2008.

Note: The subject of this AD is addressed in EASA (France) AD 2006–0079, dated April 3, 2006.

Issued in Fort Worth, Texas, on March 10, 2008.

Mark R. Schilling,

Acting Manager, Rotocraft Directorate, Aircraft Certification Service.

[FR Doc. E8–5494 Filed 3–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0303; Directorate Identifier 2008–NM–047–AD; Amendment 39–15441; AD 2008–06–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 737–300, –400, and –500 series airplanes. This AD requires repetitive inspections of the downstop assemblies on the main tracks of the No. 2, 3, 4, and 5 slats and the inboard track of the No. 1 and 6 slats to verify if any parts are missing, damaged, or in the wrong order. This AD also requires other specified actions, and related investigative and corrective actions if necessary. This AD results from reports of fuel leaking from a puncture in the slat track housing (referred to as the ''slat can''). We are issuing this AD to detect and correct loose or missing parts from the main slat track downstop assemblies, which could puncture the slat can and result in a fuel leak and consequent fire.

DATES: This AD is effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2008.

We must receive comments on this AD by May 23, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION;

Discussion

Boeing has notified us that it has received numerous reports of fuel leaking from the slat track housing (referred to as the ''slat can'') on Boeing Model 737–300, –400, and –500 series airplanes. In all cases, there were no reports of a fire as a result of the fuel leaks on these airplane models. In some of the reports, the fuel leak was caused by loose or broken parts falling off the downstop assembly into the slat can, which were then subsequently driven into the slat can by the retracting slat track. This condition, if not corrected, could puncture the slat can and result in a fuel leak and consequent fire.

Other Related Rulemaking

On August 28, 2007, we issued emergency AD 2007–18–52, amendment 39–15197, to address the same unsafe condition on all Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That AD was published in the **Federal Register** on September 21, 2007 (72 FR 53928). That AD requires repetitive detailed inspections of the slat track downstop assemblies to verify that proper hardware is installed, one-time torquing of the nut and bolt, and corrective actions if necessary. That AD resulted from reports of parts coming off the main slat track downstop assemblies and a resultant fire. That AD was issued to detect and correct loose or missing parts from the main slat track downstop assemblies, which could result in a fuel leak and consequent fire.

Because the main slat track downstop assemblies of Model 737 airplanes are similar in design to those of other Boeing airplane models, we have been working with the manufacturer to evaluate its remaining airplane models to determine if a similar unsafe condition exists on them. As a result, we may consider additional rulemaking as those evaluations are completed.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–57A1301, dated February 5, 2008. The service bulletin describes procedures for doing repetitive detailed inspections of the downstop assemblies on the main tracks of the No. 2, 3, 4, and 5 slats and the inboard track of the No. 1 and 6 slats to verify if any parts are missing, damaged, or in the wrong order. The service bulletin specifies that the downstop assembly may be inspected using a borescope. The service bulletin also describes procedures for doing other specified actions, and doing related investigative and corrective actions if necessary. The other specified actions include a one-time torquing of the nut of the downstop assembly and a detailed inspection of the bolt to verify that the entire chamfered portion of the bolt protrudes beyond the outer surface of the nut. The related investigative action is a detailed inspection of the inside of the slat can for loose parts and damage to the wall of the slat can, which is done if any downstop assembly part is missing or damaged. The corrective actions include the following:

- Removing any loose downstop assembly part found in the slat can.
- Replacing any damaged slat can, or contacting Boeing for repair information.
- Replacing any missing or damaged downstop assembly part with a new or serviceable part.
- Removing and reinstalling the downstop assembly if any downstop assembly parts are in the wrong order, or if the entire chamfered portion of the bolt does not protrude beyond the outer surface of the nut after it is torqued.

The service bulletin specifies doing the initial inspection within 90 days and repeating the inspection thereafter at intervals not to exceed 4,500 flight

cycles. The service bulletin specifies doing the other specified actions within 90 days. The service bulletin specifies doing the related investigative and corrective actions before further flight after certain findings.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the 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 AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and Service Bulletin.''

Differences Between the AD and Service Bulletin

For airplanes on which any downstop assembly part is missing or damaged, the service bulletin specifies doing a related investigative action—i.e., a detailed inspection of the inside of the slat can for loose parts and damage to the wall of the slat can. However, this AD allows operators to accomplish a borescope inspection of the inside of the slat can instead of a detailed inspection. We have coordinated this difference with Boeing.

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

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

Clarification of Slat Can Replacement

Paragraph 3.B.5.a.(2) of the Accomplishment Instructions of the service bulletin specifies to either replace any damaged slat can or contact Boeing for repair information if any damaged slat can is found. Paragraph (f)(3) of this AD specifies, in part, that if an operator chooses to replace the damaged slat can instead of contacting Boeing for repair information, the damaged slat can must be replaced with a new slat can having the same part number.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

Loose or missing parts from the main slat track downstop assemblies could puncture the slat can and result in a fuel leak and consequent fire. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the structural integrity of the main slat track downstop assemblies and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0303; Directorate Identifier 2008–NM–047–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

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:

2008–06–29 Boeing: Amendment 39–15441. Docket No. FAA–2008–0303; Directorate Identifier 2008–NM–047–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of fuel leaking from a puncture in the slat track housing (referred to as ''slat can''). We are issuing this AD to detect and correct loose or missing parts from the main slat track downstop assemblies, which could puncture the slat can and result in a fuel leak and consequent fire.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Repetitive Inspections and Corrective Actions

(f) At the applicable time specified in Table 1 of paragraph 1.E. of Boeing Alert Service Bulletin 737–57A1301, dated February 5, 2008, except as provided by paragraph (f)(1) of this AD: Do a detailed inspection or borescope inspection of the downstop assemblies on the main tracks of the No. 2, 3, 4, and 5 slats and the inboard track of the No. 1 and 6 slats to verify if any parts are missing, damaged, or in the wrong order; and do all the other specified, related investigative, and corrective actions as applicable; by accomplishing all of the applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraphs (f)(2) and (f)(3) of this AD. Repeat the inspection thereafter at the applicable interval specified in Table 1 of paragraph 1.E. of the service bulletin. Do all applicable related investigative and corrective actions before further flight.

(1) Where the service bulletin specifies counting the compliance time from ''* * * the date on the service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

(2) For airplanes on which any downstop assembly part is missing or damaged, a borescope inspection of the inside of the slat can for loose parts and damage to the wall of the slat can may be accomplished in lieu of the detailed inspection of the inside of the slat can that is specified in the service bulletin.

(3) If any damaged slat can is found during any inspection required by this AD: Before further flight, either replace the slat can with a new slat can having the same part number or repair the slat can using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, Attn: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; 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.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 737–57A1301, dated February 5, 2008, 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 11, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5702 Filed 3–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28370; Directorate Identifier 2003–NM–239–AD; Amendment 39–15439; AD 2008–06–27]

RIN 2120–AA64

Airworthiness Directives; Goodrich Evacuation Systems Approved Under Technical Standard Orders (TSOs) TSO–C69, TSO–C69a, TSO–C69b, and TSO–C69c, Installed on Various Boeing, McDonnell Douglas, and Airbus Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Goodrich evacuation systems approved under Technical Standard Orders (TSOs) TSO–C69, TSO–C69a, TSO–C69b, and TSO–C69c, installed on certain Boeing, McDonnell Douglas, and Airbus transport category airplanes. For certain systems, this AD requires replacing the evacuation system's shear-pin restraints with new ones. For certain other systems, this AD requires an inspection for manufacturing lot numbers; and a general visual inspection of the shear-pin restraint for discrepancies, and corrective actions if necessary. This AD results from several reports of corroded shear-pin restraints that prevented Goodrich evacuation systems from deploying properly. We are issuing this AD to prevent failure of an evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation.

DATES: This AD is effective April 28, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 28, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 11, 2008 (73 FR 6586, February 5, 2008).

ADDRESSES: For service information identified in this AD, contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040–1169.

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:

Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5352; fax (562) 627–5210.

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 Goodrich evacuation systems approved under Technical Standard Orders (TSOs) TSO–C69, TSO–C69a, TSO–C69b, and TSO–C69c, installed on certain Boeing, McDonnell Douglas, and Airbus transport category airplanes. That NPRM was published in the **Federal Register** on June 8, 2007 (72 FR 31761). For certain systems, that NPRM proposed to require replacing the evacuation systems shear-pin restraints with new ones. For certain other systems, that NPRM proposed to require an inspection for manufacturing lot numbers; and a general visual inspection of the shear-pin restraint for discrepancies, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the 5 commenters.

Supportive Comments

Air Line Pilots Association, International (ALPA), and Air Transport Association (ATA), on behalf of its member Continental Airlines, support the intent of the rule. Continental states that it has captured Goodrich Service Bulletin 25–343 on a total of 969 slide assemblies since the service bulletin's October 2003 release.

Request To Combine Two AD Actions Into One AD Action

ATA, on behalf of its member United Airlines, notes that this NPRM is similar to NPRM 2005–NM–139–AD (AD 2008–03–05, amendment 39–15354 (73 FR 6586, February 5, 2008)). United requests that this AD action be incorporated into NPRM 2005–NM–139–AD.

We do not agree with the commenter's request. While the evacuation slides affected by this AD and AD 2008–03–05 are identified in the same service bulletin and have the same unsafe condition, the individual evacuation slides were approved under different certification processes. This AD affects certain evacuation slides that were approved under a TSO that specified certain requirements for evacuation slides. AD 2008–03–05 affects airplanes that had certain other evacuation slides approved as part of a type certificate. The TSO approval process specifies the airplane model(s) on which a specific evacuation slide can be installed. These two approval processes affect how we issue ADs. We have not changed this AD or AD 2008–03–05 in this regard.

Request To Extend Compliance Times

ATA, on behalf of its member United Airlines, requests that the compliance times be extended from 18 months after the effective date of the AD for Model 767 airplane off-wing evacuation systems and 36 months after the effective date of the AD for the other evacuation systems to 36 and 48 months respectively. The commenters state that extended compliance times would match routine overhaul cycles, account for parts lead-time, take into consideration the large quantity of affected evacuation systems, and relieve a burden on resources and capacity.

We disagree with the request to extend the compliance times. A significant number of affected evacuation systems have already been modified. We have received confirmation from Goodrich that parts are available to support the 18- and 36-month compliance times. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these factors, we find that a compliance time of 18 months for Goodrich evacuation systems installed on Boeing Model 767 off-wing ramp/slide units and 36 months for all other evacuation systems represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have not changed the AD in this regard.

Request To Accept Certain Service Bulletins for Accomplishment

ATA, on behalf of its member United Airlines, requests that the FAA accept accomplishment of either Goodrich Service Bulletin 25–343, Revision 1, dated January 31, 2005; or Revision 2, dated October 11, 2006; after the effective date of the AD. The commenters explain that there are no technical or procedural changes between these revisions and the most recent revision, Revision 3, dated January 12, 2007.

We disagree with the request to accept accomplishment of earlier service bulletin revisions after the effective date of the AD. It is our policy to require compliance with the most recent revision of service information. However, in paragraph (k) of this AD, we provide credit for accomplishment of the earlier service bulletin revisions if done before the effective date of the AD. We have not changed the AD in this regard.

Request To Refer to Current Service Bulletins as Acceptable for Credit

Goodrich, the evacuation slide manufacturer, requests that we give credit for accomplishing paragraph (h) of this AD to airlines/overhaul shops that might have accomplished Revision 3 of Goodrich Service Bulletin 25–343, dated January 12, 2007; and Revision 2 of Goodrich Service Bulletin 25–344, dated October 11, 2006; before the effective date of this AD. Goodrich states that ''The wording of paragraph (k) does not clearly provide credit for actions done in compliance with 25–343, revision 3, and 25–344, revision 2, unless it occurs 'after the effective date of this AD'.''

We infer that Goodrich interprets the text of paragraph (k) of the AD to mean that operators that have accomplished Revision 3 of Goodrich Service Bulletin 25–343 or Revision 2 of Goodrich Service Bulletin 25–344 before the effective date would be required to accomplish those actions again after the effective date to comply with this AD. We find that clarification is necessary. Paragraph (e) of this AD states that the actions must be done as specified in the AD ''unless the actions have already been done,'' so it is not necessary to repeat this information in paragraph (k) of the AD. We refer to Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007; and Goodrich Service Bulletin 25–344, Revision 2, dated October 11, 2006; as the sources of service information for accomplishing the requirements of paragraph (h) of this AD. Accomplishing the requirements of

this AD in accordance with these service bulletins before the effective date of the AD is acceptable for compliance with this AD. We have not changed the AD in this regard.

Request To Allow Other Methods of Recording Compliance

ATA, on behalf of its member United Airlines, states that the Accomplishment Instructions of Goodrich Service Bulletin 25–343 instruct the operator to record service bulletin compliance on the system information card. United requests that the method of recording compliance on the card be made optional, as operators have alternative means to record compliance and the system information card might not be available.

We infer that the commenters want us to revise the AD to allow different methods of recording compliance with the service bulletin. We agree with the request to revise the AD. We have revised paragraph (h) of this AD to specify that recording compliance with the service bulletin in accordance with the service bulletin instructions is not required by this AD. Operators may record service bulletin compliance whichever way their applicable record-keeping system specifies. However, recording compliance with the AD is still required. Recording AD compliance is accomplished in a maintenance log, on job/task cards, or some other method approved by the operator's principal inspector or local flight standards district office. We have not changed the AD in this regard.

Request To Reverse Order of Sub-Paragraphs

Goodrich requests that we reverse the sequence of paragraphs (f)(1) and (f)(2) of the NPRM so that the references to Tables 1 and 2 of the AD are called out first before Table 3.

We agree with the commenter's request. Revising the sequence of the paragraphs to match the sequence of the tables will reduce confusion. We have changed paragraphs (f)(1) and (f)(2) of this AD as requested.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

This AD affects certain Goodrich evacuation systems installed on about 2,844 airplanes worldwide. This AD affects about 1,240 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per slide unit	Number of slide units per airplane	Fleet cost
Replacement	Between 2 and 9.	$80	Between $58 and $638, depending on number of restraints.	Between $218 and $1,358.	Between 2 and 12	Between $540,640 and $20,207,040.
Inspection	Between 2 and 9.	80	None	Between $160 and $720.	Between 2 and 12	Between $396,800 and $10,713,600.

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:

2008–06–27 Goodrich (Formerly BFGoodrich): Amendment 39–15439. Docket No. FAA–2007–28370; Directorate Identifier 2003–NM–239–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to:

(1) Goodrich evacuation systems approved under Technical Standard Orders (TSOs) TSO–C69, TSO–C69a, and TSO–C69b, installed on certain Boeing airplanes, certificated in any category, as listed in Table 1 of this AD;

(2) Goodrich evacuation systems approved under TSOs TSO–C69, TSO–C69a, and TSO–C69b, installed on certain McDonnell Douglas airplanes, certificated in any category, as listed in Table 2 of this AD; and

(3) Goodrich evacuation systems approved under TSOs TSO–C69a, TSO–C69b, and TSO–C69c, installed on certain Airbus airplanes, certificated in any category, as listed in Table 3 of this AD.

TABLE 1.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN BOEING MODEL AIRPLANES

Goodrich evacuation systems having part number (P/N)—	Having any serial number (S/N)—	Component/part is named—	Installed on Boeing Model—
(i) 101623–303	PB0400 through PB0453 inclusive.	Slide, forward/aft door	767–200 and –300 series airplanes.
(ii) 101630–305	PG0276 through PG0309 inclusive.	Ramp/Slide, off-wing, left-hand (LH) side.	767–200 and –300 series airplanes.
(iii) 101630–306	PC0264 through PC0368 inclusive.	Ramp/Slide, off-wing, right-hand (RH) side.	767–200 and –300 series airplanes.
(iv) 101655–305	PK0161 through PK0212 inclusive.	Ramp/Slide, off-wing, LH side	767–200 and –300 series airplanes.
(v) 101655–306	PF0164 through PF0220 inclusive	Ramp/Slide, off-wing, RH side	767–200 and –300 series airplanes.
(vi) 101656–305	PH0300 through PH0390 inclusive.	Ramp/Slide, off-wing, LH side	767–200 and –300 series airplanes.
(vii) 101656–306	PD0294 through PD0378 inclusive.	Ramp/Slide, off-wing, RH side	767–200 and –300 series airplanes.
(viii) 101658–101 and 101658–103	PAK137 through PAK150 inclusive.	Slide, forward door	737–200 series airplanes.
(ix) 101659–101 through 101659–205 inclusive.	PAL671 through PAL738 inclusive.	Slide, aft door	737–200, –300, –400, and –500 series airplanes.
(x) 101660–101 through 101660–107 inclusive.	PAB611 through PAB649 inclusive.	Slide, forward door	737–300, –400, and –500 series airplanes.
(xi) 5A3086–3 and 5A3086–301	B3F315 through B3F611 inclusive	Slide, forward door	737–600, –700, –700C, –800, and –900 series airplanes.
(xii) 5A3088–3 and 5A3088–301	B3A338 through B3A685 inclusive.	Slide, aft door	737–600, –700, –700C, –800, and –900 series airplanes.
(xiii) 5A3109–1	Odd S/Ns ST0015 through ST0131.	Ramp/Slide, off-wing, LH side	777–300 and –300ER series airplanes.
(xiv) 5A3109–2	Even S/Ns ST0014 through ST0128.	Ramp/Slide, off-wing, RH side	777–300 and –300ER series airplanes.
(xv) 5A3294–1 and 5A3294–2	SS0001 through SS0210 inclusive.	Slide/Raft, door 2	767–300 and –400ER series airplanes.
(xvi) 5A3295–1 and 5A3295–3	SF0001 through SF0501 inclusive	Slide/Raft, doors 1 and 4	767–200, –300, and –400ER series airplanes.
(xvii) 5A3307–1 through 5A3307–5 inclusive and 5A3307–301.	BNG0213 through BNG4911 inclusive.	Slide, forward/aft door	737–600, –700, –700C, –800, and –900 series airplanes.
(xviii) 7A1323–111 through 7A1323–114 inclusive.	GS1340 through GS1879 inclusive.	Slide, stretched upper deck	747–100B SUD, –300, –400, and –400D series airplanes.
(xix) 7A1394–4 and 7A1394–6	GV0214 through GV0249 inclusive.	Slide/Raft, forward/aft doors	767–200 and –300 series airplanes.
(xx) 7A1418–21 and 7A1418–23	Odd S/Ns GT1591 through GT1857.	Ramp/Slide, off-wing door 3, LH side.	747–100, –100B, –100B SUD, –200B, –200C, –300, –400, –400D, and 747SR series airplanes.
(xxi) 7A1418–22 and 7A1418–24	Even S/Ns GT1576 through GT1830.	Ramp/Slide, off-wing door 3, RH side.	747–100, –100B, –100B SUD, –200B, –200C, –300, –400, –400D, and 747SR series airplanes.
(xxii) 7A1447–39 through 7A1447–54 inclusive.	GW2682 through GW2923 inclusive.	Slide/Raft, doors1, 2, and 4	747–100, –100B, –100B SUD, –200B, –200C, –300, and 747SR series airplanes.
(xxiii) 7A1448–5 through 7A1448–12 inclusive.	GX1538 through GX1593 inclusive.	Slide/Raft, door 5	747–100, –100B, –100B SUD, –200B, –200C, –300, and 747SR series airplanes.
(xxiv) 7A1467–21 and 7A1467–23	Odd S/Ns GH1969 through GH2443.	Slide/Raft, doors 1 and 4, LH side	747–400 and –400D series airplanes.
(xxv) 7A1467–22 and 7A1467–24	Even S/Ns GH1954 through GH2420.	Slide/Raft, doors 1 and 4, RH side.	747–400 and –400D series airplanes.
(xxvi) 7A1469–13	Odd S/Ns GJ909 through GJ1163	Slide/Raft, door 5, LH side	747–400 and –400D series airplanes.
(xxvii) 7A1469–14	Even S/Ns GJ912 through GJ1150.	Slide/Raft, door 5, RH side	747–400 and –400D series airplanes.

TABLE 1.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN BOEING MODEL AIRPLANES—Continued

Goodrich evacuation systems having part number (P/N)—	Having any serial number (S/N)—	Component/part is named—	Installed on Boeing Model—
(xxviii) 7A1479–13	Odd S/Ns GI1019 through GI1265.	Slide/Raft, door 2, LH side	747–300, –400, and –400D series airplanes.
(xxix) 7A1479–14	Even S/Ns GI1036 through GI1298.	Slide/Raft, door 2, RH side	747–300, –400, and –400D series airplanes.
(xxx) 7A1489–3	Odd S/Ns GK355 through GK403	Slide/Raft, mid door, LH side	767–300 series airplanes.
(xxxi) 7A1489–4	Even S/Ns GK356 through GK406.	Slide/Raft, mid door, RH side	767–300 series airplanes.
(xxxii) 101623–107 through 101623–303 inclusive.	PB0001 through PB0399 inclusive, and all S/Ns with a B23 prefix.	Slide, forward/aft door	767–200 and –300 series airplanes.
(xxxiii) Odd dash numbers 101630–105 through 101630–305.	PG0001 through PG0275 inclusive, and all S/Ns with a B101 prefix.	Ramp/Slide, off-wing, LH side	767–200 and –300 series airplanes.
(xxxiv) Even dash numbers 101630–106 through 101630–306.	PC0001 through PC0263 inclusive, and all S/Ns with a B102 prefix.	Ramp/Slide, off-wing, RH side	767–200 and –300 series airplanes.
(xxxv) Odd dash numbers 101655–101 through 101655–305.	PK0001 through PK0160 inclusive, and all S/Ns with an L55 prefix.	Ramp/Slide, off-wing, LH side	767–200 and –300 series airplanes.
(xxxvi) Even dash numbers 101655–102 through 101655–306.	PF0001 through PF0163 inclusive, and all S/Ns with an R55 prefix.	Ramp/Slide, off-wing, RH side	767–200 and –300 series airplanes.
(xxxvii) Odd dash numbers 101656–103 through 101656–305.	PH0001 through PH0299 inclusive, and all S/Ns with an L56 prefix.	Ramp/Slide, off-wing, LH side	767–200 and –300 series airplanes.
(xxxviii) Even dash numbers 101656–104 through 101656–306.	PD0001 through PD0293 inclusive, and all S/Ns with an R56 prefix.	Ramp/Slide, off-wing, RH side	767–200 and –300 series airplanes.
(xxxix) 101658–101 and 101658–103.	PAK001 through PAK136 inclusive.	Slide, forward door	737–200 series airplanes.
(xl) 101659–101 through 101659–205 inclusive.	PAL001 through PAL670 inclusive.	Slide, aft door	737–200, –300, –400, and –500 series airplanes.
(xli) 101660–101 through 101660–107 inclusive.	PAB001 through PAB610 inclusive.	Slide, forward door	737–300, –400, and –500 series airplanes.
(xlii) 5A3086–3 and 5A3086–301	B3F001 through B3F314 inclusive	Slide, forward door	737–600, –700, –700C, –800, and –900 series airplanes.
(xliii) 5A3088–3 and 5A3088–301	B3A001 through B3A337 inclusive.	Slide, aft door	737–600, –700, –700C, –800, and –900 series airplanes.
(xliv) 5A3109–1	Odd S/Ns, ST0001 through ST0013.	Ramp/Slide, off-wing, LH side	777–300 and –300ER series airplanes.
(xlv) 5A3109–2	Even S/Ns, ST0002 through ST0012.	Ramp/Slide, off-wing, RH side	777–300 and –300ER series airplanes.
(xlvi) 5A3307–1 through 5A3307–5 inclusive, and 5A3307–301.	BNG0001 through BNG0212 inclusive.	Slide, forward/aft door	737–600, –700, –700C, –800, and –900 series airplanes.
(xlvii) 7A1323–1 through 7A1323–114 inclusive.	GS0001 through GS1339 inclusive, and all S/Ns with a single G prefix.	Slide, stretched upper deck	747–100B SUD, –300, –400, and –400D series airplanes.
(xlviii) 7A1394–3 through 7A1394–6 inclusive.	GV001 through GV213 inclusive, and all S/Ns with a single G prefix.	Slide/Raft, forward/aft doors	767–200 and –300 series airplanes.
(xlix) Odd dash numbers 7A1418–1 through 7A1418–23.	Odd S/Ns GT0001 through GT1589, and all odd S/Ns with a single letter G prefix.	Ramp/Slide, off-wing door 3, LH side.	747–100, –100B, –100B SUD, –200B, –200C, –300, –400, –400D, and 747SR series airplanes.
(l) Even dash numbers 7A1418–2 through 7A1418–24.	Even S/Ns GT0002 through GT1574, and all even S/Ns with a single letter G prefix.	Ramp/Slide, off-wing door 3, RH side.	747–100, –100B, –100B SUD, –200B, –200C, –300, –400, –400D, and 747SR series airplanes.
(li) 7A1437–1 through 7A1437–8 inclusive.	GW0001 through GW2923 inclusive, and all S/Ns with a single letter G prefix.	Slide/Raft, doors 1, 2, and 4	747–100B, –200C, –300, and 747SR series airplanes.
(lii) 7A1439–1 through 7A1439–8 inclusive.	GX0001 through GX1593 inclusive, and all S/Ns with a single letter G prefix.	Slide/Raft, door 5	747–100B, –200C, –300, and 747SR series airplanes.
(liii) 7A1447–1 through 7A1447–54 inclusive.	GW0001 through GW2681 inclusive, and all S/Ns with a single letter G prefix.	Slide/Raft, doors 1, 2, and 4	747–100, –100B, –100B SUD, –200B, –200C, –300, and 747SR series airplanes.
(liv) 7A1448–1 through 7A1448–12 inclusive.	GX0001 through GX1537, and all S/Ns with a single letter G prefix.	Slide/Raft, door 5	747–100, –100B, –100B SUD, –200B, –200C, –300, and 747SR series airplanes.

TABLE 1.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN BOEING MODEL AIRPLANES—Continued

Goodrich evacuation systems having part number (P/N)—	Having any serial number (S/N)—	Component/part is named—	Installed on Boeing Model—
(lv) Odd dash numbers 7A1467–1 through 7A1467–23.	Odd S/Ns GH0001 through GH1967, and all odd S/Ns with a single letter G prefix.	Slide/Raft, doors 1 and 4, LH side	747–400 and –400D series airplanes.
(lvi) Even dash numbers 7A1467–2 through 7A1467–24.	Even S/Ns GH0002 through GH1952, and all even S/Ns with a single letter G prefix.	Slide/Raft, doors 1 and 4, RH side.	747–400 and –400D series airplanes.
(lvii) Odd dash numbers 7A1469–1 through 7A1469–13.	Odd S/Ns GJ001 through GJ907, and all odd S/Ns with a single letter G prefix.	Slide/Raft, door 5, LH side	747–400 and –400D series airplanes.
(lviii) Even dash numbers 7A1469–2 through 7A1469–14.	Even S/Ns GJ002 through GJ910, and all even S/Ns with a single letter G prefix.	Slide/Raft, door 5, RH side	747–400 and –400D series airplanes.
(lix) Odd dash numbers 7A1479–1 through 7A1479–13.	Odd S/Ns GI0001 through GI1017, and all odd S/Ns with a single letter G prefix.	Slide/Raft, door 2, LH side	747–300, –400, and –400D series airplanes.
(lx) Even dash numbers 7A1479–2 through 7A1479–14.	Even S/Ns GI0002 through GI1034, and all even S/Ns with a single letter G prefix.	Slide/Raft, door 2, RH side	747–300, –400, and –400D series airplanes.
(lxi) 7A1489–1 and 7A1489–3	Odd S/Ns GK001 through GK353, and all odd S/Ns with a single letter G prefix.	Slide/Raft, mid door, LH side	767–300 series airplanes.
(lxii) 7A1489–2 and 7A1489–4	Even S/Ns GK002 through GK354, and all even S/Ns with a single letter G prefix.	Slide/Raft, mid door, RH side	767–300 series airplanes.

TABLE 2.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN MCDONNELL DOUGLAS MODEL AIRPLANES

Goodrich evacuation systems having P/N—	Having any S/N—	Component/part is named—	Installed on McDonnell Douglas Model—
(i) 100504–101 through 100504–205 inclusive.	D9F161 through D9F256 inclusive, and PU0325 through PU0331 inclusive.	Slide, forward door	DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.
(ii) 100505–101 through 100505–201 inclusive.	D9A078 through D9A122 inclusive, and PS0151 through PS0157 inclusive.	Slide, aft door	DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.
(iii) 100506–103 through 100506–203 inclusive.	D9T085 through D9T127 inclusive, and PT0175 through PT0178 inclusive.	Slide, tailcone	DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.
(iv) 100504–101 through 100504–205 inclusive.	D9F001 through D9F160 inclusive, and PU0001 through PU0324 inclusive.	Slide, forward door	DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.
(v) 100505–101 through 100505–201 inclusive.	D9A001 through D9A077 inclusive, and PS0001 through PS0150 inclusive.	Slide, aft door	DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.
(vi) 100506–103 through 100506–203 inclusive.	D9T001 through D9T084 inclusive, and PT0001 through PT0174 inclusive.	Slide, tailcone	DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.
(vii) 7A1274–3 through 7A1274–12 inclusive.	All	Slide, forward/ service door	DC–9–81 (MD–81) and DC–9–82 (MD–82) airplanes.
(viii) 7A1275–3 through 7A1275–20 inclusive.	All	Slide, aft door	DC–9–81 (MD–81) and DC–9–82 (MD–82) airplanes.

TABLE 2.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN MCDONNELL DOUGLAS MODEL AIRPLANES—Continued

Goodrich evacuation systems having P/N—	Having any S/N—	Component/part is named—	Installed on McDonnell Douglas Model—
(ix) 7A1276–3 through 7A1276–12 inclusive.	All	Slide, tailcone	DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes.

TABLE 3.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN AIRBUS MODEL AIRPLANES

Goodrich evacuation system having P/N—	Having any S/N—	Component/part is named—	Installed on Airbus Model—
(i) 4A3928–1	AY0001 through AY0007 inclusive.	Slide, door 3 type 1, LH side	A340–541 airplanes.
(ii) 4A3928–2	AZ0001 through AZ0007 inclusive	Slide, door 3 type 1, RH side	A340–541 airplanes.
(iii) 4A3931–1 and 4A3931–3	AQ0001 through AQ0028 inclusive.	Ramp/Slide, off-wing, LH side	A340–642 airplanes.
(iv) 4A3931–2 and 4A3931–4	AT0001 through AT0028 inclusive	Ramp/Slide, off-wing, RH side	A340–642 airplanes.
(v) 4A3934–1 and 4A3934–3	AK0001 through AK0028 inclusive.	Slide/Raft, door 3, LH side	A340–642 airplanes.
(vi) 4A3934–2 and 4A3934–4	AM0001 through AM0028 inclusive.	Slide/Raft, door 3, RH side	A340–642 airplanes.
(vii) 7A1296–004 and 7A1296–005	WB0030 through WB0033 inclusive.	Slide, mid door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R and F4–622R airplanes.
(viii) 7A1297–103 and 7A1297–203	WF0257 through WF0273 inclusive.	Ramp/Slide, off-wing door	A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.
(ix) 7A1298–004 and 7A1298–005	WA0327 through WA0374 inclusive.	Slide, forward/aft door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.
(x) 7A1299–006	WE0149 through WE0172 inclusive.	Slide, emergency door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R and F4–622R airplanes.

TABLE 3.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN AIRBUS MODEL AIRPLANES—Continued

Goodrich evacuation system having P/N—	Having any S/N—	Component/part is named—	Installed on Airbus Model—
(xi) 7A1300–007	WC0423 through WC0507 inclusive.	Slide/Raft, forward/aft door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.
(xii) 7A1359–005	WD0134 through WD0159 inclusive.	Slide/Raft, mid door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R and F4–622R airplanes.
(xiii) 7A1508–109 through 7A1508–117 inclusive.	AA1041 through AA2419 inclusive.	Slide/Raft, doors 1 and 4	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes.
(xiv) 7A1509–111, 7A1509–115 and 7A1509–117.	AD0487 through AD1007 inclusive.	Slide, door 3 type 1	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes.
(xv) 7A1510–109 through 7A1510–117 inclusive.	AB0077 through AB0150 inclusive.	Slide/Raft, door 3 type A, LH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes.
(xvi) 7A1510–110 through 7A1510–118 inclusive.	AC0077 through AC0148 inclusive.	Slide/Raft, door 3 type A, RH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes.
(xvii) 7A1539–109 through 7A1539–117 inclusive.	AU0302 through AU0677 inclusive.	Slide/Raft, door 2, LH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes.

TABLE 3.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN AIRBUS MODEL AIRPLANES—Continued

Goodrich evacuation system having P/N—	Having any S/N—	Component/part is named—	Installed on Airbus Model—
(xviii) 7A1539–110 through 7A1539–118 inclusive.	AX0302 through AX0673 inclusive.	Slide/Raft, door 2, RH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes.
(xix) 7A1296–001 through 7A1296–004 inclusive.	WB0001 through WB0029 inclusive, all S/Ns with a single letter R prefix, and all S/Ns with a single letter G prefix.	Slide, mid door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R and F4–622R airplanes.
(xx) 7A1297–101 through 7A1297–203 inclusive.	WF0001 through WF0256 inclusive, all S/Ns with a single letter R prefix, and all S/Ns with a single letter G prefix.	Ramp/Slide, off-wing door	A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.
(xxi) 7A1298–001 through 7A1298–004 inclusive.	WA0001 through WA0326 inclusive, all S/Ns with a single letter R prefix, and all S/Ns with a single letter G prefix.	Slide, forward/aft door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.
(xxii) 7A1299–001 through 7A1299–006 inclusive.	WE0001 through WE0148 inclusive, all S/Ns with a single letter R prefix, and all S/Ns with a single letter G prefix.	Slide, emergency door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R and F4–622R airplanes.
(xxiii) 7A1300–001 through 7A1300–007 inclusive.	WC0001 through WC0422 inclusive, all S/Ns with a single letter R prefix, and all S/Ns with a single letter G prefix.	Slide/Raft, forward/aft door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes.
(xxiv) 7A1359–001 through 7A1359–005 inclusive.	WD0001 through WD0133 inclusive, all S/Ns with a single letter R prefix, and all S/Ns with a single letter G prefix.	Slide/Raft, mid door	A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R and F4–622R airplanes.

TABLE 3.—GOODRICH EVACUATION SYSTEMS INSTALLED ON CERTAIN AIRBUS MODEL AIRPLANES—Continued

Goodrich evacuation system having P/N—	Having any S/N—	Component/part is named—	Installed on Airbus Model—
(xxv) 7A1508–001 through 7A1508–017 inclusive, and 7A1508–101 through 7A1508–117 inclusive.	AA0001 through AA1040 inclusive.	Slide/Raft, doors 1 and 4	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes.
(xxvi) 7A1509–001 through 7A1509–005 inclusive, and 7A1509–101 through 7A1509–117 inclusive.	AD0001 through AD0486 inclusive.	Slide, door 3 type 1	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes.
(xxvii) 7A1510–001 through 7A1510–017 inclusive, and 7A1510–101 through 7A1510–117 inclusive.	AB0001 through AB0076 inclusive.	Slide/Raft, door 3 type A, LH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes.
(xxviii) 7A1510–002 through 7A1510–018 inclusive, and 7A1510–102 through 7A1510–118 inclusive.	AC0001 through AC0076 inclusive.	Slide/Raft, door 3 type A, RH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes.
(xxix) 7A1539–001 through 7A1539–017 inclusive, and 7A1539–101 through 7A1539–117 inclusive.	AU0001 thru AU0301 inclusive	Slide/Raft, door 2, LH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes.
(xxx) 7A1539–002 through 7A1539–018 inclusive, and 7A1539–102 through 7A1539–118 inclusive.	AX0001 thru AX0301 inclusive	Slide/Raft, door 2, RH side	A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes.

Unsafe Condition

(d) This AD is prompted by several reports of corroded shear-pin restraints that prevented Goodrich evacuation systems from deploying properly. We are issuing this AD to prevent failure of an evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the following service bulletins, as applicable:

(1) For Goodrich evacuation systems identified in Tables 1 and 2 of this AD: Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007; and

(2) For Goodrich evacuation systems identified in Table 3 of this AD: Goodrich Service Bulletin 25–344, Revision 2, dated October 11, 2006.

Compliance Times

(g) Perform the actions specified in paragraph (h) of this AD at the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For Goodrich evacuation systems installed on Boeing Model 767 airplanes as off-wing ramp/slide units and identified in Table 1 of this AD: Do the actions within 18 months after the effective date of this AD.

(2) For Goodrich evacuation systems other than those identified in paragraph (g)(1) of this AD: Do the actions within 36 months after the effective date of this AD.

Replacement, or Inspections and Corrective Action

(h) Do the actions specified in paragraph (h)(1) or (h)(2) of this AD in accordance with the Accomplishment Instructions of the applicable service bulletin, except where the service bulletin specifies to record service bulletin compliance on a system information card, this AD requires recording accomplishment in accordance with an FAA-approved record-keeping system.

(1) For Goodrich evacuation systems identified in paragraphs (c)(1)(i) through (c)(1)(xxxi) inclusive in Table 1 of this AD, (c)(2)(i) through (c)(2)(iii) inclusive in Table 2 of this AD, and (c)(3)(i) through (c)(3)(xviii) inclusive in Table 3 of this AD: Replace the shear-pin restraints with new restraints.

(2) For Goodrich evacuation systems identified in paragraphs (c)(1)(xxxii) through (c)(1)(lxii) inclusive in Table 1 of this AD, (c)(2)(iv) through (c)(2)(ix) inclusive in Table 2 of this AD, and (c)(3)(xix) through (c)(3)(xxx) inclusive in Table 3 of this AD: Do an inspection to verify the manufacturing lot number of the shear-pin restraint. A review of airplane maintenance records is acceptable in lieu of this inspection if the manufacturing lot number of the shear-pin restraint can be conclusively determined from that review.

(i) If a manufacturing lot number from 3375 through 5551 inclusive is found, before further flight, replace the shear-pin restraint with a new restraint.

(ii) If a manufacturing lot number from 3375 through 5551 inclusive is not found, do a general visual inspection of the shear-pin restraints for discrepancies (i.e., corrosion, security of pin retainer/label, overall condition, and lack of play). If any discrepancy is found, before further flight, replace the shear-pin restraint with a new restraint.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Parts Installation

(i) As of the effective date of this AD, no Goodrich evacuation system identified in paragraph (h)(1) of this AD may be installed on any airplane, unless the shear-pin restraints have been replaced with new restraints in accordance with paragraph (h)(1) of this AD.

(j) As of the effective date of this AD, no Goodrich evacuation system identified in paragraph (h)(2) of this AD may be installed on any airplane, unless the shear-pin restraints have been inspected and found acceptable in accordance with paragraph (h)(2) of this AD.

Credit for Actions Done Using Previous Service Information

(k) Replacements and inspections done before the effective date of this AD in accordance with the applicable service bulletins identified in Table 4 of this AD, are acceptable for compliance with the requirements of paragraph (h) of this AD.

TABLE 4.—ACCEPTABLE GOODRICH SERVICE BULLETINS

Goodrich Service Bulletin	Revision level	Date
25–343	Original	October 15, 2003.
25–343	1	January 31, 2005.
25–343	2	October 11, 2006.
25–344	Original	October 15, 2003.
25–344	1	January 31, 2005.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Los Angeles 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.

Material Incorporated by Reference

(m) You must use Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007; or Goodrich Service Bulletin 25–344, Revision 2, dated October 11, 2006; 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 Goodrich Service Bulletin 25–344, Revision 2, dated October 11, 2006, 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 Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007, on March 11, 2008 (73 FR 6586, February 5, 2008).

(3) For service information identified in this AD, contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040–1169.

(4) You may review copies of the service information that is 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 9, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–5375 Filed 3–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 6145]

Amendment to the International Traffic in Arms Regulations: Sri Lanka

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: In accordance with the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161), the Department of State is amending the International Traffic in Arms Regulations (ITAR) regarding Sri Lanka, to make it United States policy to deny licenses and other approvals to export or otherwise transfer defense articles and defense services to Sri Lanka except, on a case-by-case basis, for technical data or equipment made available for the limited purposes of maritime and air surveillance and communications.

DATES: *Effective Date:* This rule is effective March 24, 2008.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

• *E-mail:* *DDTCResponseTeam@state.gov* with an appropriate subject line.

• *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, Sri Lanka, SA–1, 12th Floor, Washington, DC 20522–0112.

Persons with access to the Internet may also view this notice by going to the *regulations.gov* Web site at *http://regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Director Ann Ganzer, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2792 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, Sri Lanka.

SUPPLEMENTARY INFORMATION: In accordance with the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, Section 126.1 of the ITAR is amended to make it United States policy to deny licenses and other approvals to export or otherwise transfer defense articles and defense services to Sri Lanka except, on a case-by-case basis, for technical data or equipment made available for the limited purposes of maritime and air surveillance and communications.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this amendment involves a foreign affairs function of the United States, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42 and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108–375.

■ 2. Section 126.1 is amended by adding paragraph (n) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

* * * * *

(n) *Sri Lanka.* It is the policy of the United States to deny licenses and other approvals to export or otherwise transfer defense articles and services to Sri Lanka except, on a case-by-case basis, for technical data or equipment made available for the limited purposes of maritime and air surveillance and communications.

Dated: March 10, 2008.

John C. Rood,

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. E8–5890 Filed 3–21–08; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source

CFR Correction

In Title 26 of the Code of Federal Regulations, Parts 30 to 39, revised as of April 1, 2007, in § 31.3121(s)–1, on page 104, paragraph (b)(2)(iii) is corrected and, on page 107, paragraph (c)(2)(iii) is revised to read as follows:

§ 31.3121(s)–1 Concurrent employment by related corporations with common paymaster.

* * * * *

(b) * * *

(2) * * *

(iii) *Examples.* The rules of this subparagraph are illustrated by the following examples:

Example 1. S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these employees are concurrently employed by two or more of the corporations, during a calendar quarter. The four corporations arrange for S to disburse remuneration to thirty of these forty employees for their services. Under these facts, S is the common paymaster of S, T, U, and V with respect to the thirty employees. S is not a common paymaster with respect to the remaining employees.

Example 2. (a) W, X, Y, and Z are related corporations. The corporations collectively have 20,000 employees. Two hundred of the employees are top-level executives and managers, sixty of whom are concurrently employed by two or more of the corporations during a calendar quarter. Six thousand of the employees are skilled artisans, all of whom are concurrently employed by two or more of the corporations during the calendar year. The four corporations arrange for Z to disburse remuneration to the sixty executives who are concurrently employed by two or more of the corporations. W and X arrange for X to disburse remuneration to the artisans who are concurrently employed by W and X.

(b) A is an executive who is concurrently employed only by W, Y, and Z during the calendar year. Under these facts, Z is a common paymaster for W, Y, and Z with respect to A. Assuming that the other requirements of this section are met, the amount of the tax liability under sections 3102 and 3111 is determined as if Z were A's only employer for the calendar quarter.

(c) B is a skilled artisan who is concurrently employed only by W and X

during the calendar year. Under these facts, X is a common paymaster for S and X with respect to B. Assuming that the other requirements of this section are met, the amount of the tax liability under sections 3102 and 3111 is determined as if X were B's only employer for the calendar quarter.

* * * * *

(c) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 31.3121(s)–1T(c)(2)(iii).

* * * * *

[FR Doc. 08–55507 Filed 3–21–08; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0871; FRL–8545–2]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of 8-Hour Ozone Section 110(a)(1) Maintenance Plans for the Parishes of Lafayette and Lafourche

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Louisiana State Implementation Plan (SIP) concerning the 8-hour ozone maintenance plans for the parishes of Lafayette and Lafourche. On October 13, 2006 and December 19, 2006, the State of Louisiana submitted maintenance plans for Lafayette and Lafourche Parishes, respectively, which ensure continued attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. These maintenance plans meet the statutory and regulatory requirements, and are consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the Federal Clean Air Act (CAA).

DATES: This rule is effective on May 23, 2008 without further notice, unless EPA receives relevant adverse comment by April 23, 2008. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0871, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0871. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Louisiana Department of Environmental Quality, Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana 70821.

FOR FURTHER INFORMATION CONTACT: Paul Kaspar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7459; fax number 214–665–7263; e-mail address *kaspar.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we" "us" or "our" is used, we mean the EPA.

Outline

I. Background
II. Analysis of the State's Submittals
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Under section 107 of the 1977 CAA, Louisiana's Lafayette and Lafourche Parishes were designated as nonattainment areas because they did not meet the National Ambient Air Quality Standards (NAAQS) for 1-hour ozone (40 CFR 81.319). As required by section 110 of the CAA, the state of Louisiana submitted a SIP to EPA on December 10, 1979. EPA approved this SIP on October 29, 1981 (46 FR 53412). Under the 1990 CAA Amendments, the

Lafayette and Lafourche Parish nonattainment areas continued to be designated nonattainment for the 1-hour ozone NAAQS by operation of law since Louisiana had not yet collected the required three years of data necessary to petition for redesignation to attainment.

On May 25, 1993 and November 18, 1994, Louisiana submitted requests to redesignate Lafayette and Lafourche Parishes, respectively, to attainment for the 1-hour ozone standard. At the same time, the State submitted the required ozone monitoring data and maintenance plans for each parish (each area includes only the one Parish) to ensure the areas would remain in attainment for 1-hour ozone for a period of 10 years. The maintenance plans submitted by Louisiana followed EPA guidance for limited maintenance areas, which provides for 1-hour ozone areas that have design values less than 85% of the applicable standard. In this case, the applicable standard was the 1-hour ozone standard of 0.12 parts per million (ppm). At the time of the redesignation request, the design values for Lafayette and Lafourche Parishes were 0.102 ppm and 0.098 ppm, respectively, and below the 85% threshold of 0.106 ppm.

Due to several approvability issues that existed with the Lafayette Parish maintenance plan and redesignation request, the state submitted a revised maintenance plan and redesignation request to EPA on October 14, 1994. EPA approved Louisiana's request to redesignate Lafayette Parish to attainment for the 1-hour ozone standard and approved the Parish's maintenance plan on August 18, 1995 (60 FR 43020), with an effective date of October 17, 1995.

EPA originally approved Louisiana's request to redesignate Lafourche Parish to attainment for the 1-hour ozone standard and approved the Parish's maintenance plan on August 18, 1995 (60 FR 43020). However, before the redesignation to attainment was effective, a violation of the 1-hour ozone standard was recorded at a Lafourche Parish ozone monitoring station. On December 5, 1997, EPA corrected the designation for Lafourche Parish to nonattainment for the 1-hour ozone standard (62 FR 64284) but left the Parish's maintenance plan approved on August 18, 1995 in place. On August 9, 2000, the Louisiana Department of Environmental Quality (LDEQ) again requested to redesignate Lafourche Parish to attainment for the 1-hour ozone standard by submitting data indicating the 1-hour ozone standard had been achieved for the period of January 1, 1997 through December 31, 1999. EPA also evaluated the ozone data from the years 2000 and 2001, and no violations of the 0.12 ppm 1-hour ozone standard occurred in these additional years. Since the data satisfied the regulatory requirements of no more than one exceedance per annual monitoring period, EPA approved Louisiana's request to redesignate Lafourche Parish to attainment on December 26, 2001 (66 FR 66317), with an effective date of February 25, 2002.

On April 30, 2004, EPA designated and classified areas for the new 8-hour ozone NAAQS (69 FR 23858), and published the final phase 1 rule for implementation of the 8-hour ozone NAAQS (69 FR 23951). Lafayette and Lafourche Parishes were designated as unclassifiable/attainment for the 8-hour ozone standard, effective June 15, 2004. The two attainment areas consequently were required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA and the Phase 1 rule. On May 20, 2005, EPA issued guidance providing information regarding how a state might fulfill the maintenance plan obligation established by the Act and the Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-Hour Ozone Areas Under Section 110(a)(1) of Clean Air Act, May 20, 2005*). These SIP revisions satisfy the section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 8-hour ozone NAAQS in the Lafayette and Lafourche Parish 8-hour ozone unclassifiable/attainment areas.

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (*South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (D.C.Cir. 2006)). Petitions for rehearing were filed with the Court, and on June 8, 2007, the Court modified the scope of the vacatur of the Phase 1 rule. The Court vacated those portions of the Rule that provide for regulation of 8-hour ozone nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allow backsliding with respect to new source review, penalties, milestones, contingency plans, and motor vehicle emission budgets. Consequently, the Court's modified ruling does not alter any requirements under the Phase 1 8-hour ozone implementation rule for maintenance plans.

II. Analysis of the State's Submittals

On October 13, 2006 and December 19, 2006, the State of Louisiana submitted maintenance plans for the Parishes of Lafayette and Lafourche, respectively. These October and December revisions provide 8-hour ozone maintenance plans for the two parishes named above, as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase 1 Implementation Rule (*see* 40 CFR 51.905(a)(4)). The purpose of these plans is to ensure continued attainment and maintenance of the NAAQS for 8-hour ozone in Lafayette and Lafourche Parishes.

In this action, EPA is approving the State's 8-hour ozone maintenance plans for the Lafayette and Lafourche Parish areas because EPA finds that the LDEQ submittals meet the requirements of section 110(a)(1) of the CAA, EPA's rule, and is consistent with EPA's guidance. As required, these plans provide for continued attainment and maintenance of the 8-hour ozone NAAQS in these areas for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 8-hour ozone NAAQS, and include components illustrating how each Parish will continue in attainment of the 8-hour ozone NAAQS and contingency measures. Each of the section 110(a)(1) plan components is discussed below.

(a) Attainment Inventory. The LDEQ developed comprehensive inventories of volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions from area, stationary, and mobile sources using 2002 as the base year to demonstrate maintenance of the 8-hour ozone NAAQS for Lafayette and Lafourche Parishes. The year 2002 is an appropriate year for the LDEQ to base attainment level emissions because States may select any one of the three years on which the 8-hour attainment designation was based (2001, 2002, and 2003). The State's submittals contain the detailed inventory data and summaries by source category. The 2002 base year inventory is a good choice. Using the 2002 inventory as a base year reflects one of the years used for calculating the air quality design values on which the 8-hour ozone designation decisions were based. It also is one of the years in the 2002–2004 period used to establish baseline visibility levels for the regional haze program.

A practical reason for selecting 2002 as the base year emission inventory is that Section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require States to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002

emissions inventory was established in the rule as June 2004. In accordance with these requirements, the State of Louisiana compiles a statewide emissions inventory for point sources on an annual basis. For stationary point sources in Lafayette and Lafourche Parishes, the LDEQ provided estimates for each commercial or industrial operation that emits 100 tons or more per year of VOC or 100 tons or more per year of NO_X in Appendix A of each maintenance plan. Stationary non-point source data was provided by E.H. Pechan & Associates, Inc., through the Central Regional Air Planning Association (CENRAP) using the methodology in ''Consolidation of Emissions Inventories'', section C, page 26. On-road mobile emissions of VOC and NO_X were estimated using EPA's MOBILE6.2 motor vehicle emissions factor computer model. Non-road mobile emissions data were derived from the ''Emission Inventory Development For Mobile Sources and Agricultural Dust Sources for the Central States'' produced by Sonoma Technology, Inc. for CENRAP in October 2004 using EPA's NONROAD 2004 non-road mobile emissions computer model. EPA finds that the LDEQ prepared the 2002 base year emissions inventories for the two Parishes consistent with EPA's long-established guidance memoranda.

In projecting data for the attainment year 2014 inventory, LDEQ used several methods to project data from the base year 2002 to the years 2008, 2011, and 2014. These projected inventories were developed using EPA-approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions Growth Analysis System version 4.0 (EGAS 4.0). Non-road mobile projections were derived from EGAS 4.0, as well as from the National Mobile Inventory Model.

The following tables provide VOC and NO_X emissions data for the 2002 base attainment year inventory, as well as projected VOC and NO_X emission inventory data for the years 2008, 2011, and 2014. Please see the Technical Support Document (TSD) for additional emissions inventory data including projections by source category for each parish.

LAFAYETTE PARISH

[VOC and NO_X Emissions Inventory Baseline (2002) and Projections (2008, 2011, and 2014)]

Emissions source	2002 tons per day	2008 tons per day	2011 tons per day	2014 tons per day
Total VOC	27.23	22.24	20.79	19.75
Total NO_X	29.38	24.18	22.74	21.22

As shown in the table above, total VOC and total NO_X emissions for Lafayette Parish are projected to decrease over the 10-year period of the maintenance plan.

LAFOURCHE PARISH

[VOC and NO_X Emissions Inventory Baseline (2002) and Projections (2008, 2011, and 2014)]

Emissions source	2002 tons per day	2008 tons per day	2011 tons per day	2014 tons per day
Total VOC	24.20	20.61	19.08	17.95
Total NO_X	14.24	13.06	12.51	12.06

As shown in the table above, total VOC and total NO_X emissions for Lafourche Parish are projected to decrease over the 10-year period of the maintenance plan.

Please see the TSD for more information on EPA's analysis and review of the State's methodologies, modeling data and performance, etc. for developing the base and attainment year inventories. As shown in the tables above, the State has demonstrated that the future year 8-hour ozone emissions will be less than the 2002 base attainment year's emissions. The attainment inventories submitted by the LDEQ for these areas are consistent with the criteria as discussed in the EPA Maintenance Plan Guidance memo dated May 20, 2005. EPA finds that the future emissions levels in 2008, 2011 and 2014 for total VOC and total NO_X are expected to be less than the emissions levels in 2002.

(b) Maintenance Demonstration. The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in compliance with the 8-hour ozone standard for the 10-year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the attainment designation, which for Lafayette and Lafourche Parishes was June 15, 2004. Therefore, these plans must demonstrate attainment through 2014. As discussed in section (a) Attainment Inventory above, Louisiana has identified the level of ozone-forming emissions in Lafayette and Lafourche Parishes that were consistent with attainment of the NAAQS for ozone in 2002. Louisiana has projected VOC and NO_X emissions for the years 2008, 2011, and 2014 in Lafayette and Lafourche Parishes and EPA finds that the future emissions levels for total VOC and total NO_X in those years are expected to be below the emissions levels in 2002. Please see the TSD for more information on EPA's review and evaluation of the State's 2008, 2011, and 2014 projected emissions inventories.

Louisiana relies on several air quality measures that will provide for additional 8-hour ozone emissions reductions in Lafayette and Lafourche Parishes. These measures include the following, among others: (1) Implementation of EPA's National Rule for VOC Emission Standards for Automobile Refinish Coatings (63 FR 48806), Consumer Products (63 FR 48819), and Architectural Coatings (63 FR 48848), (2) enacting of specific requirements from EPA's Tier 2 Motor Vehicle Emission Standards (65 FR 6697), EPA's Heavy-Duty Engine and Vehicle Standards (66 FR 5002), as well as EPA's gasoline and highway diesel fuel sulfur control requirements (66 FR

5002), (3) EPA's required control of emissions from non-road diesel engines and fuels (69 FR 38958), and (4) implementation of the Federal Clean Air Interstate Rule (CAIR) (70 FR 25162). The purpose of these control measures is to reduce levels of 8-hour ozone, including the areas of Lafayette and Lafourche Parishes.

As an additional demonstration of maintenance, Louisiana references the EPA modeling conducted for CAIR, in the maintenance plan submittals. Louisiana is a state that must implement CAIR, and the EPA CAIR modeling indicates that all Louisiana parishes will be in attainment with the 8-hour ozone standard by 2010, with continued attainment projected through 2015. This analysis is consistent with the projections discussed above in (a) Attainment Inventory.

(c) Ambient Air Quality Monitoring. The State of Louisiana has committed in its maintenance plans for Lafayette and Lafourche Parishes to continue operation of an appropriate, EPA-approved, ozone monitoring network and to work with EPA in compliance with 40 CFR Part 58 with regard to the continued adequacy of the network, if additional monitoring is needed, and when monitoring can be discontinued. The 8-hour ozone NAAQS is 0.08 ppm based on the three-year average of the fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area. The standard is considered to be attained at 84 parts per billion (ppb).

The Lafayette monitoring site has monitored attainment with the 8-hour ozone standard since 1998. The three most recent 8-hour ozone design values at the time of the October 2006 submission of the maintenance plan for Lafayette Parish were 78 ppb for 2003, 79 ppb for 2004, and 82 ppb for 2005. Due to issues with the lease agreement at the monitoring site location, the Lafayette monitoring site location was relocated to its current location on the campus of Louisiana State University. Sampling started at the current location on December 12, 2005, for the beginning of the 2006 ozone season. (The ozone season in the State of Louisiana is from January to December for the Parishes discussed in this notice.) Since the 8-hour ozone design value is based on a three-year average of the fourth-highest daily maximum 8-hour average ozone concentration, the first available design value for the current monitoring location will be available once three ozone monitoring seasons (2006, 2007 and 2008) have been completed. According to the most recent data available in EPA's Air Quality System (AQS) for the current Lafayette monitoring site, the annual fourth highest daily maximum values are 84 ppb for 2006 and 73 ppb for 2007 based on preliminary data from the January 2007 through September 2007 timeframe. Based on the NAAQS standard discussed above, each of the design values for Lafayette Parish is considered to be in attainment of the 8-hour ozone NAAQS and demonstrates that Lafayette Parish is expected to continue attainment of the 8-hour ozone NAAQS.

The Lafourche monitoring site, which was relocated at the end of 1999 to its current location, has monitored attainment with the 8-hour ozone standard since 2001. The three most recent 8-hour ozone design values at the time of December 2006 submission of the maintenance plan for Lafourche Parish were 78 ppb for 2003, 76 ppb for 2004, and 79 ppb for 2005. Based upon the most recent data available in AQS for the Lafourche monitoring site, the design value for 2006 was 80 ppb and a preliminary design value for 2007 is 79 ppb based on data from the January 2007 through September 2007 timeframe. Based on the NAAQS standard discussed above, each of these design values for Lafourche Parish is considered to be in attainment of the 8-hour NAAQS and further demonstrates that Lafourche Parish is expected to continue attainment of the 8-hour ozone NAAQS.

(d) Contingency Plan. The section 110(a)(1) maintenance plans include contingency provisions to promptly correct any violation of the NAAQS that occurs. The contingency indicator for the Lafayette and Lafourche Parish maintenance plans is based upon monitoring. The triggering mechanism for activation of contingency measures is a monitoring violation of the 8-hour ozone standard and analysis of data to determine the cause of the violation. In these maintenance plans, if contingency measures are triggered, LDEQ is committing to implement the measures as expeditiously as practicable, but no longer than 24 months following the trigger.

The following contingency measures are identified for implementation: (1) Lowering VOC RACT applicability thresholds for Stage 1 gasoline controls, (2) NO_X controls on major sources (100 tpy and greater), (3) Emission offsets for permits (1.10 ratio for VOC and NO_X), and (4) Other measures deemed appropriate at the time as a result of advances in control technologies. These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) for continued attainment. Continued attainment of the 8-hour ozone NAAQS in the areas of Lafayette and Lafourche Parishes will depend, in part, on the air quality measures discussed previously (see II (b) above). The State will continue to operate an appropriate, EPA-approved, ambient ozone monitoring site in Lafayette and Lafourche Parish to verify continued attainment of the 8-hour ozone NAAQS. The air monitoring results will reveal changes in the ambient air quality as well as assist the State in determining whether or not implementation of any contingency measures is necessary. The state will continue to work with the EPA through the air monitoring network review process, as required by 40 CFR Part 58, to determine: (1) The adequacy of the ozone monitoring network; (2) if additional monitoring is needed; and (3) when monitoring can be discontinued. Air monitoring data will continue to be quality assured according to federal requirements.

III. Final Action

Pursuant to section 110 of the Act, EPA is approving the 8-hour ozone maintenance plans for Lafayette and Lafourche Parishes, which were submitted by LDEQ on October 13, 2006, and December 19, 2006, respectively, which ensure continued attainment of the 8-hour ozone NAAQS through the year 2014. We have evaluated the State's submittals and have determined that they meet the applicable requirements of the Clean Air Act and EPA regulations, and are consistent with EPA policy.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 23, 2008, without further notice unless we receive adverse comment by April 23, 2008. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be

severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 6, 2008.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 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 T—Louisiana

■ 2. In § 52.970, the table in paragraph (e) entitled, ''EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES'', is amended by adding two new entries to the end of the table as follows:

§ 52.970 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
8-Hour Ozone Section 110 Maintenance Plan.	Lafayette Parish, LA	10/13/06	March 24, 2008 [Insert FR page number where document begins].	
8-Hour Ozone Section 110 Maintenance Plan.	Lafourche Parish, LA	12/19/06	March 24, 2008 [Insert FR page number where document begins].	

■ 3. Section 52.975, entitled, ''Redesignations and maintenance plans; ozone'', is amended by adding a new paragraph (i) as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(i) Approval. The Louisiana Department of Environmental Quality (LDEQ) submitted 8-hour ozone maintenance plans for the Lafayette and Lafourche Parish areas on October 13, 2006 and December 19, 2006, respectively. The two areas are designated unclassifiable/attainment for the 8-hour ozone standard. EPA determined these requests for Lafayette and Lafourche Parishes were complete on November 30, 2006 and May 2, 2007, respectively. These maintenance plans meet the requirements of section 110(a)(1) of the Clean Air Act, and are consistent with EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 8-hour ozone maintenance plans for the Lafayette and Lafourche Parish areas on *March 24, 2008*.

[FR Doc. E8–5800 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2008–0072; FRL–8545–5]

Finding of Failure To Submit State Implementation Plans Required for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is taking a final action finding that several states have failed to submit State Implementation Plans (SIPs) to satisfy certain requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). Under the CAA and EPA's implementing regulations, states with nonattainment areas classified as moderate, serious, severe or extreme were required to submit by June 15, 2007, SIPs: Demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable but no later than the applicable dates established in the implementing regulations; and demonstrating reasonable further progress (RFP). Additionally, states were required by September 15, 2006, to submit for these same areas SIPs demonstrating that sources specified under the CAA were subject to reasonably available control technology requirements (RACT). States that are part of the Ozone Transport Region (OTR) were required to submit SIPs to meet the 1997 8-hour ozone RACT requirement for the entire state by September 15, 2006. The RACT requirement applies to all areas within the Ozone Transport Region, regardless of the area's designation for the 1997 8-hour ozone standard. Some states have not yet submitted SIPs to satisfy these requirements. The EPA is by this action making a finding of failure to submit for those nonattainment areas and OTR areas that have not made the required SIP submission(s). If EPA has not affirmatively found that the state has submitted the required plan or plans within 18 months, the offset sanction applies in the area. If within 6 additional months EPA has still not affirmatively determined that the state has submitted the required plan, the highway funding sanction applies in an area if it is designated nonattainment. No later than 2 years after EPA makes the finding, EPA must promulgate a Federal Implementation Plan if the state has not submitted and EPA has not approved the required SIP.

DATES: *Effective Date:* This action is effective on March 24, 2008.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541–5208.

SUPPLEMENTARY INFORMATION: For questions related to a specific state please contact the appropriate regional office:

Regional offices	States
Dave Conroy, Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02203–2211.	Maine, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866.	New York.
Christina Fernandez, Acting Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Virginia.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Ohio, and Wisconsin.
Dave Jesson, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	California.

Table of Contents

I. Background
A. Statutory Requirements
B. Consequences of Findings of Failure to Submit
II. This Action
A. Clean Air Determination Areas Receiving a Finding of Failure to Submit
B. OTR Attainment Areas Receiving a Finding of Failure to Submit
C. Finding of Failure to Submit RFP Plans in California
III. Statutory and Executive Order Reviews
A. Notice and Comment Under the Administrative Procedures Act
B. Effective Date Under the Administrative Procedures Act
C. Executive Order 12866: Regulatory Planning and Review
D. Paperwork Reduction Act
E. Regulatory Flexibility Act (RFA)
F. Unfunded Mandates Reform Act
G. Executive Order 13132: Federalism
H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
I. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
J. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
L. National Technology Transfer Advancement Act
M. Congressional Review Act

N. Judicial Review

I. Background

The CAA requires states with areas that are designated nonattainment for the 1997 8-hour ozone NAAQS to develop a SIP providing how the state will attain and maintain the NAAQS. Part D of title I of the CAA specifies the required elements of a SIP for an area designated nonattainment. These requirements include, but are not limited to, RFP, RACT, and an attainment demonstration. *See* CAA sections 172 and 182. In addition, states that are part of the Ozone Transport Region (OTR) must submit SIPs meeting the 1997 8-hour ozone RACT requirement for the entire state or the portion of the state in the OTR. A number of states have submitted RFP, RACT and attainment demonstration SIPs as required under the CAA and EPA's implementing regulations, but at present, some states have not yet submitted SIPs to satisfy these requirements of the CAA. The EPA is by this action making a finding of failure to submit for those areas that have not yet submitted these required SIPs.

A. Statutory Requirements

On July 18, 1997, EPA issued a revised ozone standard. At that time, the ozone standard was 0.12 ppm measured over a 1-hour period. EPA revised the NAAQS to rely on an 8-hour averaging period (versus 1 hour for the previous NAAQS), and the level of the standard was changed from 0.12 ppm to 0.08 ppm (62 FR 38856). EPA's initial implementation strategy for the 1997 8-hour standard was vacated and remanded by the Supreme Court. *Whitman* v. *American Trucking Associations, Inc.*, 531 U.S. 457 (2001). On April 30, 2004 (69 FR 23951) and on November 29, 2005 (70 FR 71612), EPA published final rules that addressed the elements related to implementation of the 1997 8-hour ozone NAAQS (Phase 1 and Phase 2 Implementation Rules). In an April 30, 2004 rulemaking (69 FR 23858) EPA designated attainment and nonattainment areas for the 1997 8-hour ozone standard, and specified the classification for each nonattainment area. The 1997 8-hour ozone designations took effect on June 15, 2004. The November 30, 2005 Phase 2 implementation rule set forth deadlines for state and local governments to develop and submit to EPA implementation plans designed to meet the 1997 8-hour standard by reducing air pollutant emissions contributing to ground-level ozone concentrations. The Phase 2 Rule required states with nonattainment areas to submit SIPs by June 15, 2007 demonstrating how each nonattainment area would attain the 1997 8-hour ozone standard as expeditiously as practicable but no later than specified dates and demonstrating how the area would make reasonable further progress toward attainment in the years prior to the attainment year. Additionally, the Phase 2 Rule required states to submit SIPs requiring RACT for nonattainment areas and for areas within the OTR by September 15, 2006.

B. Consequences of Findings of Failure To Submit

The CAA establishes specific consequences if EPA finds that a state has failed to submit a SIP or, with regard to a submitted SIP, EPA determines it is incomplete or disapproves it. CAA section 179(a)(1). Additionally, any of these findings also triggers an obligation for EPA to promulgate a Federal Implementation Plan (FIP) if the states have not submitted and EPA has not approved the required SIP within 2 years of the finding. CAA section 110(c). The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking.

EPA is finding that 11 states have failed to make required SIP submissions for 11 nonattainment areas and 3 states or portions of states in the Ozone Transport Region. If EPA has not affirmatively determined that a state has made the required complete submittals for an area within 18 months of the effective date of this rulemaking, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the area subject to the finding. If EPA has not affirmatively determined that the state has made a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in areas designated nonattainment, in accordance with CAA section 179(b)(1) and 40 CFR 52.31.[1] The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the state has made a complete submittal as to each of the SIPs for which these findings are made. In addition, EPA is not required to promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's finding.

At approximately the same time as the signing of this notice, EPA Regional Administrators are sending letters to the states informing each state identified below that EPA is determining that they have failed to make one or more of the required SIP submissions for the specified areas. These letters, and any accompanying enclosures, have been included in the docket to this rulemaking.

II. This Action

In this action, EPA is making a finding of failure to submit for states that have failed to make certain required SIP submittals. This finding starts the 18-month emission offset sanctions clock, 24-month highway funding sanctions clock and a 24-month clock for the promulgation by EPA of a FIP. This action will be effective on March 24, 2008. The following states failed to make an attainment demonstration, reasonable further progress, or reasonably available control technology submittal required under Part D of Title 1 of the CAA for the specific area(s) identified below.

The areas for which states that did not submit the RACT SIP, RFP SIP, and/or the attainment demonstration SIP are as follows:

Attainment Demonstrations [2]

NH, Boston-Manchester-Portsmouth (SE) Area
NY, Jefferson County Area
RI, Providence (all of RI) Area
IL, Chicago-Gary-Lake County Area
IN, Chicago-Gary-Lake County Area
WI, Milwaukee-Racine Area
WI, Sheboygan Area

RACT SIPs [3]

RI, Providence (all of RI) Area
VT, entire state in Ozone Transport Region
ME, entire state of Maine for the OTR VOC RACT requirement
ME, entire state of Maine for the OTR NO_X RACT requirement, with the exception of those areas that received a NO_X waiver [4]

[1] In accordance with section 179(b)(1)(A), the highway funding sanction only applies in areas designated nonattainment for the relevant standard and thus would not apply in the portions of the OTR subject to RACT, but not designated nonattainment.

[2] This finding is for the attainment demonstration requirement in section 182(b)(1), 182(c)(2)(A) and 182(d) and 40 CFR 51.908.

[3] Except as noted, this finding is for the RACT SIPs required under CAA section 182(b)(2) for VOC and section 182(f) for NO_X. This requirement applies to moderate areas under 182(b)(2) and applies to serious, severe and extreme areas as provided in CAA section 182(c), (d) and (e), respectively.

[4] On February 3, 2006 (71 FR 5791), EPA approved a NO_X waiver for Northern Maine (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, and portions of Hancock and Waldo Counties). This approval exempts major sources of NO_X in this area from the requirements to implement controls meeting RACT.

VA, Stafford County
IL, Chicago-Gary-Lake County Area
IL, St. Louis Area for NO_X RACT requirement
IN, Chicago-Gary-Lake County Area
OH, Cleveland-Akron-Lorain Area for VOC RACT requirement

RFP SIPs [5]

RI, Providence (all of RI) Area
NH, Boston-Manchester-Portsmouth (SE) Area
NY, Jefferson County Area
IL, Chicago-Gary-Lake County Area
IN, Chicago-Gary-Lake County Area
WI, Milwaukee-Racine Area
WI, Sheboygan Area
CA, Western Mojave Desert
CA, Sacramento Metro Area
CA, Ventura County (part) Area

A. Clean Air Determination Areas Receiving a Finding of Failure To Submit

For areas designated as ''moderate nonattainment'' areas, the CAA requires states to develop SIPs describing how the state will attain and maintain the ozone standard; such SIPs were to have been submitted to EPA by June 15, 2007. The Boston-Manchester-Portsmouth (SE) area in NH and Jefferson County, NY are designated ''moderate nonattainment.'' EPA has published proposed determinations that both areas are in attainment of the 1997 8-hour ozone NAAQS. *See* 73 FR 7234 (February 7, 2008), and 73 FR 8637 (February 14, 2008). These actions were taken in consideration of several years of air quality data in these areas showing attainment of the NAAQS and in consultation with the states. In the case of Jefferson County, on June 14, 2007 New York submitted to EPA a formal clean data request.

EPA is proceeding with rulemaking on the clean data determinations for these two areas. A final determination of attainment would suspend the attainment demonstration and RFP SIP requirements of 40 CFR 50.918. EPA expects to take final action on these determinations as soon as possible. If EPA issues a final determination of attainment, it will stay the sanctions and FIP clocks. The stay for the 2:1 emission offset sanction, highway sanction and FIP promulgation clocks will continue for as long as the area air quality continues to attain the 1997 8-hour ozone standard. The clocks will be permanently turned off if the areas are redesignated to attainment.

EPA is issuing findings of failure to submit to New Hampshire for the Boston-Manchester-Portsmouth (SE) area and to New York for the Jefferson County Area. As noted earlier, EPA has published proposed determinations that both areas are in attainment of the 1997 8-hour ozone NAAQS. Pursuant to 40 CFR 51.918, the states' obligation to submit the reasonable further progress and attainment demonstrations will be stayed as of the effective date of a final approval of the clean air determination for these areas. This stay will remain in effect for so long as the area remains in attainment and will no longer apply if the area is redesignated to attainment.

B. OTR Attainment Areas Receiving a Finding of Failure To Submit

The states of Maine and Vermont and Stafford County, VA have 8-hr ozone RACT requirements because they are part of the OTR.[6] The EPA is issuing a finding of failure to submit to Maine, Vermont and Virginia because they have not met the requirement (40 CFR 51.916(b)). EPA understands that these three states are each working on a certification that the RACT rules the states adopted and EPA approved under the 1-hour ozone standard meet the RACT requirements applicable for the 1997 8-hour ozone standard. The FIP clocks will be stopped when the states submit and EPA approves the RACT SIP. This is a formal SIP submittal and the states must complete their notice-and-comment process prior to submission. Maine, Vermont and Virginia should be able to complete the process and submit the SIPs in time for EPA to take rulemaking action on the submissions before the 24-month FIP clock expires. These OTR areas are subject to nonattainment NSR and, therefore, would be subject to the 2:1 emission offset sanctions if they fail to submit RACT rules EPA affirmatively determines are complete within 18 months of this finding. Because the areas are in attainment, the highway funding sanction would not apply (40 CFR 52.31(e)(2)).

C. Findings of Failure To Submit RFP Plans in California

EPA is making findings of failure to submit RFP plans for the following three areas in California: Los Angeles-San Bernardino Counties (Western Mojave Desert), Ventura, and Sacramento Metro nonattainment areas. The findings of failure to submit are being made because these areas did not submit the RFP plans that were due on June 15, 2007. On February 14, 2008, the state submitted a formal request to EPA to voluntarily reclassify: (1) Western Mojave Desert from moderate to severe-17; (2) Ventura from moderate to serious; and (3) Sacramento Metro from serious to severe-15. Although EPA must grant such voluntary reclassification, a reclassification does not provide a basis for extending the submittal deadlines for SIP elements that were due for these areas' initial classifications. Consequently this finding of failure to submit is based on the states' failure to submit the RFP plans that were due on June 15, 2007 for the area's current classification; this finding does not apply with regard to any additional RFP obligations that would be triggered by the reclassification of these areas. The February 14, 2008 letter included a commitment to submit to EPA the RFP for the current classifications for the three areas, as well as the RFP and attainment requirements for the requested higher classification for the Western Mojave Desert and Ventura areas by April 30, 2008. With respect to the Sacramento Metro area, we note that the state has submitted an RFP SIP for the 2008 milestone. Thus the finding applies only to the RFP component required for the 2011 milestone.

Both the Ventura and Western Mojave Desert areas are downwind from the South Coast Air Basin (metropolitan Los Angeles), and the state has indicated that RFP in the areas must depend in part upon reductions in the South Coast area. The Phase 2 Rule to implement the 1997 8-hour NAAQS set forth a policy that emission reductions from outside a nonattainment area could be credited toward the 1997 8-hour ozone RFP requirement. The rule stated that credit could be taken for VOC and NO_X emission reductions within 100 km and 200 km respectively outside the nonattainment area (70 FR 71647; November 29, 2005). However, if a regional NO_X control strategy were in place in the state, reductions could be taken from within the state. On July 17, 2007, EPA requested a partial voluntary remand from the Court of Appeals for the District of Columbia Circuit on this policy provision. This provision was challenged by the Natural Resources Defense Council (NRDC). EPA's $PM_{2.5}$ Implementation Rule (72 FR 20586, April 25, 2007) adopted a different approach for crediting reductions of precursor pollutants from ''outside'' the nonattainment area for ROP/RFP purposes.[7] Because the $PM_{2.5}$

[5] This finding is for the RFP requirement under CAA sections 172(c)(2) and 182(b)(1). *See* also 40 CFR 51.910.

[6] The remaining portion of Virginia that is in the OTR is also part of the Washington DC-MD-VA moderate 1997 8-hour ozone nonattainment area. EPA has received a RACT SIP addressing Virginia's OTR and moderate RACT requirements for the Washington DC-MD-VA moderate 1997 8-hour ozone nonattainment area.

[7] ''If the state justifies consideration of precursor emissions for an area outside the nonattainment

Implementation Rule significantly modified the policy regarding which emissions reductions are eligible to be credited towards a nonattainment area's RFP requirement, EPA asked for a partial voluntary remand of the Phase 2 Ozone Rule to consider whether it should be revised for consistency with the $PM_{2.5}$ Implementation Rule. In response to EPA's request for a partial voluntary remand of the Phase 2 Ozone Rule, NRDC asked the court for a vacatur, i.e., to nullify this provision. The Court ultimately granted NRDC's petition for vacatur. EPA issued a memorandum on October 11, 2007 stating that we: (1) Sought a voluntary remand, (2) would be revising the rule, and (3) advised the Regional Offices not to approve ROP/RFP SIPs that obtained VOC or NO_X reductions from outside the nonattainment area until the new rulemaking was finalized.[8]

EPA is currently developing a proposed rule to address the court's vacatur of the provision in the Phase 2 Ozone Implementation Rule that allowed nonattainment areas to take credit for emission reductions outside the nonattainment area from selected sources which differed from what was in the $PM_{2.5}$ Implementation Rule. Until we issue that final rule, we could take rulemaking action on the RFP SIPs on a case-by-case basis. We plan to issue the final rule as soon as possible. However, sanctions clocks will terminate when states make submittals that EPA affirmatively determines are complete and the FIP clocks can be turned off if we take final action to approve the RFP plans.

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedure Act

This is a final EPA action, but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

B. Effective Date Under the Administrative Procedure Act

This action will be effective on March 24, 2008. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to specify an earlier effective date. This action concerns SIP submissions that are already overdue; and EPA previously cautioned the affected states that the SIP submissions were overdue and that EPA was considering taking this action. In addition, this action simply starts a ''clock'' that will not result in sanctions against the states for 18 months, and that the states may ''turn off'' through the submission of complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication.

C. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. However, the EPA submitted this action to the Office of Management and Budget (OMB) for review on February 12, 2008 and any changes made in response to OMB's recommendations have been documented in the docket for this action. The OMB released it on March 14, 2008.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule relates to the requirement in the CAA for states to submit SIPs under section Part D of title I of the CAA to satisfy elements required for the 1997 8-hour ozone NAAQS. The present final rule does not establish any new information collection requirement. Burden means that 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 the CFR are listed in 40 CFR part 9.

E. Regulatory Flexibility Act (RFA)

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate 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 mandate'' 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the

area, EPA will expect state RFP assessments to reflect emissions changes from all sources in this area. The State cannot include only selected sources providing emission reductions in the analysis.'' (72 FR at 20636 (4/25/07).)

[8] ''Partial Voluntary Remand Sought in the Ozone Phase 2 Rule Concerning Rate of Progress (ROP) Reductions Obtained From Outside a Nonattainment Area'' Memorandum of October 11, 2007.

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 that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

This action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any 1 year by either state, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 1997 8-hour ozone NAAQS (62 FR 38652; 62 FR 38856, July 18, 1997), therefore, no UMRA analysis is needed. EPA has determined that this action is not a Federal mandate. The CAA provisions requires states to submit SIPs. This notice merely provides a finding that the states have not met the requirement to submit certain SIPs and begins a clock that could result in the imposition of sanctions if the states continue to not meet this statutory obligation. This notice does not, by itself, require any particular action by any state, local, or Tribal government; or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year.

G. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS and the Federal Government acts as a backstop where states fail to take the required actions. This rule will not modify the relationship of the states and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

EPA has concluded that this final rule will not have Tribal implications. It will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This rule responds to the requirement in the CAA for states to submit SIPs to satisfy the nonattainment area requirements of the CAA for the 1997 8-hour ozone NAAQS. The CAA requires states with areas that are designated nonattainment for the NAAQS to develop a SIP describing how the state will attain and maintain the NAAQS. There are Tribal governments within certain nonattainment areas for which this rule turns on a sanctions clock. However, this rule does not have Tribal implications because it does not impose any compliance costs on Tribal governments nor does it pre-empt Tribal law. The rule will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

I. 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action should reduce the levels of harmful pollutants in the air that should reduce harmful effects on children.

J. 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. In this action, EPA is finding that several states have failed to submit SIPs to satisfy certain nonattainment area requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS).

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

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice finds that certain states have not met the requirement to submit one or more SIPs and begins a clock that could result in the imposition of sanctions if the states continue to not meet this statutory obligation. If the states fail to submit the required SIPs or if they submit SIPs that EPA cannot approve, then EPA will be required to develop the plans in lieu of the states.

L. National Technology Transfer Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 24, 2008.

N. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

Thus, any petitions for review of this action making findings of failure to submit RACT, RFP, and attainment demonstration SIPs for the nonattainment areas identified in section II above, must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 17, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

[FR Doc. E8–5807 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2006–0971; FRL–8544–2]

RIN 2060–AO86

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the National Volatile Organic Compound Emission Standards for Aerosol Coatings final rule, which is a rule that establishes national reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under the Clean Air Act, published elsewhere in this **Federal Register**. This direct final action clarifies and amends certain explanatory and regulatory text in the Aerosol Coatings final rule, as the final rule contains misstatements and possibly confusing language on how compounds are added to the list in Tables 2A, 2B or 2C—Reactivity Factors, and when distributors and retailers are regulated entities responsible for compliance with the final rule.

DATES: This direct final rule is effective on June 23, 2008, without further notice, unless EPA receives adverse comment by April 23, 2008, or May 8, 2008, if a public hearing is held. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in the final rule will not take effect.

Comments. Written comments must be received by April 23, 2008, unless a public hearing is requested by April 3, 2008. If a hearing is requested, written comments must be received by May 8, 2008.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing concerning the proposed regulation by April 3, 2008, we will hold a public hearing on April 8, 2008.

ADDRESSES: Comments. Submit your comments, identified under Docket ID No. EPA–HQ–OAR–2006–0971 by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–

0971. The 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/epahome/dockets.htm.*

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 National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA/DC, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. on April 8, 2008 at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Persons interested in presenting oral testimony must contact Ms. Joan Rogers at (919) 541–4487 no later than April 3, 2008. If you are interested in attending the public hearing, contact Ms. Joan Rogers at (919) 541–4487 to verify that a hearing will be held. If no one contacts EPA requesting to speak at a public hearing concerning this rule by April 3, 2008 this meeting will be cancelled without further notice.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–2509; facsimile number (919) 541–3470; e-mail address: *whitfield.kaye@epa.gov*. For information concerning the Clean Air Act (CAA) section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460, facsimile number (919) 541–3470, e-mail address: *moore.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Why Is EPA Using a Direct Final Rule?
II. Does This Action Apply to Me?
III. What Should I Consider as I Prepare My Comments for EPA?
IV. What Are the Amendments Made by This Direct Final Rule?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Why Is EPA Using a Direct Final Rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. EPA has identified misstatements and possibly confusing language in the preamble and regulatory text on how compounds are added to the list in Tables 2A, 2B, or 2C of subpart E, 40 CFR part 59, and when distributors and retailers are regulated entities responsible for compliance with the final rule. The amendments to the Aerosol Coatings final rule described herein consist of clarifications that do not make material changes to the rule.

However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to the National Volatile Organic Compound Emission Standards for Aerosol Coatings (40 CFR Part 59) if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

The entities potentially affected by this direct final rule are the same entities that are subject to the Aerosol Coatings final rule. The entities affected by the Aerosol Coatings final rule include: Manufacturers, processors, distributors, importers of aerosol coatings for sale or distribution in the United States, and manufacturers, processors, distributors, or importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States.

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. What Are the Amendments Made by This Direct Final Rule?

The direct final rule clarifies and amends certain explanatory and regulatory text in the Aerosol Coatings final rule.

First, we are amending the explanatory text in section III.C. of the preamble (entitled ''Consideration of Other Factors in the Consideration of Best Available Controls''), which states that compounds will be added to the list in Tables 2A, 2B, or 2C if they are identified in an initial notification or update. This statement is inconsistent with the regulatory text in § 59.511(j), which provides that compounds are to be added to the list in Tables 2A, 2B, or 2C only through a petition to the Agency. Through today's action, we are amending the preamble to the Aerosol Coatings final rule to track the regulatory text that provides persons seeking to have a compound added to Tables 2A, 2B, or 2C must follow the petition process prescribed by 59.511(j).

Second, EPA has determined that certain language in the regulatory text is inconsistent and potentially confusing as to when distributors and retailers are regulated entities responsible for compliance with the Aerosol Coatings final rule. First, the second phrase in the first sentence of § 59.501(a) suggests that a distributor is only regulated by the final rule if it is named on the label, and the second sentence in § 59.501(a) states ''Distributors whose names do not appear on the label for the product are not regulated entities.'' The language in the first two sentences of § 59.501(a) is inconsistent and incomplete because, under § 59.501(b)(2), distributors who specify a formulation and distributors whose names appear on the label for the product are responsible for compliance with the final rule. We are adding language to § 59.501(a) to make that section consistent with § 59.501(b)(2). Specifically, we are adding language to the second phrase in the first sentence of § 59.501(a) to include distributors who specify a formulation, and deleting the entire second sentence in § 59.501(a).

Third, the third sentence in § 59.501(a), which states ''Distributors include retailers whose names appear on the label for the product,'' is potentially confusing because it fails to note that, as defined in § 59.503, retailers are distributors if they meet the definition of ''distributor.'' A retailer who both meets the definition of ''distributor'' in § 59.503 and either is named on the label or specifies the formulation of a product is responsible for compliance with the final rule under § 59.501(b)(2). To avoid any confusion about when retailers are regulated by the final rule, we are deleting the third sentence in 59.501(a) and replacing it with a sentence stating ''Distributors include retailers who fall within the definition of 'distributor' in § 59.503.''

Fourth, EPA has identified that several provisions in § 59.501(b) use the phrase ''the regulated entity'' to identify when certain entities are responsible for compliance with provisions of the final rule. In some instances, however, the final rule provides that different entities will be regulated entities responsible for compliance with provisions of the final rule for a given product. To avoid any confusion about whether there can be more than one regulated entity for a given product, we are changing the phrase from ''the regulated entity'' to ''a regulated entity.'' This change does not change the compliance responsibilities for any entity.

Fifth, we identified that a few words were inadvertently omitted from the regulatory text in § 59.501(b)(2). The first sentence of § 59.501(b)(2) uses the phrase ''regulated entity responsible for compliance,'' while the second sentence uses the phrase ''responsible for compliance'' without the words ''regulated entity.'' To avoid any confusion, we are adding the words ''a regulated entity'' to the second sentence in § 59.501(b)(2) to make clear that the distributor is a regulated entity responsible for compliance with provisions of the final rule if it either is named on the label or has specified formulations to be used by a manufacturer.

V. 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.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any new information collection burden because it serves to clarify certain explanatory and regulatory text. No additional information collection is necessary for this action.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule 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 today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any

requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to make certain clarifications and amendments to the Aerosol Coatings final rule, and these clarifications and amendments do not create any new requirements or burdens. No costs are associated with these amendments.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, this action is not subject to the requirements of sections 202 and 205 of UMRA because EPA is taking this action to make certain clarifications and amendments to the Aerosol Coatings final rule, and these clarifications and amendments do not create any new requirements or burdens.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. The final rule requirements will not supersede State regulations that are more stringent. Thus, EO 13132 does not apply to this rule.

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

Executive Order (EO) 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final action does not have Tribal implications as specified in EO 13175. The final regulatory action does not have a substantial direct effect on one or more Indian tribes, in that this action imposes no regulatory burdens on Tribes. Furthermore, the action does not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian tribes. The CAA and the Tribal Authority Rule (TAR) establish the relationship of the Federal Government and Tribes in implementing the CAA. Thus, EO 13175 does not apply to this rule.

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

EPA interprets Executive Order (EO) 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d)), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the EPA does not use available and applicable VCS.

The rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use the following standards in the final rule: California Air Resources Board Method 310—Determination of VOC in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products; EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A), in conjunction with

American Society of Testing and Materials (ASTM) Method D3063–94 or D3074–94 for analysis of the propellant portion of the coating; South Coast Air Quality Management District (SCAQMD) Method 318–95, Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction, July, 1996, for metal content; and ASTM D523–89 (Reapproved 1999), Standard Test Method for Specular Gloss for specular gloss of flat and nonflat coatings.

EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) also is a compilation of voluntary consensus standards. The following are incorporated by reference in EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A): ASTM D1979–91, ASTM D3432–89, ASTM D4457–85, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94.

For the methods required by the final rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income populations. Further, it establishes national emission standards for VOC in aerosol coatings.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule amendment in the **Federal Register**. The final rule amendment is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule is effective on June 23, 2008.

List of Subjects in 40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 13, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 59 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 59—[AMENDED]

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

Subpart E—[Amended]

■ 2. Section 59.501 is amended by revising paragraphs (a) and (b)(1), (b)(2) and (b)(3) to read as follows:

§ 59.501 Am I subject to this subpart?

(a) The regulated entities for an aerosol coating product are the manufacturer or importer of an aerosol coating product and a distributor of an aerosol coating product if it is named on the label or if it specifies the formulation of the product. Distributors include retailers who fall within the definition of ''distributor'' in § 59.503.

(b) * * *

(1) If you are a manufacturer or importer, you are a regulated entity responsible for ensuring that all aerosol coatings manufactured or imported by you meet the PWR limits presented in § 59.504, even if your name is not on the label.

(2) If you are a distributor named on the label, you are a regulated entity responsible for compliance with all sections of this subpart except for the limits presented in § 59.504. If you are a distributor that has specified formulations to be used by a manufacturer, then you are a regulated entity responsible for compliance with all sections of this subpart.

(3) If there is no distributor named on the label, then the manufacturer or importer is a regulated entity responsible for compliance with all sections of this subpart.

* * * * *

[FR Doc. E8–5583 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0906; FRL–8355–4]

Pyraclostrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of pyraclostrobin and its desmethoxy metabolite in or on avocado; canistel; oat, grain; oat, hay; oat, straw; sapodilla; sapote, black; sapote, mamey; and star apple. It also increases the existing tolerances in or on barley, grain from 0.4 parts per million (ppm) to 1.4 ppm; mango and Papaya from 0.1 ppm to 0.6 ppm. Interregional Research Project Number 4 (IR–4) and BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 24, 2008. Objections and requests for hearings must be received on or before May 23, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0906. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or

access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0906 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 23, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0906, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 4, 2007 (72 FR 16352) (FRL–8119–2); May 9, 2007 (72 FR 26372) (FRL–8121–5); and October 24, 2007 (72 FR 60369) (FRL–8150–8), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6E7165, PP 6F7105 and PP 7E7245) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540 and BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petitions requested that 40 CFR 180.582 be amended by establishing tolerances for combined residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester; and its desmethoxy metabolite; methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenylcarbamate, in or on herbs, fresh at 30.0 parts per million (ppm); avocado at 0.7 ppm; mango at 0.7 ppm; papaya at 0.7 ppm; sapote, black at 0.7 ppm; sapote, mamey at 0.7 ppm; canistel at 0.7 ppm; sapodilla at 0.7 ppm; and star apple at 0.7 ppm (PP#6E7165); in or on oat, grain at 1.0 ppm; oat, hay at 17.0 ppm; oat, straw at 17.0 ppm; and oilseed, group at 0.4 ppm (PP#6F7105); and in or on barley, grain at 1.3 ppm; and barley, straw at 9.0 ppm (PP#7E7245). The notices referenced summaries of the petitions prepared by BASF Corporation, the registrant, which are available to the public in docket ID numbers EPA–HQ–OPP–2007–0117 (PP 6E7165); EPA–HQ–OPP–2007–0214 (PP 6F7105); and EPA–HQ–OPP–2007–0906 (PP 7E7245); available at *http://www.regulations.gov*. There were no comments received in response to the April 4, 2007 or October 24, 2007 notices of filing; comments were received from a private citizen in response to the May 9, 2007 notice of filing of pesticide petition 6F7105. EPA's response to these comments is discussed in Unit IV.C.

IR–4 has withdrawn its request for a tolerance for combined residues of pyraclostrobin and its desmethoxy metabolite in or on fresh herbs; and EPA is deferring to a later date the decision regarding the proposed tolerances in or on oilseed commodities. Based upon review of the data supporting the

petitions, EPA has revised the tolerance levels for the remaining commodities. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of pyraclostrobin and its desmethoxy metabolite on avocado at 0.6 ppm; barley, grain at 1.4 ppm; canistel at 0.6 ppm; mango at 0.6 ppm; oat, grain at 1.2 ppm; oat, hay at 18 ppm; oat, straw at 15 ppm; papaya at 0.6 ppm; sapodilla at 0.6 ppm; sapote, black at 0.6 ppm; sapote, mamey at 0.6 ppm; and star apple at 0.6 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pyraclostrobin has low to moderate acute toxicity. In repeated dose oral toxicity studies, the main target organs for pyraclostrobin are the upper gastrointestinal tract (mainly the duodenum and stomach), the spleen/hematopoiesis, the immune system, and the liver. There was no evidence of increased quantitative or qualitative susceptibility of *in utero* rats or offspring following exposure to pyraclostrobin in the rat developmental or reproduction toxicity studies. There was evidence of increased qualitative susceptibility of *in utero* rabbits following exposure to pyraclostrobin in the rabbit developmental study. Increases in resorptions/litter and post-implantation losses occurred at doses that resulted in less severe maternal toxicity (decreases in body weight gain and food consumption). In both the acute and subchronic neurotoxicity studies, there were no indications of treatment-related neurotoxicity.

EPA has evaluated the carcinogenic potential of pyraclostrobin and concluded that, in accordance with the EPA's Final Guidelines for Carcinogen Risk Assessment (March 2005), pyraclostrobin should be classified into the category ''Not Likely to be Carcinogenic to Humans.'' This determination is based on no treatment-related increase in tumors in either sex of rats and mice, which were tested at doses that were adequate to assess carcinogenicity, and the lack of evidence of mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by pyraclostrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Pyraclostrobin: Human Health Risk Assessment for Proposed Uses on Oats, Oilseed Group (Canola and Flax), Plus Seed Treatment on Oats, Canola, and Flax; Tropical Fruits (Avocado, Black Sapote, Canistel, Mamey Sapote, Mango; Papaya, Sapodilla, and Star Apple); Increased Tolerance on Barley; Adding Aerial Application to Turf and Ornamentals; and Adding In-Furrow Applications to Corn, Soybean, and Sugar Beets*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2007–0906–0003 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for pyraclostrobin used for human risk assessment can be found at *http://www.regulations.gov* in the document *Pyraclostrobin: Human Health Risk Assessment for Proposed Uses on Oats, Oilseed Group (Canola and Flax), Plus Seed Treatment on Oats, Canola, and Flax; Tropical Fruits (Avocado, Black Sapote, Canistel, Mamey Sapote, Mango; Papaya, Sapodilla, and Star Apple); Increased Tolerance on Barley; Adding Aerial Application to Turf and Ornamentals; and Adding In-Furrow Applications to Corn, Soybean, and Sugar Beets* at page 21 to 23 in docket ID number EPA–HQ–OPP–2007–0003.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pyraclostrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing pyraclostrobin tolerances in 40 CFR 180.582. EPA assessed dietary

exposures from pyraclostrobin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA identified such an effect for the general population (decreased body weight gain seen after a single oral dose in the rat acute neurotoxicity study) and for females 13 to 49 years old (increased resorptions/litter and increased total resorptions seen in the rabbit developmental toxicity study that are presumed to occur after a single exposure). The aPAD for the general population has been established at 3.0 milligrams/kilogram/day (mg/kg/day); whereas, the aPAD for females 13 to 49 years old is significantly lower (0.05 mg/kg/day), due to the more sensitive endpoint on which it is based.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present at tolerance levels or for some commodities (amaranth, leafy; arugula; chrysanthemum; cress, garden; cress, upland; dandelion, leaves; fennel; parsley, leaves; radicchio; rhubarb; spinach; swiss chard; beans, dry; celery; lettuce, head; lettuce, leaf; and pea, dry) at the highest residue level found in residue field trials. One hundred percent crop treated (PCT) was assumed for all commodities in the assessment. Default processing factors were applied to all commodities except those for which experimentally-derived processing factors were available: apple juice, grape juice, citrus juices, cottonseed oil, tomato paste, tomato puree, wheat flour, and wheat germ.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that residues are present at tolerance levels in all crops except apple, broccoli, celery, collard, grape, lettuce, citrus, pepper, mustard green and tomato. EPA relied on anticipated residues (average residues from field trials) for these crops. One hundred PCT was assumed for all commodities in the assessment. Default processing factors were applied to all commodities except those for which experimentally-derived processing factors were available: apple juice, grape juice, citrus juices, tomato paste, tomato puree, wheat flour, and wheat germ.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA has concluded that pyraclostrobin is ''not likely to be carcinogenic to humans.'' Consequently, a quantitative cancer exposure and risk assessment is not appropriate for pyraclostrobin.

iv. *Anticipated residue information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA, must pursuant to section 408(f)(1) of FFDCA, require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for pyraclostrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of pyraclostrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated environmental concentrations (EECs) of pyraclostrobin for acute exposures are estimated to be 35.6 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 2.3 ppb for surface water and 0.02 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 35.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 2.3 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyraclostrobin is currently registered for the following residential non-dietary sites: Residential and recreational turfgrass. EPA assessed residential exposure using the following assumptions: Residential and recreational turf applications are applied by professional pest control operators (PCOs) only, and, therefore, residential handler exposures do not occur. There is, however, a potential for short- and intermediate-term postapplication exposure of adults and children entering lawn and recreation areas previously treated with pyraclostrobin. Exposures from treated recreational sites are expected to be similar to, or in many cases lower than, those from treated residential turf sites; therefore, a separate exposure assessment for recreational turf sites was not conducted. EPA assessed exposures from the following residential turf postapplication scenarios:

i. Adult and toddler postapplication dermal exposure from contact with treated lawns,

ii. Toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer,

iii. Toddlers' object-to-mouth transfer from mouthing of pesticide-treated turfgrass, and

iv. Toddlers' incidental ingestion of soil from pesticide-treated residential areas. The postapplication risk assessment was conducted in accordance with the Residential Standard Operating Procedures (SOPs) and recommended approaches of the Health Effects Division's (HED's) Science Advisory Council for Exposure (ExpoSAC).

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyraclostrobin and any other substances

and pyraclostrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyraclostrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for pyraclostrobin includes the rat and rabbit developmental toxicity studies and the 2–generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility of *in utero* rats or offspring following exposure to pyraclostrobin in the rat developmental and reproduction studies. In the rabbit developmental study, there was evidence of increased qualitative susceptibility of *in utero* rabbits following exposure to pyraclostrobin (increases in resorptions/litter and post-implantation losses). However, the concern is low for the qualitative susceptibility in the rabbit developmental study because: The developmental effects were seen in the presence of maternal toxicity; there are clear NOAELs for maternal and developmental toxicities; and this endpoint is used in the acute dietary (reference dose) exposure assessment for females, 13 years and older, as well as for short- and intermediate-term dermal risk assessments.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. This determination was exhaustively discussed in a prior order concerning pyraclostrobin, 72 FR 52108, 52118–52123 (September 12, 2007). In summary, the safety factor decision is based on the following findings:

i. The toxicity database for pyraclostrobin is complete.

ii. There is no indication that pyraclostrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that pyraclostrobin results in increased susceptibility in *in utero* rats in the prenatal developmental study or in young rats in the 2–generation reproduction study. Although there is qualitative evidence of increased susceptibility in the prenatal developmental study in rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of pyraclostrobin. The degree of concern for prenatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues or anticipated residues derived from reliable field trial data. Conservative ground and surface water modeling estimates were used. Similarly, conservative assumptions were used to assess post-application dermal exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by pyraclostrobin.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, EPA performed two different acute risk assessments – one focusing on females 13 to 49 years old and designed to protect against prenatal effects and the other focusing on acute effects relevant to all other population groups. The more sensitive acute endpoint was seen as to prenatal effects rather than other acute effects. For females 13 to 49 years old, the acute dietary exposure from food and water will occupy 80% of the aPAD addressing prenatal effects. As to acute effects other than prenatal effects, the acute dietary exposure from food and water to pyraclostrobin will occupy 2.4% of the aPAD for children 1 to 2 years old, the population subgroup with the highest estimated acute dietary exposure to pyraclostrobin.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyraclostrobin from food and water will utilize 48% of the cPAD for children 1 to 2 years old, the population subgroup with the highest estimated exposure and risk. Based on the use pattern, chronic residential exposure to residues of pyraclostrobin is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraclostrobin is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyraclostrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 200 for adults and 100 for children, 1 to 2 years old. The aggregate MOE for adults is based on the residential turf scenario and includes combined food, drinking water and post-application dermal exposures. The aggregate MOE for children includes food, drinking water, post-application dermal and incidental oral exposures from entering turf areas previously treated with pyraclostrobin.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraclostrobin is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for pyraclostrobin. Since the endpoints and points of departure (NOAELs) are identical for short- and intermediate-term exposures, the

aggregate MOEs for intermediate-term exposure are the same as those for short-term exposure (200 for adults and 100 for children, 1 to 2 years old).

5. *Aggregate cancer risk for U.S. population*. EPA has classified pyraclostrobin into the category ''Not Likely to be Carcinogenic to Humans.'' Pyraclostrobin is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyraclostrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a liquid chromatography/mass spectrometry (LC/MS/MS) method (BASF Method D9808), and a high performance liquid chromatography using untraviolet detection (HPLC/UV) method (BASF Method D9904)) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (MRLs) for residues of pyraclostrobin, *per se*, at 0.5 ppm in or on oats and barley and at 0.05 ppm in or on papaya. The U.S. tolerance levels on these commodities are higher than the corresponding CODEX MRLs because the U.S. tolerances, unlike the Codex MRLs, include both pyraclostrobin and its desmethoxy metabolite.

C. Response to Comments

EPA received comments from a private citizen in response to the notice of filing of several pesticide petitions (including PP 6F7105; docket ID number EPA–HQ–OPP–2007–0214) which was published in the **Federal Register** on May 9, 2007 (72 FR 26372–26375) (FRL–8121–5). Although none of the comments specifically addressed pyraclostrobin, the commenter expressed concerns generally about the testing of pesticides, their toxicity (including potential carcinogenicity), residues in food and potential effects on bees. Comments received contained no scientific data or other substantive evidence to rebut the Agency's finding that there is a reasonable certainty that no harm will result from aggregate exposure to pyraclostrobin from the establishment of these tolerances. The Agency has received these same or similar comments from this commenter on numerous previous occasions. Refer to the **Federal Register** of June 30, 2005 (70 FR 37686) (FRL–7718–3), Janaury 7, 2005 (70 FR 1354) (FRL–7691–4), and October 29, 2004 (69 FR 63096–63098) (FRL–7681–9) for the Agency's previous responses to these objections. In response to the commenter's question about potential effects on bees, EPA would note that the environmental effects of a pesticide are considered in the registration process for pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*.

D. Changes to Proposed Tolerances

Based upon review of the data supporting the petitions, EPA has modified the proposed tolerances as follows: (1) Revised the tolerance levels for oat, grain from 1.0 ppm to 1.2 ppm; oat, hay from 17 ppm to 18 ppm; and oat, straw from 17 ppm to 15 ppm; (2) decreased the tolerances for avocado, canistel, mango, papaya, sapodilla, sapote (black and mamey) and star apple from 0.7 ppm to 0.6 ppm; and (3) revised the barley, grain tolerance from 1.3 ppm to 1.4 ppm and determined that the existing tolerance of 6.0 ppm for barley, straw is adequate and should not be raised to 9.0 ppm, as proposed by IR–4. EPA made these changes based on analyses of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data.

V. Conclusion

Therefore, tolerances are established for combined residues of pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite; methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenylcarbamate, in or on avocado at 0.6 ppm; barley, grain at 1.4 ppm; canistel at 0.6 ppm; mango at 0.6 ppm; oat, grain at 1.2 ppm; oat, hay at 18 ppm; oat, straw at 15 ppm; papaya at 0.6 ppm; sapodilla at 0.6 ppm; sapote, black at 0.6 ppm; sapote, mamey at 0.6 ppm; and star apple at 0.6 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 18, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.582 is amended in the table in paragraph (a)(1) by revising the tolerances for ''barley, grain'', ''mango'' and ''papaya''; removing the footnote; and alphabetically adding new commodities to read as follows:

180.582 Pyraclostrobin; tolerances for residues.

(a)* * * (1)* * *

Commodity	Parts per million
* * * * *	
Avocado	0.6
* * * * *	
Barley, grain	1.4
* * * * *	
Canistel	0.6
* * * * *	
Mango	0.6
* * * * *	
Oat, grain	1.2
Oat, hay	18
Oat, straw	15
Papaya	0.6
* * * * *	
Sapodilla	0.6
Sapote, black	0.6
Sapote, mamey	0.6
* * * * *	
Star apple	0.6
* * * * *	

* * * * *

[FR Doc. E8–5893 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 27, 54, 73, and 76

[CS Docket No. 07–148; FCC 08–56]

DTV Consumer Education Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules requiring industry to participate in a coordinated, nationwide, consumer outreach campaign. Despite extensive consumer outreach efforts by the Commission and others, a large percentage of the public is not sufficiently informed about the DTV transition. The rules in this item will ensure that the full benefits of the transition are realized and experienced by consumers.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Lyle Elder, *Lyle.Elder@fcc.gov*, or Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order in MB Docket No. 07–148, FCC 08–56, adopted February 19, 2008 and released March 3, 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

This document was analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13 and contains new and modified information collection requirements, including the following: (1) Broadcasters must provide information to their viewers about the DTV transition, and must report those efforts to the Commission and the public; (2) MVPDs must provide monthly notices about the DTV transition in their customer billing statements; (3) manufacturers of television receivers and related devices must provide notice to consumers buying their devices of the transition's impact on that equipment; (4) DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts; (5) ETCs that receive federal universal service funds must provide notice of the transition to their low income customers and potential customers; and (6) the winners of the 700 MHz spectrum auction will be required to report their consumer education efforts. The information collection requirements contained in this Report and Order will be submitted to the Office of

Management and Budget (''OMB'') for review under Section 3507(d) of the PRA. The Commission will seek OMB approval for these information collection requirements and forms in accordance with OMB's emergency processing rules. The Commission will publish a separate **Federal Register** Notice seeking comments from OMB, the general public, and other Federal agencies on the final information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, we will also seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees'' in the **Federal Register** Notice seeking comment on the information collections.

Summary of the Report and Order

I. Introduction

1. As discussed below, in this Report and Order we adopt several proposals relating to consumer education about the digital television (''DTV'') transition. As the Nation's full-power television stations transition from analog broadcast television service to digital broadcast television service, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrum available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer understanding of the benefits and mechanics of the transition. The Congressional decision to establish a hard deadline of February 17, 2009, for the end of full-power analog broadcasting has made consumer awareness even more critical.

2. As explained in more detail below, we thus impose the following requirements in this Order. First, broadcasters must provide on-air information to their viewers about the DTV transition, by compliance with one of three alternative sets of rules, and must report those efforts to the Commission and the public. Second, multichannel video programming distributors (MVPDs) must provide monthly notices about the DTV transition in their customer billing statements. Third, manufacturers of television receivers and related devices must provide notice to consumers of the transition's impact on that equipment. Fourth, DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts. Fifth, companies participating in the Low Income Federal Universal Service Program must provide notice of the transition to their low income customers and potential customers. Sixth, the winners of the 700 MHz spectrum auction must report their consumer education efforts. Finally, we offer our assistance to the National Telecommunications and Information Agency (NTIA) in policing and enforcing the requirements of the digital converter box retail program. We find that these requirements are necessary to ensure that the American public is adequately prepared for the full-power digital transition, but that they will no longer be necessary after the full-power transition is fully complete. This Order therefore provides that these requirements will be in place for a limited time only.

II. Background

3. Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. As the National Consumers League describes it, ''[t]he transition to DTV is probably the most significant event for television-viewers since the invention of television itself. It is crucial for people to be aware of the change, understand its impact, and be able to make sound choices.'' We agree, and the Commission has been actively engaged in DTV consumer education and outreach efforts since before the establishment of the hard full-power transition deadline. Our longstanding and ongoing efforts include a wide range of activities, both completed and planned. For instance, the Chairman recently announced the creation of a DTV Task Force, formalizing the relationships among the numerous Offices and Bureaus involved in the transition. The goal of the Task Force is to facilitate a smooth transition that minimizes the burdens on consumers while maximizing their opportunities to benefit from it. As an extension of existing coordination efforts, the Task Force will: meet regularly to discuss and direct ongoing DTV transition efforts, coordinate with other federal agencies, shares ideas, and address any problems that arise or appear imminent. The members of the Task Force will also meet regularly with various stakeholders from industry and federal, state, local, and tribal governments.

4. Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, recently wrote to the Commission to express interest in the pace and scope of consumer education about the full-power transition. As the Congressmen observed, ''the Commission is particularly well suited to lead this effort given its existing expertise and resources.'' They proposed a number of specific actions that they believe the Commission should take. As discussed above, many of these recommendations are already being actively pursued by the Commission. The Commission released a Notice of Proposed Rulemaking on July 21, 2007 requesting comment on the best means of creating a coordinated, national DTV consumer education campaign. Comments were due September 17, 2007 and reply comments were due October 1, 2007. We reviewed over 30 comments, 6 reply comments, and over 100 ex parte presentations and comments from a wide range of sources, including individuals, trade associations, broadcasters, and nonprofits.

III. Discussion

5. Insofar as the actions referenced in the Letter require regulatory action by the Commission, we adopt those proposals. As a general matter, it suggests that ''the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign.'' We agree that the Commission should take whatever steps we can to promote a coordinated, national DTV consumer education campaign. Some industry commenters have objected to these requirements on the ground that the Commission has insufficient statutory authority to implement them. These objections are discussed in more detail below. As Telecommunication for the Deaf and Hard of Hearing, et al. observe, we have broad authority to require educational outreach efforts concerning the DTV transition. The Commission is statutorily required to promote the orderly transition of full-power stations from analog to digital television, and we have exercised that mandate to, among other things, prevent the continued importation and interstate shipment of analog-only sets and to require retailers to label those analog-only sets they continue to legally sell. Our statutory authority allows us to facilitate the transition by adopting rules requiring the dissemination of essential information about the transition.

6. There is a clear and compelling need for educational efforts directed toward consumers. As APTS found in its most recent quarterly consumer survey on the DTV transition, a majority of Americans do not fully understand the transition. Moreover, as the Commission's Consumer Advisory Committee (CAC) points out, a substantial number of Americans have not yet made the switch to digital. By the end of 2007, it was expected that only one-third of households would have a digital television. Of households that rely on over-the-air (OTA) broadcasts, only seven percent own a digital television. Furthermore, the households that principally rely on OTA broadcasts are the most vulnerable and arguably the most difficult to reach; almost half have annual incomes of less than $30,000, and two-thirds are headed by someone over 50 years of age or someone for whom English is a second language. Thus, we must take immediate and effective action to ensure that viewers are informed of the effect that the full-power digital transition will have on them and the options that are available to them to make the transition to digital television without losing full-power television service. This Order focuses on actions that television broadcasters, MVPDs, telecommunications carriers, retailers, and manufacturers must take to inform consumers about the transition. Nonetheless, because of the national importance of this issue, we also strongly encourage radio broadcasters to engage in efforts to educate and inform their listeners. Such efforts could be an important complement to consumer outreach by other public and private sector groups between now and the transition.

A. Broadcaster Education and Reporting

7. The National Association of Broadcasters (NAB) and other broadcast industry commenters have argued that there is a public interest benefit in preserving some flexibility on the part of broadcasters to serve the needs of viewers in their widely divergent communities, and we agree. We therefore adopt rules that give both commercial and noncommercial broadcasters a choice of education and reporting requirements. Furthermore, we acknowledge that the ongoing educational efforts of industry have made a notable impact on consumer awareness, and anticipate continuing effective and creative measures from the industry to increase viewer awareness of the full-power digital transition. As discussed throughout this *Order,* we find a broad-based consumer education mandate essential given the importance of consumer awareness to the digital transition, but we will allow broadcasters the flexibility to choose which of these different plans to follow.

8. Although the sets of requirements are distinct, we find that they each entail a similar level of commitment and engagement on the part of broadcasters. Where the first option calls for more frequent PSAs, the second calls for longer ones, and the third for the same total amount of education with less restriction on length. Where the first and third options allow for PSAs in specified parts of the day, the second option requires greater focus on the hours when most viewers tune in. Where the first option does not require any long educational messaging, the second and third mandate a 30 minute program dedicated to in-depth education. Where Option One requires a set number of crawls, Option Two allows broadcasters to use a variety of in-program messaging techniques to inform viewers, and Option Three requires only PSAs and longer messages. While Options One and Three do not directly address special additional education measures during the final months of the full-power transition, Option Two is more comprehensive in its focus on alternative approaches. All plans require quarterly reporting of both mandatory and voluntary outreach and education efforts. This will allow the Commission not only to monitor compliance, but also to stay informed of the creative approaches being taken by disparate broadcasters all over the country, and continue to serve in its role as the primary transition educator and coordinator of transition education efforts.

9. The Commission's education requirement will go into effect upon the effective date of the rules. Every full-power commercial broadcaster must participate in option One or Two, and noncommercial broadcasters must participate in option One, Two, or Three. Whichever Option is elected, every broadcaster must conduct consumer outreach and education pursuant to that set of rules. Under each of the options, broadcasters must report on its educational and outreach activities by filing Form 388 with the Commission and placing it in the station's public file. Each broadcaster will elect the option with which it will comply no later than the first reporting deadline under the plans, by noting its chosen plan when it first files Form 388. Failure to comply with either the education or reporting requirements under any Option may result in enforcement action.

1. Broadcaster Education Option One

a. Option One Consumer Education Requirements

10. Broadcasters who opt to comply with this option will be required to regularly air a mix of PSAs and crawls, with increasing frequency as the full-power transition approaches, that explain the various important issues of the full-power transition and explain how viewers can find more information. Specifically, a station must air one transition PSA, and run one transition crawl, in every quarter of every day. This requirement applies separately to a station's analog channel and its primary digital stream. This requirement will increase to two PSAs and crawls per quarter per day on April 1, 2008, and to three of each on October 1, 2008. For the purposes of these education requirements, each broadcast day can be broken into four quarters; 6:01 a.m. to 12 p.m., 12:01 p.m. to 6 p.m., 6:01 p.m. to 12 a.m., and 12:01 a.m. to 6 a.m. Stations are required to air PSAs or crawls at various times in any given day part, and we expressly require that at least one PSA and one crawl per day be run during primetime hours. For the purposes of this item, ''primetime'' is defined as the hours between 8 p.m. and 11 p.m. in the Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain and Central time zones. We expect that broadcasters will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. In addition, we require that the transition PSAs be closed-captioned regardless of their duration, notwithstanding the exemption in 79.1(d)(6).

11. These requirements will expire for most broadcasters on March 31, 2009. This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009 will be required to continue its education efforts until its request for extension has been withdrawn or denied, or until a granted extension has expired. We will increase these requirements if we find, based on the overall progress of DTV consumer

education, that it is necessary to revise the frequency, content or duration of the PSAs or crawls on a station-by-station basis, for a particular region, or for the country as a whole.

12. Crawls must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area, and be provided in the same language as a majority of the programming carried by the station. Although we do not dictate the exact content of the crawls, we find that, over the 60 second duration, they must repeat a message that conveys the following information:

- On February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may lose the signal being viewed unless the viewer takes action.
- That viewers can get more information by telephone or online, and how to do so.

The crawl may also, at the broadcaster's discretion, provide other information, such as, for example, contact information for the DTV Transition Coalition.

13. Required PSAs must be at least 15 seconds. Each PSA must provide, at a minimum, the same information as required for crawls, above. We acknowledge the creativity of the private sector, as noted by SBA, and do not mandate the form of PSAs other than to require that, over the course of a broadcaster's education campaign, they give more detail about the following subjects:

- What a viewer needs to do to continue watching the station, whether they are an OTA viewer or receive broadcast signals via their MVPD, and
- Where appropriate, specific details about the station's transition: for example, shifts in service area, channel numbering changes, the addition of multicast and/or High Definition channels, timing, etc.

14. Additionally, on-air outreach must contain no misleading or inaccurate statements. We do not limit stations to these efforts. For example, certain stations may find that additional PSAs in languages other than those in which a majority of their programming is presented would be beneficial to their viewers; for other stations, multilingual announcements may not be needed. Stations are free to use PSAs provided by outside sources such as NAB or networks, so long as their overall campaign touches on all the elements relevant to their particular transition. The flexibility of the rules we adopt today makes clear that we are focusing on Congress's command to promote an orderly full-power transition.

15. The Letter suggested that the Commission consider using its regulatory authority to ''require television broadcasters to air periodic public service announcements and a rolling scroll about the digital transition.'' We note that although the Letter refers to ''scrolls,'' commenters (including AARP, NAB, and APTS) understood this to refer to what in the closed captioning context we have called a ''crawl.'' Indeed, the National Hispanic Media Coalition, which strongly supports PSA requirements and calls for ''Y2K-level consumer education efforts,'' opposes vertical scrolls as unnecessary. Comments of NHMC at 3. For the sake of consistency and to reflect the generally understood intent of the proposal, we use the term ''crawl'' here. We have adopted this requirement, while giving broadcasters significant latitude to determine the best way to present the essential information on the timing and nature of the full-power transition and how to continue receiving the station's programming throughout and after the transition.

16. Most of the commenters who commented on this issue agreed with the Commission that broadcast consumer education efforts are the best way to reach viewers who will be most affected by the full-power transition, particularly those who rely primarily or exclusively on OTA television. For example, one commenter states that PSAs should be the ''primary focus for transition education efforts,'' and that an education program including PSAs must be mandated to ensure public education ''in a timely manner.'' It is also important not to simply rely on one form of on-screen education or the other. Crawls and PSAs convey information very differently, and reach different groups of people as a result. Given the growing use of personal video recorders and other devices that can be used for time-shifting and commercial skipping, many consumers might not be reached by education efforts, such as PSAs, that air only during programming breaks. At the same time, a crawl can not reach those viewers whose eyesight is not strong enough to read its comparatively small print, or who are not able to read at all. Using both methods will ensure that education efforts reach more viewers. Broadcaster commenters are generally in agreement regarding the importance of their role in consumer education; for instance, Entravision, a Spanish language broadcaster, supports mandatory PSAs. Even those broadcasters who oppose regulation in this matter say that, regardless of our decision here, they plan to engage in consumer outreach and education that ''far exceed any requirements the FCC could or should impose,'' because ''the ability to reach every household is the foundation of broadcast television's public interest and operational success.'' A wide array of broadcaster activity is promised not just in this Commission docket, but also in testimony to Congress.

17. Despite commendable pledges by organizations like the State Broadcasters Association (SBA) and the National Association of Broadcasters (NAB), we find that regulatory action is the only way to ensure a sustained, nationwide, station-by-station effort. As the Benton Foundation observes, these organizations have no power to bind individual stations. We acknowledge and appreciate the leadership and coordination efforts of NAB, and anticipate continuing to work with it on additional voluntary efforts. At the same time, we are convinced that DTV consumer education needs to be a nationwide station-by-station effort. As SBA says, consumer education is ''critical'' because interruption of broadcast service to even a single home is ''unacceptable.'' Our rules will ensure that the critical need for education is met in every market. NAB and APTS both argue that we can simply rely on the interests of all broadcasters in preserving their over-the-air audience, and that we therefore need not require any broadcaster education efforts. While we agree that broadcasters have every incentive to prepare their viewers for the transition, a ''baseline requirement'' is necessary to ensure the public awareness necessary for a smooth and orderly transition. We have adopted NAB's proposal as an alternative method by which stations can meet this baseline requirement. As the Commission's Consumer Advisory Committee points out, there will be a number of contrary pressures on local broadcasters over the next 12 months. For example, it is possible that the viewers most likely to be left behind due to an insufficient educational effort are the ones least demographically attractive to advertisers. Finally, potential advertising revenue from such sources as presidential and other political campaigns may make it tempting, in the short run, not to devote advertising time to transition education.

18. APTS suggests that public television stations be exempt from any requirements because they have a good track record of informing the public and because they are limited in the time they have to air public service announcements. We disagree because the rules we impose are designed to

complement efforts such as APTS'; if broadcasters are already engaging in these efforts, the rules will not be a burden. However, as with commercial stations, we have given noncommercial broadcasters the option to comply with our requirements via an alternative route.

19. *Statutory Authority.* The National Association of Broadcasters, alone among commenters, argues that the Commission does not have statutory authority to require that broadcasters inform their viewers of the full-power broadcast digital television transition. NAB argues that Section 326 of the Act, prohibiting us from interfering with the right of free speech by broadcasters, prevents us from acting here absent a grant of authority that specifically mentions DTV consumer education PSAs and crawls. We disagree. As discussed more fully in Section G, below, our actions here do not constitute an improper restriction on speech. NAB also asserts an artificially narrow conception of the Commission's statutory authority when it argues that we cannot act without a ''specific statutory provision authorizing required PSAs and crawls, including content thereof.'' As noted above, Congress both mandated the digital transition and vested the Commission with the power to ''prescribe such regulations as may be necessary for the protection of the public interest, convenience, and necessity'' in connection with the digital transition.

20. Finally, broadcast licensees have a statutory obligation to ''serve the public interest, convenience, and necessity.'' One can scarcely conceive a situation more illustrative of the ''necessity'' prong of this duty than the instant case, where certain viewers will cease having access to full-power broadcast services transmitted over the public airwaves on a date certain absent concerted informational efforts. There simply can be no national full-power digital broadcast transition if the very people who rely on broadcast television are unaware of it. As NAB acknowledges, ''[t]he future of free-over-the-air television depends upon a smooth transition. * * * For this to happen, the American public must understand what all-digital broadcasting means for them.''

21. Broadcasters must take some responsibility for educating the public that they are bound to serve. If a blizzard hits Chicago on February 18, 2009, all over-the-air viewers should be able to turn on their television and receive emergency information without missing a beat. Educating viewers so that they have access to digital transmissions is a keystone of the transition which the FCC is statutorily required to effectuate, and broadcasters must play a central role in that process. In reviewing other regulations designed to advance the digital transition, the D.C. Circuit held in *Consumer Electronics Ass'n* v. *FCC* that ''[g]iven Congress' instruction to end analog broadcasts * * * and the Commission's finding that [current trends were not such that the public would be ready for the transition], * * * the Commission reasonably determined to take action * * * so that the DTV transition may move at the pace required by Congress.'' As in *CEA,* we must take action to ensure the orderly transition of broadcast service to digital and we have the statutory authority to do so.

22. Finally, the imposition here is similar to existing requirements for broadcaster station identification and broadcast of license renewal notices. The change from analog to digital broadcasting is at least as fundamental to the operation of a station as the possession of a broadcast license, and of more practical import to viewers. Given the extremely minimal requirements for producing a compliant PSA or crawl and the indispensable role that television stations must play in educating their viewers in how they can continue to have access to full-power television service after the transition, it does not avail NAB to claim that these public notices are fundamentally different from other broadcast notice requirements because they are ''furthering a government policy.''

23. The Commission, in a similar context, enforced broadcaster public interest obligations by requiring digital television stations to participate in the emergency alert system (''EAS''). In that proceeding, NAB agreed with the Commission that participation in EAS was a natural extension of broadcaster public interest obligations. The order noted that exemption from this requirement would not be in the public interest. It also noted that if participation in the Emergency Alert System were voluntary, some communities could be left without an EAS source, and such messages are too important to risk missing ''because a person is tuned to the wrong channel.'' Similarly, in the case of the transition, an exemption from consumer education is contrary to the public interest because the public has a right to know how televisions will function after February 17, 2009. A voluntary program is inadequate because transition information is too important to risk that some viewers will lack the necessary information because the licensee serving them fails to provide that information in a timely fashion. If viewers see a blank screen on February 18, 2009 because they were not informed about the actions they needed to take to continue receiving television programming, they will effectively be deprived of access to all OTA television service—including EAS. The Commission imposed a similar requirement upon broadcasters pursuant to the Children's Television Act (''CTA'').

b. Option One Reporting Requirements

24. A broadcaster choosing to comply with Option One will be required to electronically report its consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster's public file and, if the broadcaster has a public Web site, on that Web site. These reports will be made available on the Commission's Web site in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option One complete Form 388 and file it electronically in this docket (07–148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station's public inspection file by that same date. Because of the limited duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station's final quarter of mandated educational efforts, will be filed no later than April 10, 2009 for most stations. Stations that are required to continue educational efforts beyond March 31, 2009 must also continue to file these quarterly reports, up to and including the final quarter in which they have active educational requirements.

25. The Letter suggested that the Commission consider requiring ''broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance.'' It also suggested that the Commission consider imposing ''interim requirements for detailing a broadcaster's consumer education efforts in the required local public inspection file, such as by including coverage about the digital transition in the issues/programs list compiled every three months or by making announcements in local newspapers or on-air similar to public notice requirements for new stations or license renewal.''

26. Broadcasters generally oppose this reporting requirement. As discussed above, broadcaster education efforts are a central part of consumer education concerning the transition. We require reporting to enforce these consumer education initiatives and ensure that the necessary efforts are underway. As the National Hispanic Media Coalition observes, ''[t]here is no satisfactory alternative to this reporting.'' As with the Children's Television Programming requirements, self-reporting allows broadcasters to verify for themselves that they are fulfilling their obligations. Furthermore, because of the importance of these education requirements and the relatively short time frame of the full-power transition, the Commission needs to be able to monitor compliance with and enforce those obligations in a way that is not prohibitively cost- and time-consuming. Self-reporting is the most effective way to do this.

27. As to the form and format of the reports, the AARP and others take the position that the reports should include detailed information about each airing of a PSA and its content, and should be filed quarterly. The Benton Foundation suggests that the reports be filed in electronic form, and also be placed in the broadcaster's public file. As noted, we decline to require a specific format, but all of the above information must be included.

28. Given our statutory authority to require the PSAs and crawls, as discussed above, we also have authority to require broadcasters to document and report their compliance efforts. We have statutory authority under the Communications Act to require broadcasters to provide information about their programming to the public and the Commission. Providing information to the public about their transition education efforts will make broadcasters more accountable for their public interest obligation to promote the continued availability of free television programming and ensure a smooth transition. Sections 303(r) and 4(i) of the Communications Act provide ample authority for the reporting requirement because providing this information will help us ensure broadcasters are acting as public trustees and the Commission is fulfilling its duty to oversee the full-power transition. In addition, section 4(k) of the Communications Act expressly authorizes the Commission to collect information and data ''as may be considered of value in the determination of questions connected with the regulation of interstate * * * radio communication and radio transmission of energy'' to assist the Congress in its normal oversight responsibilities. Determining whether the American public is adequately informed and educated about the full-power DTV transition is of significant concern to Congress, and the reporting requirements will assist the Commission in gathering this important information. In addition, these reporting requirements are ''necessary for the protection of the public interest, convenience, and necessity'' in connection with the digital transition because they will assist the Commission in assessing consumer understanding of the transition and in determining whether adjustments to the educational efforts must be made. Further, without broadcasters reporting their efforts, the public and the Commission will be unable to determine at renewal time whether stations have complied with the consumer education rules. Indeed, these requirements are similar to the long-standing issues/programs list requirements which require stations to list every three months their programs that have provided the most significant treatment of community issues and retain these lists in their public file. As with on-air identifiers, our broad authority under the Communications Act to carry out the public interest requirement permits us to have broadcasters provide public service announcements to effectuate the public interest standard. Although we have not previously required broadcasters to air public service announcements, we have required stations to broadcast certain on-air announcements, to give public notice in a local newspaper for certain broadcast applications, and to make available certain information in a public file.

29. Similarly, the Commission's First Report and Order pursuant to the Children's Television Act (''CTA'') relied on the authority cited above and the Commission's authority to enforce the public interest obligations of broadcasters to impose upon broadcasters mandatory quarterly children's programming reporting requirements. Here, the reporting requirement is much more lenient, as it is for a finite period of time.

2. Broadcaster Education Option Two

a. Option Two Consumer Education Requirements

30. We find that the record also supports permitting broadcasters to choose to comply with our rules by following the alternative plan offered by the National Association of Broadcasters. Under this option, a broadcaster must air an average of sixteen transition PSAs per week, and an average of sixteen transition-related crawls, snipes, and/or tickers per week, over each quarter through the transition period between 5 a.m. and 1 a.m. No PSAs or crawls, snipes, and/or tickers aired between the hours of 1 a.m. and 5 a.m. will qualify as compliant for the purposes of these education requirements. Over the course of each calendar quarter, one fourth of all PSAs and crawls, snipes, and/or tickers must air between 6 p.m. and 11:35 p.m., Eastern and Pacific, and between 5 p.m. and 10:35 p.m., Central and Mountain. These requirements will expire for most broadcasters on March 31, 2009. This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009 will be required to continue its education efforts until their request for extension has been withdrawn or denied, or until a granted extension has expired. This requirement applies separately to a station's analog channel and its primary digital stream. As with broadcasters electing Option One, we expect that broadcasters electing Option Two will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. And, as under Option One, these transition PSAs must be closed-captioned. Stations are free to use PSAs produced in-house or provided by outside sources such as NAB or the networks.

31. Required PSAs must be at least 30 seconds in length. A broadcaster may, however, choose to air two PSAs of no less than 15 seconds in length in place of a single PSA of at least 30 seconds in length. Stations will also air at least one 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009.

32. Beginning on November 10, 2008, all stations must begin a 100-Day Countdown to the full-power transition. During this period, each station must air at least one of the following per day:

- *Graphic Display.* A graphic super-imposed during programming content that reminds viewers graphically there are ''x number of days'' until the full-power transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length

of time will vary from 5 to 15 seconds, at the discretion of the station.

• *Animated Graphic.* A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are ''x number of days'' until the full-power transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

• *Graphic and Audio Display.* Option #1 or option #2 with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

• *Longer Form Reminders.* Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an ''Ask the Expert'' segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The length of these segments will vary from 2 minutes to 5 minutes, at the discretion of the station (Some stations may also choose to include during newscasts DTV ''experts'' who may be asked questions by the anchor or reporter about the impending February 17, 2009 deadline).

b. Option Two Reporting Requirements

33. We also find that the record supports a requirement that broadcasters electing Option Two electronically report their consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster's public file, just as under Option One. These reports will be made available on the Commission's Web site in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option Two complete Form 388 and file it electronically in this docket (07–148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station's public inspection file by that same date. Because of the short remaining duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station's final quarter of mandated educational efforts, will be filed no later than April 10, 2009 for most stations. Stations that are required to continue educational efforts beyond March 31, 2009 must also continue to file these quarterly reports up to and including the final quarter in which they have active educational requirements.

3. Broadcaster Education Option Three

a. Option Three Consumer Education Requirements

34. This option is open only to noncommercial broadcasters. We find that the record also supports permitting some broadcasters to choose to comply with our rules by following the alternative plan offered by the Association of Public Television Stations. Under this option, a broadcaster must air 60 seconds per day of on-air consumer education, in variable timeslots, including at least 7.5 minutes per month between 6 p.m. and 12 a.m. Beginning May 1, 2008, this requirement doubles, and beginning November 1, 2008, it increases again, to 180 seconds per day and 22.5 minutes per month between 6 p.m. and midnight. The transition PSAs must be closed-captioned. These requirements will expire for most broadcasters on March 31, 2009. Stations will also air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009. This requirement applies separately to its analog channel and its primary digital stream. As with broadcasters electing Option One, we expect that broadcasters electing Option Three will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. Stations are free to use PSAs produced in-house or provided by outside sources such as NAB or the networks. And, as under Option One, these transition PSAs must be closed-captioned.

b. Option Three Reporting Requirements

35. We also find that the record supports a requirement that noncommercial broadcasters electing Option Three electronically report their consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster's public file, just as under Option One. These reports will be made available on the Commission's Web site in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option Three complete Form 388 and file it electronically in this docket (07–148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station's public inspection file by that same date. Because of the short remaining duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station's final quarter of mandated educational efforts, will be filed no later than April 10, 2009 for most stations. Stations that are required to continue educational efforts beyond March 31, 2009 must also continue to file these quarterly reports up to and including the final quarter in which they have active educational requirements.

4. Low-Power, Class A, and Translator Stations

36. Low-power (LP) broadcast stations are not required to cease broadcasting in analog as of February 17, 2009. Although some already have or plan to independently transition to digital-only broadcasting, many of these stations will continue to broadcast in analog after the conclusion of the full-power transition. Thus, many consumers may receive some programming in digital and some programming in analog after the transition date. Those consumers with analog televisions who are reliant on over-the-air broadcasting will need to acquire a digital to analog converter box to continue watching television after the transition. Recently, concerns have been raised, by the Community Broadcasters Association among others, about the fact that the majority of Coupon Eligible Converter Boxes (CECBs) certified by NTIA are not capable of ''passing through'' analog signals from the antenna to a connected set. As a result, LP stations (including Class A and translator stations) that continue to broadcast in analog will not be viewable to OTA viewers who rely on a converter box, unless they use one of the boxes with pass-through capability.

37. This issue was raised before the Commission after the record in this rulemaking had closed, and we therefore do not have a record on it. Accordingly, we have an insufficient basis upon which to adopt consumer education requirements relating to this issue in the instant proceeding. Nonetheless, given that converter boxes are already on the shelves of many retailers, and coupons are in the process of being mailed to consumers, we recognize the urgency of the problem for those consumers who may have difficulty viewing these low power stations. We therefore urge all LP broadcasters, but particularly those that plan to continue analog-only broadcasting, to immediately begin educating their viewers about this issue. For instance, such stations could notify their viewers that (1) they are watching a low-power broadcast station that,

unlike full-power stations, may continue to offer analog service after February 17, 2009, and (2) viewers who plan to purchase a converter box in order to view digital signals should buy a model with analog pass-through capability in order to continue watching that station. The LP station could direct viewers to the NTIA converter box coupon program, and in particular the NTIA listing of certified converter boxes. In addition, NTIA will mail a list of current coupon-eligible converter boxes, noting with an asterisk those that have analog pass-through capability, to each household that receives converter box coupons. We also urge industry and our private and public sector partners to do what they can to educate consumers generally about this situation, and to assist in the effort to ensure that no American loses a signal due to the transition.

B. Multichannel Video Programming Distributor Customer Bill Notices

38. We will require that all MVPDs (*e.g.*, DBS carriers, cable operators, open video system operators, private cable operators, etc.) provide notice of the full-power DTV transition to their subscribers in monthly bills or billing notices. To the extent that a given customer does not receive paper versions of either a bill or a notice of billing, that customer must be provided with equivalent monthly transition notices in whatever medium they receive information about their monthly bill. The notice must be provided as a ''bill stuffer'' or as part of an information section on the bill itself. It must be noticeable, and state that on February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may be unable to display full-power broadcast programming unless the viewer takes action. It must also note that viewers can get more information by going to *http://www.DTV.gov* or calling the MVPD at a number provided, and more information about the converter box program by going to *http://www.dtv2009.gov* or calling the NTIA at 1–888–DTV–2009. The notice may also, at the MVPD's discretion, provide contact information for the DTV Transition Coalition. The message should be provided in the same language or languages as the bill, and explain clearly what impact, if any, the transition will have on the subscriber's access to MVPD service. For example, DBS carriers must provide additional notice to all subscribers who do not receive local broadcast signals via satellite. This additional notice would explain the steps that these subscribers would need to take to continue receiving broadcast signals, in particular the necessary steps if the subscriber relies on a tuner integrated into the DBS carrier's set-top box. The most important information may be to note that sets not connected to an MVPD service may need additional equipment (i.e. converter box) or may have to be replaced. MVPDs must begin including these monthly notices 30 days after the effective date of the rules and must continue including them monthly through March 2009. Beginning approximately one year before the full-power transition and running through March 2009 ensures that subscribers will be exposed to educational messages throughout the remainder of the transition, and will have sufficient opportunity to act on them.

39. The Letter suggested that the Commission consider requiring, ''as a license condition or through customer service or other consumer protection or public interest requirements, all multichannel video programming distributors (MVPDs) to insert periodic notices in customer bills that inform consumers about the digital television transition and their customers' future viewing options, with civil penalties for noncompliance.'' These notices would go to all MVPD subscribers and provide them with information about the full-power transition generally and about how it will affect their service specifically. The New York State Consumer Protection Board is primarily concerned that MVPD subscribers understand what effects, if any, the transition will have on their service. The Benton Foundation not only supported this proposal, as ''an optimal way to reach consumers that value television service,'' but also proposed a requirement that MVPDs run PSAs themselves. The National Cable and Telecommunications Association states in its comments that the cable industry has not only committed to exceed the Commission's proposal, but those of the commenters. The cable industry has committed to include DTV transition notices in subscriber bills, on a monthly basis beginning in 2008. Indeed, these commitments have been made not only to the Commission, but also to the Commerce Committees of both the U.S. House of Representatives and the U.S. Senate. NCTA argues that, given these commitments, the Commission should not impose any requirements for MVPD DTV education efforts.

40. Of course, we welcome the efforts of NCTA and its members. We note, however, that the commitments of NCTA do not bind its member cable operators, and that, of course, it does not speak for all MVPDs. DIRECTV and EchoStar, while pledging active education efforts both for their subscribers and for OTA viewers state that they have no plans to provide periodic notices with bills. Verizon, similarly, opposes the use of notices in bills, on the grounds that they would be expensive, ineffective, and potentially counterproductive. We disagree with Verizon because the overall record in this proceeding indicates that bill notices would contribute significantly to consumer education efforts. Such notices would reach viewers who are engaged with television viewing and well positioned both to act on the information regarding any OTA sets they may have and to serve as a source of information for others.

41. Several industry commenters object that the Commission does not have statutory authority to impose the notice requirement. We conclude, however, that we have ancillary authority to adopt notice requirements for Multichannel Video Programming Distributors under Titles I, III, and VI of the Communications Act of 1934, as amended (''Act''). Courts have long recognized that, even in the absence of explicit statutory authority, the Commission has authority to promulgate regulations to effectuate the goals and provisions of the Act if the regulations are ''reasonably ancillary to the effective performance of the Commission's various responsibilities'' under the Act. The Supreme Court has established a two-part ancillary jurisdiction test: (1) The subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act; and (2) the regulation must be reasonably ancillary to the Commission's statutory responsibilities. The requirements we adopt here regulate the disclosure obligations of companies providing services that fall within the Commission's jurisdiction under Titles I, III, and VI, advance our statutory obligation to promote the digital transition, and serve the public interest. We conclude, therefore, that we have ancillary jurisdiction to adopt DTV transition notice requirements in this proceeding.

42. For the most part, commenters do not argue that the Commission lacks jurisdiction over either the DTV transition or MVPDs. Rather, they argue that requiring MVPDs to provide billing notices regarding the full-power DTV transition is not reasonably ancillary to our authority over either broadcast television or MVPDs. Verizon and NTCA both argue that there is no connection between multichannel

distribution and the full-power broadcast television transition, and that this would be a broadcast regulation imposed on parties not engaged in broadcasting. On the contrary, MVPDs are an inextricable part of the television market. Both DBS and cable have mandatory carriage requirements, and all MVPDs have requirements concerning retransmission of broadcast signals. Without the stations and viewers affected by this transition, MVPDs would be in a very different business. The Commission is statutorily obligated to promote the orderly transition to digital television, ''a critical step in the evolution of broadcast television.'' Further, the Commission is authorized to ''make such rules and regulations * * * as may be necessary in the execution of its functions,'' and to ''[m]ake such rules and regulations * * * not inconsistent with law, as may be necessary to carry out the provisions of this Act * * *''

43. The rules we adopt today advance these statutory mandates and serve the public interest. USTA argues that the connection between such notices and the Commission's DTV transition authority is weak, because ''the customers who would receive those notices do not rely on the broadcast signals that will cease on the transition date.'' Many of those very customers do in fact rely on broadcast signals for at least some of the televisions in their homes. Accurate and timely communication of the impending change from analog to digital transmission is a critical disclosure for all consumers. Not only will every DTV-educated consumer accelerate the spread of knowledge about the full-power transition, but as described in COAT's comments, many MVPD subscribers will in fact be directly impacted by the transition, even if only because they have some OTA sets in their home. Furthermore, broadcast channels carried on a system will tend to be clearer and crisper as a result of the broadcaster switch to digital, and every station broadcasting programming in HD, not just those carried pursuant to retransmission consent, will be available in HD. As discussed above, over half of consumers still are not aware of the impending full-power digital transition. Clearly, voluntary industry efforts to date have not been sufficient to ensure consumer awareness of the upcoming transition to digital television. Such consumer awareness is critical to our missions of promoting public safety and an orderly digital transition.

44. Exercising ancillary jurisdiction to adopt DTV transition notice requirements for MVPDs is consistent with prior exercises of the Commission's authority. The Commission previously relied on its authority under the Act and the ACRA to impose an analog-only labeling requirement in order to promote the orderly transition to digital television. In addition, the Commission recently relied on its ancillary jurisdiction in requiring interconnected Voice over Internet Protocol (VoIP) service providers to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service. The Commission also has numerous other labeling and disclosure requirements designed to further its statutory objectives and to protect consumers. In sum, therefore, we conclude that we have ancillary authority to adopt DTV transition notice requirements for MVPDs.

45. USTA makes two additional arguments about the limits of our ancillary jurisdiction in this case. First, it argues that because NTIA was given some express authority over DTV transition education, it ''creates a strong presumption'' that Congress did not mean for the Commission to have any authority in this area at all. On the contrary, Congress had no need to give the Commission specific authority over any one element of the transition, because as discussed above we have general authority to promulgate rules to advance the transition. USTA also argues, again almost in passing, that the Commission ''may'' not be permitted to exercise ancillary jurisdiction in any manner that could be seen as content-related regulation of speech. In support of this argument, USTA cites only the 2002 DC Circuit decision that struck down the Commission's video description requirements. *MPAA* v. *FCC* can not, however, be reasonably read to impose such a sweeping rule. The Court's decision focuses on the inability of the Commission to rely on section 1 of the Act as a source of authority for restricting programming content. In this case, section 1 is not the primary source of the Commission's authority, and programming content is not at issue. More to the point, the *MPAA* Court pointed to a clear Congressional directive that specifically spoke to video description and limited the Commission's sphere of authority to the creation of a report. Here, on the other hand, Congress has endowed the Commission with general authority to prescribe regulations that will ''promote the orderly transition to digital television.''

C. Consumer Electronics Manufacturer Notices

46. We require that parties that manufacture, import, or ship interstate television receivers and devices designed to work with television receivers (including digital-to-analog converter boxes like the NTIA Coupon Eligible Converter Boxes) include information with those devices explaining to consumers what effect, if any, the full-power DTV transition will have on their use. This information must be included with all devices shipped, beginning on the effective date of these rules, until March 31, 2009. As with the notices included in MVPD bills, the information may be in any form preferred by the manufacturer. It must be noticeable, contain the minimum information about the full-power transition described in paragraph 12, above, and explain clearly what impact, if any, the transition will have on the use of the device. For example, with receivers with a digital OTA tuner, one sufficient form of notice would be a sticker on the outside of the packaging that reads: ''Digital Television Transition Notice: This television receiver will display over the air programming after the end of full-power analog broadcasting on February 17, 2009. Some older television receivers may need a converter box to display over the air digital programming, but should continue to work as before for other purposes (e.g., for watching LPTV, Class A, or translator stations still broadcasting in analog, watching pre-recorded movies, or playing video games). For more information, please call [the manufacturer], go to *http://www.DTV.gov*, or, for converter box information, go to *http://www.dtv2009.gov* or call the NTIA at 1–888–DTV–2009.''

47. As noted above, this requirement applies not only to television receivers, but also to electronic devices that are designed to be connected to, and are dependent on, television receivers. Notices included with these devices, which include DVD players and recorders, VCRs, and monitors, must not only provide the basic information about the transition. They must also make clear that, after the transition, the device will not serve its function, in regard to full-power OTA signals, unless connected to a device with a digital tuner.

48. The Letter suggested that the Commission consider requiring ''manufacturers to include information

with television receivers and related devices about the transition, with civil penalties for noncompliance.'' The only commenter to oppose this proposal, LG, conceived of it applying only to ''television sets,'' and argued that the existing Labeling Order already resolves this issue. On the contrary, the Labeling Order's requirements apply only to sets without a digital receiver, which are no longer being manufactured for the U.S. market. Therefore the two sets of requirements do not overlap at all. The Benton Foundation suggests that the included information should be standardized by the Commission.

49. No commenter challenged the Commission's statutory or constitutional authority to impose this requirement. As in the analog receiver labeling order, our authority to impose this requirement is ancillary to our responsibilities under the Communications Act and the All Channel Receivers Act. An electronic device that is dependent for its use, in whole or in part, on over-the-air reception of television broadcast channels, is an ''apparatus'' ''incidental to * * * transmission'' of television broadcasts and, therefore, within the scope of our Title I subject matter jurisdiction. As discussed in more detail in paragraphs 5 and 19–23, above, the Commission is statutorily obligated to promote the orderly transition to digital television. Ensuring that consumers know how it will affect their devices, and why they may suddenly stop working or change their functionality, is essential to achieving that goal.

D. DTV.gov Partner Consumer Education Reporting

50. We require DTV.gov Transition Partners to report their consumer education efforts, as a condition of continuing Partner status. Reports should be filed into the record of this proceeding on a quarterly basis, beginning on April 10, 2008. Additionally, individual copies of the reports should be sent, via electronic mail or hard copy format, to the Chief and to the Chief of Staff of the Commission's Consumer and Governmental Affairs Bureau, as well as sent electronically to *dtvreporting@fcc.gov*. This is in line with the Letter' suggestion that the Commission consider requiring ''partners identified on the Commission's digital television Web site to report their specific consumer outreach efforts.''

51. We appreciate the efforts made so far by our DTV.gov Partners to keep us apprised of their consumer education and outreach activities. As we move closer to the full-power transition date, the Commission will necessarily be accelerating its efforts, and further emphasizing its role as the coordinator and clearinghouse for DTV transition education. As NAB and MSTV observe, ''coordination is critical to ensure that, in addition to messaging, industry, government agencies and other stakeholders are not either (1) unnecessarily duplicating consumer education efforts or (2) failing to target key segments of the American population. The need for coordination is further underscored by the limited financial resources of the Commission.'' No commenters opposed this proposal, and several supported it. Furthermore, NAB and MSTV describe the DTV Transition Coalition as already committed to regularly updating the Commission. Therefore, moving forward we will require that DTV.gov Partners provide us with quarterly updates on their specific consumer outreach efforts, and we anticipate that we will use this full range of information to work with Partners on future education efforts. Any Partner listed that fails to work with the Commission in this process may lose Partner status and be removed from the DTV.gov Partners page.

E. Consumer Electronics Retailer Training and Education

52. We adopt the suggestion in the letter that the Commission work ''with NTIA to require retailers who participate in the converter box coupon program to detail their employee training and consumer information plans and have Commission staff conduct spot inspections to ascertain whether such objectives are being met at stores.'' A number of commenters are in favor of this proposal. The Telecommunications Regulatory Board of Puerto Rico supports it because ''direct contact with customers will play a crucial role in educating people on the DTV transition.'' We agree that retailers can play a central role, and we plan to work with NTIA to ensure that retailers are fulfilling their commitment to the converter box program. As the Consumer Electronics Retailers Coalition has explained, consumer electronics retailers independently planned to engage in extensive employee training and consumer outreach regarding the transition. These outreach efforts began early , as Radio Shack explains, with a standardized tip sheet developed and made available for distribution by all retailers. Several large retailers, including Circuit City, Target, and Best Buy, assured the Commission of their intention to engage in extensive outreach, and have since demonstrated an admirable degree of focus, ingenuity, and dedication to the needs of viewers as they approach the digital transition. Enforcement Bureau field agents will regularly visit participating retailer stores across the country to assess their employee training and consumer education efforts and whether the retailers' objectives are being met at stores. Through ongoing and close coordination, the Enforcement Bureau will provide the results of these site visits to NTIA for review and appropriate action. We appreciate and encourage these efforts on the part of retailers, particularly participants in the NTIA converter box program.

F. Other Proposals

1. Federal Universal Service Low-Income Program Participant Notices

53. We will require that all eligible telecommunications carriers (ETCs) that receive federal universal service funds provide DTV transition information in the monthly bills of their Lifeline/Link-Up customers. Lifeline and Link-Up (Lifeline/Link-Up) are universal service low-income programs. Lifeline provides low-income consumers with discounts off of the monthly cost of telephone service for a single telephone line in their principal residence, while Link-Up provides low-income consumers with discounts off of the initial costs of installing telephone service. Similar to the requirements for MVPDs, the notice must be provided as a ''bill stuffer'' or as part of an information section on the bill itself. It must be noticeable, and state that on February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may be unable to display full-power broadcast programming unless the viewer takes action. It must also note that viewers can get more information by going to *http://www.DTV.gov*, and more information about the converter box program by going to *http://www.dtv2009.gov* or calling the NTIA at 888–DTV–2009. The notice may also, at the ETC's discretion, provide contact information for the DTV Transition Coalition. The notice should be provided in the same language or languages as the bill. If the ETC's Lifeline/Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly transition notices in whatever medium they receive information about their monthly bill. Finally, ETCs that receive federal universal service funds must provide this same basic information as part of any other Lifeline or Link-Up publicity campaigns. The customer bill notice requirement will

run concurrently with the MVPD bill notice requirement (i.e., from 30 days after the effective date of these rules through March 2009), and the publicity requirement will run for the same period.

54. The Letter suggested that the Commission ''require, as an interim measure, that telecommunications carriers that receive funds under the Low Income Federal universal service program * * * notify each of their low income customers of the digital transition and include such a notice in their required Lifeline and Link-Up publicity efforts.'' The strongest support for this requirement came from the New York State Consumer Protection Board, which suggested that ''all telecommunications providers notify their low-income customers of the transition through their current Lifeline outreach efforts.'' The Benton Foundation and the Commission's Consumer Affairs Committee both suggest that we should ''encourage'' telecommunications companies to engage in this type of outreach, particularly with their low income customers, but they do not support a mandate. Several commenters oppose the requirement, arguing that the Commission lacks a sufficient nexus to exercise ancillary jurisdiction. All argue that this would be unconstitutional compelled speech. We disagree with these commenters for the reasons explained in Section G, below. Verizon also argues that this type of notice would confuse subscribers rather than educate them, and that these notices would lead to flooding phone company call centers with questions about the DTV transition. Finally, NTCA claims that the IRFA is deficient because it does not mention LECs. We reject NTCA's argument. The Commission provided sufficient notice, under the APA, that regulation of LECs was being considered. Furthermore, the Commission's FRFA has considered the possible economic impact on LECs as required under the RFA. We agree with the consumer advocates, and adopt the above proposals.

55. We conclude that we have authority under Title I of the Act to impose the DTV Consumer Education requirements on ETCs that receive federal universal service funds. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' Both predicates for ancillary jurisdiction are satisfied here.

56. First, section 2(a) of the Act grants the Commission subject matter jurisdiction over [the services provided by] telecommunications carriers. Section 254(e) provides that only eligible telecommunications carriers are eligible to receive federal universal service funds. Therefore, all ETCs that receive federal universal service funds are telecommunications carriers, and as a result, are the subject of the Commission's subject matter jurisdiction.

57. Second, our analysis requires us to evaluate whether imposing the DTV Consumer Education requirements is reasonably ancillary to the effective performance of the Commission's various responsibilities. We find that sections 309 and 1 of the Act provide the requisite nexus. Section 309 requires the Commission to ''take such actions as are necessary * * * to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009. * * *'' In a survey on the DTV transition, the GAO found that over-the-air households are more likely to have lower incomes than cable or satellite households and that approximately 48 percent of exclusive over-the-air viewers have household incomes less than $30,000. The Commission already has in place the Lifeline/Link-Up programs that provide discounts off the initial installation and monthly costs of telephone service to millions of low-income consumers. Because the DTV transition will greatly affect lower income households and the Lifeline/Link-Up programs already serve this same demographic, we have an already established communication path that can be used to further the success of the DTV transition. By communicating with these lower income households, we ensure that all Americans will have the knowledge they need in order to prepare for the DTV broadcast transition. We therefore find that the extension of the DTV Consumer Education requirements to ETCs that receive federal universal service funds and are required to advertise to low-income consumers is reasonably ancillary to the effective performance of our duty to ensure the success of the DTV transition under the Digital Television and Public Safety Act of 2005.

58. Further, section 1 of the Act charges the Commission with responsibility for making available ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service * * * for the purpose of promoting safety of life and property through the use of wire and radio communication.'' In light of our statutory mandate to clear the broadcast spectrum for public safety use, it is important that the Commission take all steps necessary to ensure that the DTV transition occurs without delay. Further, Americans' reliance on their televisions for emergency alerts through the country's Emergency Alert System requires that we ensure that all Americans have the ability to receive emergency notifications through their televisions. If Americans are unable to receive this potential life-saving information because they are unaware of the DTV broadcast transition, this might result in tragic consequences. Therefore, ensuring that all Americans receive notice of the upcoming DTV transition, including those that have been identified as at risk of not receiving the necessary information, is a critical step to achieving our statutory mandate to promote public safety. Thus, we conclude that extending the DTV Consumer Education requirements to ETCs that receive federal universal service funds is ''reasonably ancillary to the effective performance of [our] responsibilities'' under sections 309 and 1 of the Act, and ''will 'further the achievement of long-established regulatory goals' '' to ensure the success of the DTV transition and promote the safety of life and property.

2. 700 MHz Auction Winner Consumer Education Reporting

59. We will require winning bidders in the 700 MHz spectrum auctions (Auctions 73 and 76) to detail what, if any, DTV transition consumer education efforts they are conducting. The Letter suggested that, ''given the significant stake of 700 MHz auction winners in a successful transition, the Commission could require those entities to report their specific consumer outreach efforts.'' The rule we adopt conforms with this proposal. No commenters expressed opposition to this proposal. Specifically, during the DTV transition we will require each entity obtaining a 700 MHz license to file this report with the Commission on a quarterly basis, with the first such report due by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds.

3. Consumer Contact Points

60. With respect to comments regarding the need for a toll-free call center staffed with people skilled in answering questions about the full-

power DTV transition, we emphasize that staff in the Commission's existing Consumer Center, including Spanish speakers, are available to take calls and e-mails about all aspects of the DTV transition and have been specifically trained to inform and assist consumers with any questions or concerns they may have. In addition, we note that NTIA, as part of its DTV transition education initiative, has established a center devoted specifically to taking calls about digital-to-analog converter boxes and the coupon program. Since January 1, 2008, the center has been staffed with representatives able to field and respond to calls in multiple languages, including English, Spanish, Chinese, Vietnamese, Tagalog, Russian, and French. The Commission and NTIA are working to coordinate their consumer center activities with the goal of ensuring that calls and e-mails to either agency, in whatever language, are handled in a thorough, consistent matter and that consumers can be transferred, when appropriate, from one agency to the other.

G. First Amendment Analysis

61. The actions we take in this Order to ensure that television viewers are fully informed about the digital transition are entirely consistent with the First Amendment, because they are a narrowly tailored means of advancing the government's substantial interests in furthering the digital transition. The government's interests in promoting the continued availability of free television programming and in ensuring a smooth transition from analog to digital full-power television service are undoubtedly substantial. Free television service is a vital part of the Nation's communications system, and is particularly important for viewers who cannot afford other means of receiving video programming. In order to ensure uninterrupted access to over-the-air television programming after the transition, it is essential that the viewing public understand that full power analog signals will cease on February 17, 2009, and that television equipment without a digital tuner will require additional equipment or connections to continue receiving programming after that date.

62. As discussed above, the record indicates that a substantial number of households are at risk of losing television service after February 17, 2009. Approximately 22.5 million households rely solely on over-the-air broadcast television, and of those households only seven percent currently own a digital television set. Millions of households subscribing to an MVPD service have at least one set receiving over-the-air television signals. The record indicates, however, that the majority of Americans remain unaware of the DTV transition. One recent survey reveals that 51.3% of Americans have no idea that the DTV transition is taking place, and only 19.8% are ''very much aware'' of the transition. The government thus has a substantial interest in ensuring that the public is fully informed about the DTV transition and the steps necessary to continue receiving over-the-air broadcast signals after the transition.

63. The consumer education requirements we adopt today are narrowly tailored to advance these substantial governmental interests. Our rules are targeted at the specific industry groups that are best positioned to reach households most at risk of losing television service in February 2009. PSAs and crawls transmitted by the over-the-air broadcasters are, by definition, well-calculated to reach viewers of over-the-air television. But the record also shows that millions of MVPD customers use over-the-air broadcast as a secondary source of television service. Requiring MVPDs to provide information regarding the digital transition in their bill inserts serves to ensure that MVPD households with additional over-the-air analog televisions will be prepared for the digital transition. Likewise, telecommunications carrier participants in the Low Income Federal Universal Service Program are uniquely situated to reach low-income households—one of the consumer groups identified as most at risk of losing television service after the transition. And the steps we take with regard to manufacturers and retailers recognize the importance to consumers of information provided at the point-of-sale regarding the capabilities of the equipment that they are purchasing.

64. Industry groups have acknowledged the significant role they must play in informing consumers about the transition. Thus, NAB reports that the broadcast industry has embarked on an ''unparalleled and unprecedented'' ''multi-faceted'' consumer education campaign designed to ''reach out to all demographics, all geographical areas, urban and rural communities, the young and the old'' that includes both PSAs and crawls. NCTA reports that the cable industry has launched a $200 million digital TV transition consumer education campaign which ''seeks to reach all cable customers and millions of non-cable viewers with useful information about the transition to digital television'' that includes invoice messages on billing statements. DBS providers, the consumer electronics industry, retailers, and video and telephone service providers have all voluntarily committed to participate in efforts to educate the public about the DTV transition. Thus, to a large extent, the measures we adopt today do not impose an additional burden on the affected industries beyond their current voluntary efforts..

65. Despite their stake in the successful completion of the digital transition, broadcasters nonetheless argue that mandated PSAs and crawls constitute compelled speech in violation of the First Amendment. We disagree. First, we note that a less rigorous standard of First Amendment scrutiny applies where broadcasting is at issue. Even if this were not the case, the government has broad powers to require the disclosure of ''factual and uncontroversial information'' where commercial speech is concerned, especially to ''dissipate the possibility of consumer confusion or deception,'' as long as such requirements are reasonably related to the government's regulatory goals. Here, the broadcaster PSAs and crawls we require are needed to eliminate any confusion stemming from the continuing public ignorance of the digital transition—in particular, they are necessary to ensure that over-the-air viewers are not misled into thinking that the analog signals that are now being transmitted will remain available after February 17, 2009. We also emphasize that the information we require about the digital transition is purely factual and not subject to dispute. And so far as the broadcasters are concerned, our requirements involve commercial speech, since they relate directly to the broadcasters' economic interest in ensuring that viewers maintain access to broadcast television and successfully transition to digital television.

66. Similarly, we are not persuaded by the First Amendment objections raised by video service and telephone providers. Both industry groups have a direct link to viewers who will be affected by the transition, and through direct communication with their customers they are invaluable in ensuring that the American public is prepared for the transition. Requiring MVPDs and Low Income Federal Universal Service Program participants to send notices to their customers about the DTV transition is thus a reasonable means of ensuring that word gets out to all groups that will be affected by the transition. It is thus a narrowly tailored means of advancing the government's

substantial interests in ensuring a smooth and orderly transition.

67. Nothing in the Supreme Court's plurality decision in *Pacific Gas & Elec. Co.* v. *Public Utility Comm'n of Calif.,* 475 U.S. 1 (1986), is to the contrary. In that case, the State agency ordered a utility to include in its billing envelopes a third-party newsletter containing a message with which the company disagreed. The purpose of the agency order was, among other things, to assist groups * * * that challenge [the utility] in the Commission's ratemaking proceedings in raising funds.'' The agency order thus did ''not simply award access to the public at large; rather, it discriminate[d] on the basis of the viewpoints of the selected speakers.'' In this case, by contrast, the message we require is purely factual and noncontroversial—it must only describe when the transition will occur, the listing of how consumers can obtain additional information, a very basic explanation of potential impact on the consumer and actions the consumer may take. There is nothing in the required disclosure that could interfere with the provider's ability to communicate its own message, and indeed the MVPD or telephone provider may use the opportunity to market its own service. For this reason, the requirements fall comfortably within the government's power to order reasonable disclosures to serve the public interest, and will likewise empower consumers to take actions necessary to adjust to the digital transition.

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

68. As required by the Regulatory Flexibility Act of 1980 (''RFA''), the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to the Report and Order (FCC 08–56). The FRFA, which was contained in Appendix A of the Report and Order, is set forth below.

69. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking (Notice). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments responsive to the IRFA are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

70. This Report and Order adopts rules requiring industry to participate in a coordinated, nationwide, consumer outreach campaign. Despite extensive consumer outreach efforts by the Commission and others, a large percentage of the public is not sufficiently informed about the DTV transition. This is a serious concern because the many benefits of the transition could be severely limited by insufficient consumer awareness. Therefore, this Report and Order adopts a number of proposals based on specific potential Commission initiatives raised by Congressmen Dingell and Markey. Our goals in doing so are to further educate consumers about the digital television transition; to engage all sectors of the television industry in support of that transition; and, in so doing, to facilitate the nation's transition to digital broadcast television.

71. First, the rules require all full-power television broadcasters to provide on-air transition education to their viewers. Broadcasters must comply with one of three alternative sets of rules in providing such information to their viewers and must report these consumer education and outreach efforts to the Commission and the public. Second, MVPDs must provide monthly notices about the DTV transition in their customer billing statements. Third, manufacturers of television receivers and related devices must provide notice to consumers of the transition's impact on that equipment. Fourth, DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts. Fifth, companies participating in the Low Income Federal Universal Service Program must provide notice of the transition to their low income customers and potential customers. Sixth, the winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission and the public.

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

72. We received one comment in response to the IRFA. The Reply Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (Collectively, NTCA/OPASTCO) filed comments expressing concern about the lack of reference to local exchange carriers (LECs) in Section C of the IRFA. NTCA/OPASTCO argued that the absence of LECs from the IRFA constituted a failure to consider those operators, thus rendering the IRFA deficient as to small telephone providers. We disagree, and find that sufficient notice was clearly provided to LECs and their representatives, as demonstrated by the comments and replies filed in this docket. We find that the interests of small operators, like NTCA/OPASTCO's members, have been considered throughout the rulemaking process.

3. Description and Estimate of the Number of Small Entities to Which the Report and Order Will Apply

73. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA 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. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The rules adopted herein will directly affect small television broadcast stations, small MVPDs (cable operators and satellite carriers) and other small entities, such as LECs, consumer electronics (CE) retailers and CE manufacturers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

74. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $13.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) have revenues of $13.0 million or less and thus qualify as small entities under the SBA definition. 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. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. The

Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

75. 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.

76. *Class A TV, LPTV, and TV translator stations.* The rules adopted herein may also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed TV translators and 11 TV booster stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

77. *Cable and Other Subscription Programming.* The SBA has developed a small business size standard for cable and other subscription programming, which includes all such companies generating $13.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite services, fixed-satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, instructional television fixed service, local multipoint distribution service, satellite master antenna television systems, and open video systems. According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules adopted herein. We address below each service individually to provide a more precise estimate of small entities.

78. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

79. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

80. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

81. *Satellite Carriers.* The term ''satellite carrier'' includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is

licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.

82. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Subscription Programming. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (''EchoStar'')—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

83. *Fixed-Satellite Service (''FSS'').* The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Cable and Other Subscription Programming, which includes all such companies generating $13.5 million or less in revenue annually. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Both of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

84. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Subscription Programming includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are more than 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs qualify as small entities.

85. *Home Satellite Dish (HSD) Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Subscription Programming, which includes all such companies generating $13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry more than 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data show that, as of June 2005, there were 206,358 households authorized to receive HSD service. The Commission has no information regarding the annual revenue of the four C-Band distributors.

86. *Open Video Systems (OVS).* The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Subscription Programming, which provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (''RCN''), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

87. *Wireless Cable Systems.* Wireless cable systems use the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), frequencies in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. We estimate that the number of wireless cable subscribers is

approximately 100,000, as of March 2005. Id. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Subscription Programming, which provides that a small entity is one with $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.

88. *Wireless Cable Systems (Commission Auction Standard).* The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Subscription Programming. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, we estimate that there are approximately 850 small MDS (or BRS) providers as defined by the SBA and the Commission's auction rules.

89. Educational institutions are included in this analysis as small entities; however, the Commission has not defined a small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

90. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

91. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

92. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

93. *Retailers.* The rules adopted herein will apply only to retailers that choose to participate in the converter box coupon program. The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $8 million or less in annual receipts. The list of retailers who will be participating will not be finalized until March 2008, but they will likely include dedicated consumer electronics stores and internet-based stores.

94. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.'' The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

95. *Electronic Shopping.* According to the Census Bureau, this economic census category ''comprises establishments engaged in retailing all types of merchandise using the Internet.'' The SBA has developed a small business size standard for Electronic Shopping, which is: All such entities having $23 million or less in annual receipts. According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year. Of this total, 4,742 firms had annual sales of under $10 million, and an additional 133 had sales of $10 million to $24,999,999. Thus, the majority of firms in this category can be considered small.

96. *Electronics Equipment Manufacturers.* The rules adopted herein will apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We, therefore, conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

4. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements for Small Entities

97. The rules adopted by this Report and Order impose reporting, recordkeeping and other compliance requirements on small entities. The Report and Order establishes rules requiring industry to participate in a coordinated, nationwide, consumer outreach campaign, and does not create alternative requirements for small entities. Some elements of the Report and Order are voluntary, applying, for instance, only to DTV.gov Transition Partners or participants in the NTIA Converter Box Coupon Program. The mandatory requirements vary for different sectors of the telecommunications industry.

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

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

99. The National Association of Broadcasters has expressed its intention to make informative PSAs available to all broadcasters, even non-members, which will reduce the cost burden of the requirement to air them. Also, the mandatory broadcaster filing does not require a specialized form or extensive information gathering. Most importantly, although these requirements will impose some costs on small broadcasters, they will also ensure that small broadcasters continue to retain their audiences after the transition by fully informing viewers of the steps necessary to keep watching. Small broadcasters rely completely on their viewing audience for their revenue stream, so this benefit should far outweigh any costs for this temporary requirement.

100. Small MVPDs will have costs for printing ''bill stuffer'' transition notices to include with their bills and bill notices. These costs can be somewhat ameliorated by the use of electronic and automatic billing, and the transition education campaign could potentially result in an increase of MVPD subscriptions from over-the-air subscribers and increased equipment rentals from current subscribers who wish to extend service to all of their televisions prior to the transition. Furthermore, MVPDs will have an additional 30 days to prepare for notice distribution. The costs for small MVPDs will therefore, likely not be significant.

101. The costs of reporting outreach efforts to the Commission by the winners of the 700 MHz auction will be de minimis, consisting solely of narrative reports in a flexible format describing outreach efforts the winner has chosen to make. On the other hand, small manufacturers of television receivers and related equipment, and small providers of telecommunications services to low-income households, will have costs to produce and distribute transition notices to their customers and subscribers, although ETCs will have an additional 30 days to prepare for notice distribution. These costs will not be any greater for small than for large companies, however. The very limited nature of the notification requirements for both groups mean that no lighter burden could be placed on small entities without essentially eliminating the benefit to consumers of a comprehensive transition education campaign.

6. Report to Congress

102. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

103. The Paperwork Reduction Act Analysis, which was contained in Section IV. of the Report and Order (FCC 08–56), is set forth at the beginning of this document in the Supplementary Information.

C. Congressional Review Act

104. 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.

D. Additional Information

105. For more information on this *Report and Order,* please contact Lyle Elder, *Lyle.Elder@fcc.gov,* or Eloise Gore, *Eloise.Gore@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

106. *It is ordered* that, pursuant to the authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this Report and Order is adopted and the Commission's rules are hereby amended as set forth in Appendix B. We find good cause for the rules, forms and procedures adopted in this Report and Order to be effective upon publication of the summary of the Report and Order in the **Federal Register** to ensure that consumers are informed about the digital television transition on February 17, 2009, the statutory deadline for all full power television broadcasters to transition to all digital service, provided, however, that the rules, forms and requirements contain information collection requirements subject to the PRA and are not effective until approved by the OMB. As described in this Order, the Commission has found that the public must be better informed regarding the digital television transition prior to its conclusion on February 17, 2009. Because of the limited period of time remaining prior to that date, we believe it is essential that coordinated, nationwide education efforts begin as soon as possible. Without sufficient accurate information to guide decisionmaking, consumers may be unprepared for the digital transition when it arrives, and may be unable to obtain critical information in emergencies after the transition. In such instances, consumers would be financially harmed and deprived of service at a critical time. Because delay can result in such harms to consumers and because affected parties will be afforded a reasonable opportunity to comply with the rule, we find that there is good cause to expedite the effective date of this rule. For these reasons, we are also requesting emergency PRA approval from OMB. The Commission will publish a notice in the **Federal Register** announcing when OMB approval for these rule sections has been received and thus when these rules will take effect.

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

108. *It is further ordered* that the Commission shall send a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 15

Communications equipment, Digital Television, Digital Television Equipment, Labeling, Radio, Reporting and recordkeeping requirements.

47 CFR Part 27

Communications common carriers, Digital Television, Radio, Reporting and recordkeeping requirements, Wireless Communications.

47 CFR Part 54

Communications common carriers, Digital Television, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 73

Communications equipment, Digital Television, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable Television, Digital Television, Multichannel Video Programming Distributors, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15, 27, 54, 73, and 76 as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 2. Section 15.124 is added to read as follows:

§ 15.124 DTV Transition Notices by Manufacturers of Televisions and Related Devices.

(a) The requirements of this section shall apply to television receivers and related devices. Related devices are electronic devices that are designed to be connected to, and operate with, television receivers, and which include, but are not limited to, DVD players and recorders, VCRs, and monitors, set-top-boxes, and personal video recorders. (b) Television receivers and related devices shipped between March 27, 2008 and March 31, 2009 must include notices about the digital television (DTV) transition. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from *http://www.DTV.gov* or this manufacturer at [telephone number], and from *http://www.dtv2009.gov* or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes; and

(3) Explain clearly what effect, if any, the DTV transition will have on the use of the receiver or related device, including any limitations or requirements associated with connecting a related device to a DTV receiver.

(c) Parties that manufacture, import, or ship interstate television receivers and related devices are responsible for inclusion of these notices.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Section 27.20 is added to read as follows:

§ 27.20 Digital Television Transition Education Reports.

(a) The requirements of this section shall apply only with regard to WCS

license authorizations in Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, and Block D in the 758–763 MHz and 788–793 MHz bands.

(b) By the tenth day of the first calendar quarter after the initial grant of a WCS license authorization subject to the requirements of this section—and on a quarterly basis thereafter as specified in paragraph (c) of this section—the licensee holding such authorization must file a report with the Commission indicating whether, in the previous quarter, it has taken any outreach efforts to educate consumers about the transition from analog broadcast television service to digital broadcast television service (DTV) and, if so, what specific efforts were undertaken. Thus, for example, if the license authorization is granted during the April-June quarter of 2008, the licensee must file its first report by July 10, 2008. Each quarterly report, either paper or electronic, must be filed with the Commission in Docket Number 07–148. If the quarterly report is a paper filing, the cover sheet must clearly state ''Report,'' whereas if the report is filed electronically using the Commission's Electronic Comment File System (ECFS), the ''Document Type'' on the cover sheet should indicate ''REPORT.''

(c) The reporting requirements under this section cover the remaining period of the DTV transition. Accordingly, once the licensee files its quarterly report covering the first quarter of 2009, the requirements of this section terminate.

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.418 is added to read as follows:

§ 54.418 Digital Television Transition Notices by Eligible Telecommunications Carriers.

(a) Eligible telecommunications carriers (ETCs) that receive federal universal service funds shall provide their Lifeline or Link-Up customers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the ''DTV Transition'') in the monthly bills or bill notices received by such customers beginning April 26, 2008 and concluding in March 2009.

(b) The notice must be provided as part of an information section on the bill or bill notice itself or on a secondary document mailed with the bill or bill notice, in the same language or languages as the bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from *http://www.DTV.gov,* and from *http://www.dtv2009.gov* or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes;

(c) If an ETC's Lifeline or Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill.

(d) ETCs that receive federal universal service funds shall provide information on the DTV Transition that is equivalent to the information provided pursuant to paragraph (b)(2) of this section as part of any Lifeline or Link-Up publicity campaigns conducted by the ETC between March 27, 2008 and March 31, 2009.

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

■ 2. Section 73.674 is added to read as follows:

§ 73.674 Digital Television Transition Notices by Broadcasters.

(a) Each full-power commercial and noncommercial educational television broadcast station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV). For each such commercial station, a licensee or permittee must elect, by March 27, 2008 to comply with either paragraph (c) or (d) of this section. For each such noncommercial station, a licensee or permittee must elect March 27, 2008 to comply with paragraph (c), (d), or (e) of this section. A licensee or permittee must note their election via the filing of Form 388 as required by §§ 73.3526 and 73.3527.

(b) The following requirements apply to paragraphs (c), (d), and (e) of this section:

(1) The station must comply with the requirements of the paragraph it elects with respect to its analog channel and its primary digital stream.

(2) Any Public Service Announcement aired to comply with these requirements must be closed-captioned, notwithstanding § 79.1(d)(6) of this chapter.

(3) The campaign must begin no later than March 27, 2008 and continue at least through March 31, 2009. After March 31, 2009, any station that has filed a request for an extension to serve its full operating area or is operating under such an extension must continue its education campaign until the request is withdrawn or denied or, if granted, until it expires.

(c) Consumer Education Campaign Option One:

(1) From March 27, 2008 through March 31, 2008, a licensee or permittee must, at a minimum, air one transition-related public service announcement (PSA), and one transition-related informative text crawl, in every quarter of every broadcast day. This minimum will increase to two of each, per quarter, from April 1, 2008 through September 30, 2008, and to three of each, per quarter, from October 1, 2008 through the conclusion of the campaign. At least one PSA and one informative text crawl per day must be aired between 8 p.m. and 11 p.m. in the Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain and Central time zones.

(2) For the purposes of this section, each broadcast day consists of four quarters; 6:01 a.m. to 12 p.m., 12:01 p.m. to 6 p.m., 6:01 p.m. to 12 a.m., and 12:01 a.m. to 6 a.m.

(3) Informative text crawls must:

(i) Air during programming;

(ii) Air for no fewer than 60 consecutive seconds;

(iii) Be displayed so that the text travels across the bottom or top of the viewing area at the same speed used for other informative text crawls concerning news, sports, and entertainment information;

(iv) Be presented in the same language as a majority of the programming carried by the station;

(v) Be displayed so that they do not block and are not blocked by closed-

captioning or emergency information; and

(vi) Contain at least the following information, but may contain more, provided they contain no misleading or inaccurate statements:

(A) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(B) More information is available by phone and online, and provide appropriate contact information, including means of contacting the station or the network.

(4) Public service announcements must have a duration of no fewer than 15 consecutive seconds, and contain, at a minimum, the information described in paragraph (c)(3)(vi) of this section. They must also address the following topics at least once each during every calendar week:

(i) The steps necessary for an over-the-air viewer or a subscriber to a multichannel video programming distributor to continue viewing the station after the transition;

(ii) Changes in the geographic area or population served by the station during or after the transition;

(iii) The channel on which the station can be viewed after the transition;

(iv) Whether the station will be providing multiple streams of free video programming during or after the transition;

(v) Whether the station will be providing a High Definition signal during or after the transition;

(vi) The exact date and time that the station will cease analog broadcasting, if it has not already done so; and

(vii) The exact date and time that the station will begin digital broadcasting on its post-transition channel, if it has not already done so.

(d) Consumer Education Campaign Option Two:

(1) A licensee or permittee must, at a minimum, air an average of sixteen transition-related PSAs per week, and an average of sixteen transition-related crawls, snipes, and/or tickers per week, over a calendar quarter.

(2) For the purposes of calculating the average number of PSAs aired, a 30-second PSA qualifies as a single PSA, and two 15-second PSAs count as a single PSA.

(3) PSAs, crawls, snipes, and/or tickers aired between the hours of 1 a.m. and 5 a.m. do not conform to the requirements of this section and will not count toward calculating the average number of transition-related education pieces aired.

(4) Over the course of each calendar quarter, 25 percent of all PSAs, and 25 percent of all crawls, snipes, and/or tickers, must air between 6 p.m. and 11:35 p.m. (Eastern and Pacific time zones) or between 5 p.m. and 10:35 p.m. (Central and Mountain time zones).

(5) Stations must also air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009.

(6) Beginning on November 10, 2008, all stations will begin a 100-Day Countdown to the transition. During this period, each station must air at least one of the following per day:

(i) *Graphic display.* A graphic super-imposed during programming content that reminds viewers graphically there are ''x number of days'' until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

(ii) *Animated graphic.* A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are ''x number of days'' until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

(iii) *Graphic and audio display.* Option #1 or option #2 with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

(iv) *Longer form reminders.* Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an ''Ask the Expert'' segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The length of these segments will vary from 2 minutes to 5 minutes, at the discretion of the station (some stations may also choose to include during newscasts DTV ''experts'' who may be asked questions by the anchor or reporter about the impending February 17, 2009 deadline).

(e) Consumer Education Campaign Option Three:

(1) Only a licensee or permittee of a noncommercial television station may elect this option. Under this option, from March 27, 2008 through April 30, 2008, a noncommercial broadcaster must, at a minimum, air 60 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 7.5 minutes per month between 6 p.m. and 12 a.m. From May 1, 2008, through October 31, 2008, a broadcaster must, at a minimum, air 120 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 15 minutes per month between 6 p.m. and 12 a.m. From November 1, 2008, through March 31, 2009, a broadcaster must, at a minimum, air 180 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 22.5 minutes per month between 6 p.m. and midnight.

(2) Noncommercial stations must also air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009.

■ 3. Section 73.3526 is amended by adding paragraph (e)(11)(iv) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(11) * * *

(iv) *DTV transition education reports.* For full-power commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Form 388, DTV Consumer Education Quarterly Activity Report. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter must be filed electronically with the Commission in Docket Number 07–148 using the Commission's Electronic Comment File System (ECFS). The ''Document Type'' on the cover sheet must indicate ''REPORT.'' Stations electing to conform to the requirements of Section 73.674(b) must also provide the form on the station's public Web site, if such exists. The Report shall be separated from other materials in the public inspection file. The first Report, covering the first quarter of 2008, must be filed no later than April 10, 2008. The Reports must continue to be included up to and including the quarter in which a station concludes its education campaign. These Reports shall be retained in the public inspection file for one year. Licensees and permittees shall publicize in an appropriate manner the existence and location of these Reports.

■ 4. Section 73.3527 is amended by adding paragraph (e)(13) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(13) *DTV transition education reports.* For full-power noncommercial educational TV broadcast stations, both analog and digital, on a quarterly basis, a completed Form 388, DTV Consumer Education Quarterly Activity Report. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter must be filed electronically with the Commission in Docket Number 07–148 using the Commission's Electronic Comment File System (ECFS). The ''Document Type'' on the cover sheet must indicate ''REPORT.'' Stations electing to conform to the requirements of § 73.674(b) must also provide the form on the station's public Web site, if such exists. The Report shall be separated from other materials in the public inspection file. The first Report, covering the first quarter of 2008, must be filed no later than April 10, 2008. The Reports must continue to be included up to and including the quarter in which a station concludes its education campaign. These Reports shall be retained in the public inspection file for one year. Licensees and permittees shall publicize in an appropriate manner the existence and location of these Reports.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.1630 is added to read as follows:

§ 76.1630 MVPD digital television transition notices.

(a) Multichannel video programming distributors (MVPDs) shall provide subscribers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the ''DTV Transition'') in the monthly bills or bill notices received by subscribers beginning April 26, 2008 and concluding in March, 2009.

(b) The notice must be provided as part of an information section on the bill or bill notice itself or on a secondary document mailed with the bill or bill notice, in the same language or languages as the bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from *http://www.DTV.gov* or this MVPD at [telephone number and Web site if available], and from *http://www.dtv2009.gov* or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes;

(3) And explain clearly what effect, if any, the DTV Transition will have on the subscriber's access to MVPD service. It must also note that analog sets not connected to an MVPD service may need additional equipment (i.e., converter box) or may have to be replaced.

(c) To the extent that a given customer does not receive paper versions of either a bill or a notice of billing, that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill.

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

Appendix A: Final Regulatory Flexibility Act Analysis [Reserved.]

Note: The Final Regulatory Flexibility Act Analysis, which was contained in Appendix A of the Report and Order (FCC 08–56), is set forth in Section IV.A. of the Supplementary Information, above.

Appendix B: Rule Changes [Reserved.]

Note: The rules codified in the Report and Order (FCC 08–56), which were contained in Appendix B of the Report and Order, are set forth following the signature block of this document.

Appendix C: Broadcaster Reporting Form

DTV Consumer Education Quarterly Activity Report

Instructions

This form should be used to provide the Federal Communications Commission (FCC) with information pertaining to all station activity to educate consumers on the transition to digital television (DTV). All stations should log DTV Transition-Related Public Service Announcements (PSAs) and other DTV activities using the appropriate house (identification) numbers. These logs or records should include the date and time that each DTV activity occurred. This form must be filed in Docket Number 07–148 as Document Type: REPORT, and placed in the station's Public Inspection File. This form must continue to be filed for each quarter in which a station has DTV Transition education obligations.

BILLING CODE 6712–01–P

Station Call Sign(s)

_____

Report reflects information for quarter ending (mm/dd/yy) ☐☐☐☐☐☐

Have you opted to comply with Option One, Two, or Three (once elected, this choice may not change)?

☐ **Option One (A and D)** ☐ **Option Two (B and D)** ☐ **Option Three (C and D)**

Over the past quarter, have you fully complied with the requirements of this option?

☐ **Yes** ☐ **No**

Simulcasting
Are you simulcasting on your Analog channel and your primary Digital stream?

☐ **Yes** ☐ **No**

If **YES**, complete only one form for both. If **NO,** complete a form for your Analog channel and a second for your primary Digital stream.

Call Sign	**Channel Numbers** **Analog** _____ **Digital** _____	**Community of License** **City** **State** **County** **Zip Code**			
Licensee					
Above, circle the Channel Number(s) to which this form applies.		**Nielsen DMA**	**World Wide Web Home Page Address**		
Facility ID Number	**Previous Call Sign (if applicable)**	**License Renewal Expiration Date (mm/dd/yy)** ☐☐☐☐☐☐			

Section A (For broadcasters electing Option One)

Stations that elect Option One must place a copy of this form on the station's public website, if such exists.

On its analog channel, and its primary digital stream, a station must air one transition PSA, and run one transition crawl, in every quarter of every day. This requirement will increase to two PSAs and crawls per quarter per day on April 1, 2008, and to three of each on October 1, 2008. Stations are required to air PSAs or crawls at various times in any given day part, and at least one PSA and one crawl per day must be run during primetime hours. On-air education must not contain inaccurate or misleading statements and must be provided in the same language as a majority of the programming carried by the station. PSAs must be at least 15 seconds, and closed-captioned. Crawls must run during programming for no fewer than 60 consecutive seconds across the bottom or top of the viewing area (See rules for additional details).

Have you aired a sufficient number of eligible PSAs (28, 56, or 84 per week, depending on the reporting period) during the correct quarters of the day?

☐ **Yes** ☐ **No**

Have you aired a sufficient number of eligible crawls (28, 56, or 84 per week, depending on the reporting period) during the correct quarters of the day?

☐ **Yes** ☐ **No**

Section B (For broadcasters electing Option Two)

On its analog channel, and its primary digital stream, a station must run an average of 16 transition-related PSAs and 16 transition-related crawls, snipes, and/or tickers per week in each quarter, all between the hours of 5 a.m. and 1 a.m. . It must also run one 30 minute DTV-related informational program once, and one 100-Day Countdown piece per day for the 100 days prior to the conclusion of the transition. Comment boxes MUST be used to describe these compliant activities (See rules for additional details).

Total Number of Eligible DTV Transition-Related PSAs and Crawls, Snipes, and/or Tickers (CSTs) Run -- Last Quarter

How many DTV PSAs and CSTs did your station run between 5:00 a.m. and 1:00 a.m. last quarter?

Total 5:00 a.m. to 1:00 a.m. PSAs [ ]

Total 5:00 a.m. to 1:00 a.m. CSTs [ ]

For informational purposes only, how many DTV PSAs and CSTs did your station run in the last quarter from 6:00 a.m. to 9:00 a.m.?

Total 6:00 a.m. to 9:00 a.m. PSAs [ ]

Total 6:00 a.m. to 9:00 a.m. CSTs [ ]

For stations located in the Eastern or Pacific Time Zone, how many DTV PSAs and CSTs did your station run in the last quarter from 6:00 p.m. to 11:35 p.m. (must average at least 4 per week)?

Total 6:00 p.m. to 11:35 p.m. PSAs [ ]

Total 6:00 p.m. to 11:35 p.m. CSTs [ ]

For stations located in the Central or Mountain Time Zone, how many DTV PSAs and CSTs did your station run in the last quarter from 5:00 p.m. to 10:35 p.m.(must average at least 4 per week)?

Total 5:00 p.m. to 10:35 p.m. PSAs [ ]

Total 5:00 p.m. to 10:35 p.m. CSTs [ ]

Comments (add additional sheets where necessary):

30 Minute Educational Programs – Last Quarter

How many 30 minute, DTV-related informational programs did your station run during the quarter? At least one such program must be run between the hours of 8:00 a.m. and 11:35 p.m., prior to February 17, 2009.

Total number of 30 Minute Informational Programs [ ]

Comments (add additional sheets where necessary):

100-Day Countdown Eligible Pieces – Last Quarter

Beginning on November 10, 2008, all stations participating in Option Two will engage in special 100-Day "Countdown to DTV" activities. Stations must execute a minimum of one "Countdown to DTV" on-air activity per day during the 100 days leading up to February 17, 2009. During the last quarter, how many of each eligible 100-Day "Countdown to DTV" pieces did your station run?

_____ *Graphic Displays*

_____ *Animated Graphics*

_____ *Graphic and Audio Displays*

_____ *Longer Form Reminders*

Comments (add additional sheets where necessary):

Section C (For Noncommercial broadcasters only)

On its analog channel, and its primary digital stream, a station must air 60 seconds per day of on-air consumer education, in variable timeslots, including at least 7.5 minutes per month between 6 pm and 12 am. Beginning May 1, 2008, this requirement doubles, and beginning November 1, 2008, it increases again, to 180 seconds per day and 22.5 minutes per month between 6 pm and midnight. It must also run one 30 minute transition education piece once (See rules for additional details).

Have you aired a sufficient amount of consumer education (60, 120, or 180 seconds per day, depending on the date) during each day this quarter?

☐ **Yes** ☐ **No**

30 Minute Educational Programs – Last Quarter

How many 30 minute, DTV-related informational programs did your station run during the quarter? The comment box may be used to describe this activity. At least one such program must be run between the hours of 8:00 a.m. and 11:35 p.m., prior to February 17, 2009.

Total number of 30 Minute Informational Programs ☐

Comments (add additional sheets where necessary):

Section D (For all broadcasters)

Additional DTV On-air Initiatives – Last Quarter
Did your station run additional on-air initiatives (such as news reports, town hall meetings, etc.) during the quarter? The comment box may be used to describe these initiatives.

☐ Yes ☐ No

Comments(add additional sheets where necessary):

Station Web Site Additional Activity Related to the DTV Transition – Last Quarter

Does your station have a Web site? ☐ Yes ☐ No

If YES, did your station provide additional DTV related information or activities on that Web site? The comment box may be used to describe what was posted on the station's Web site.

☐ Yes ☐ No

Comments(add additional sheets where necessary):

Additional DTV Outreach Efforts -- Last Quarter
Check all of the DTV related activities listed below that your station engaged in over the last quarter. The comment box may be used to describe this activity.

☐ Speaking Engagements

Comments(add additional sheets where necessary):

☐ Community Events

Comments(add additional sheets where necessary):

☐ Other (describe)

Comments(add additional sheets where necessary):

This comment box may be used to include other comments or information about your station's DTV activity over the last quarter.

Comments(add additional sheets where necessary):

STATION CERTIFICATION

I certify that the statements in this document are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name of Licensee (print):	
Signature:	Date:

Appendix D: Letter from the Honorable John D. Dingell, Chairman of the Committee on Energy and Commerce, and the Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, U.S. House of Representatives [Reserved.]

Note: The full text of this Appendix, which was contained in Appendix D of the Report and Order (FCC 08–56), can be obtained as described in the beginning of the Supplementary Information, above. It is also available on the FCC's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–08–56A7.pdf.*

Appendix E: Reply from the Honorable Kevin J. Martin, Chairman, Federal Communications Commission [Reserved.]

Note: The full text of this Appendix, which was contained in Appendix E of the Report and Order (FCC 08–56), can be obtained as described in the beginning of the Supplementary Information, above. It is also available on the FCC's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–08–56A8.pdf.*

[FR Doc. E8–5409 Filed 3–21–08; 8:45 am]

BILLING CODE 6712–01–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG59

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Vessels in the Bering Sea and Aleutian Islands Trawl Limited Access Fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch for vessels participating in the Bering Sea and Aleutian Islands (BSAI) trawl limited access fishery in the Eastern Aleutian District of the BSAI. This action is necessary to prevent exceeding the 2008 Pacific ocean perch allowable catch (TAC) specified for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 19, 2008, through 1200 hrs, A.l.t., September 1, 2008.

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

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

The 2008 Pacific ocean perch TAC allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI is 214 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Pacific ocean perch TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI.

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 Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 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 § 679.20 and § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: March 19, 2008.

Emily H. Menashes

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

[FR Doc. 08–1066 Filed 3–19–08; 1:57pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 57
Monday, March 24, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD27

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing regulations to implement the assessment dividend requirements in the Federal Deposit Insurance Reform Act of 2005 (''Reform Act'') and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Amendments Act''). The proposed rule is the follow-up to the advanced notice of proposed rulemaking on assessment dividends the FDIC issued in September 2007 and the temporary final rule on assessment dividends the FDIC issued in October 2006. The temporary final rule sunsets on December 31, 2008.

DATES: Comments must be received on or before May 23, 2008.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Please include ''Assessment Dividends'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Missy Craig, Program Analyst, Division of Insurance and Research, (202) 898–8724; Donna Saulnier, Division of Finance, Team Leader, Assessment Management, (703) 562–6167; or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349.

SUPPLEMENTARY INFORMATION:

I. Background

A. Reform Act Requirements

Section 7(e)(2) of the Federal Deposit Insurance Act (''FDI Act''), as amended by the Reform Act, requires the FDIC, under most circumstances, to declare dividends from the Deposit Insurance Fund (''DIF'') when the DIF reserve ratio (''Reserve Ratio'') at the end of a calendar year equals or exceeds 1.35 percent. When the Reserve Ratio equals or exceeds 1.35 percent, and is not higher than 1.50 percent, the FDIC generally must declare one-half of the amount in the DIF in excess of the amount required to maintain the Reserve Ratio at 1.35 percent as dividends to be paid to insured depository institutions. The FDIC Board of Directors (''Board'') may suspend or limit dividends to be paid, however, if it determines in writing, after taking a number of statutory factors into account, that: [1]

1. The DIF faces a significant risk of losses over the next year; and
2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the Reserve Ratio should temporarily be allowed to grow without requiring dividends when the Reserve Ratio is between 1.35 and 1.50 percent or to exceed 1.50 percent.[2]

When the Reserve Ratio exceeds 1.50 percent at the end of a calendar quarter, the FDI Act requires the FDIC, absent certain limited circumstances (discussed in footnote 2), to declare a dividend equal to the excess of the amount required to maintain the Reserve Ratio at 1.50 percent as dividends to be paid to insured depository institutions.

If the Board decides to suspend or limit dividends, it must submit, within 270 days of making the determination, a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Committee on Financial Services of the House of Representatives. The report must include a detailed explanation for the determination and a discussion of the factors required to be considered.[3]

The FDI Act directs the FDIC to consider each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance fund) when calculating such institution's share of any dividend. More specifically, when allocating dividends, the Board must consider:

1. The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date;
2. The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the DIF (and any predecessor fund); [4]

[1] The statutory factors that the Board must consider are:

1. National and regional conditions and their impact on insured depository institutions;
2. Potential problems affecting insured depository institutions or a specific group or type of depository institution;
3. The degree to which the contingent liability of the Corporation for anticipated failures of insured institutions adequately addresses concerns over funding levels in the Deposit Insurance Fund; and
4. Any other factors that the Board determines are appropriate.

12 U.S.C. 1817(e)(2)(F).

[2] This provision would allow the FDIC's Board to suspend or limit dividends in circumstances where the Reserve Ratio has exceeded 1.5 percent, if the Board made a determination to continue a suspension or limitation that it had imposed initially when the reserve ratio was between 1.35 and 1.5 percent.

[3] *See* section 5 of the Amendments Act. Public Law 109–173, 119 Stat. 3601, which was signed into law by the President on February 15, 2006.

[4] This factor is limited to deposit insurance assessments paid to the DIF (or previously to the Bank Insurance Fund (''BIF'') or the Savings Association Insurance Fund (''SAIF'')) and does not include assessments paid to the Financing

Continued

3. That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by the institution; and

4. Such other factors as the Board deems appropriate.

The Reform Act expressly requires the FDIC to prescribe by regulation the method for calculating, declaring and paying dividends. The dividend regulation must include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of dividends it is awarded. Under the Reform Act, any review by the FDIC pursuant to these administrative procedures is final and not subject to judicial review.

B. The Temporary Final Rule on Assessment Dividends

In compliance with the Reform Act requirement to issue regulations on assessment dividends within 270 days of the statute's enactment, in October 2006, the FDIC issued a temporary final rule to implement the dividend requirements of the Reform Act (''Temporary Final Rule''). 71 FR 61385 (October 18, 2006).[5]

The Temporary Final Rule, which will expire on December 31, 2008, mirrors the dividend provisions of the Reform Act, provides definitions (including the definition of a ''predecessor'' depository institution) to implement the statute and details how an institution may request that the FDIC's Division of Finance (''DOF'') review an FDIC determination of the institution's dividend amount and how an institution may appeal the DOF's response to that request. In the Temporary Final Rule, the FDIC adopted a simple system for allocating any dividends that might be declared during the two-year duration of the regulation. Any dividends awarded before January 1, 2009, will be distributed simply in proportion to an institution's 1996 assessment base ratio, as determined pursuant to the one-time assessment credit rule. 12 CFR 327.53.

In publishing the Temporary Final Rule, the FDIC stated its intention to initiate a second, more comprehensive notice-and-comment rulemaking on dividends beginning with an advanced notice of proposed rulemaking to explore alternative methods for distributing future dividends after the temporary dividend rules expired on December 31, 2008. The publication of the assessment dividend advance notice of proposed rulemaking in September 2007 (''ANPR'') commenced that process. 72 FR 53181 (September 18, 2007).

C. The Advanced Notice of Proposed Rulemaking

In the ANPR the FDIC presented two general approaches to allocating dividends—the fund balance method and the payments method.[6]

The Fund Balance Method

Under the fund balance method, every quarter, each institution would be assigned a dollar portion of the fund balance (its fund allocation), solely for purposes of determining the institution's dividend share. Each institution's most recent fund allocation (as a percentage of the fund balance) would determine its share of any dividend. The fund allocation would increase or decrease each quarter depending upon fund performance and assessments paid by each institution. Specifically:

- Initially, the December 31, 2006 fund balance would be divided up among institutions in proportion to 1996 assessment bases. Thus, initially, each institution's fund allocation would equal its 1996 ratio times the December 31, 2006 fund balance.
- Thereafter, from quarter to quarter, fund allocations would grow or shrink depending upon the performance of the fund.
- In addition, each ''eligible'' premium would increase an institution's fund allocation, dollar for dollar. An ''eligible'' premium would be the portion of an institution's premium that would count toward increasing its share of dividends.
- Possible definitions for an eligible premium include: (1) All premiums charged; (2) premiums charged up to the lowest rate charged a Risk Category I institution; or (3) something in between, for example, premiums charged up to the maximum rate for a Risk Category I institution, in all cases minus any credit use.[7] Ineligible premiums would be those paid through the use of credits or those paid in cash at rates in excess of the eligible premium rate.

The Payments Method

Under the payments method an institution's share of any dividend would depend upon its (and its predecessors') 1996 assessment base, weighted in some manner, and its quarterly assessments. Specifically:

- At the start of the new assessments system, each institution's dividend share would depend upon its 1996 assessment base compared to all other institutions, weighted in some manner.
- The resulting value assigned to each institution based on its 1996 ratio could either remain unchanged or be assigned a declining weight over time.
- The possible definitions of an eligible (and an ineligible) premium are the same as those under the fund balance method. (However, under certain variations of this method discussed below, assessments offset through credit use could increase an institution's dividend share.)
- Cumulative eligible premiums paid into the fund since 1996 would add to an institution's share.
- Alternatively, the FDIC could count only eligible premiums paid over some recent period, for example, the most recent 3, 5, 10 or 15 years. In contrast, the fund balance method would necessarily take into account all assessment payments made under the new assessment system.
- Another variation would allow the FDIC to subtract dividends paid to an institution from its eligible premiums.

The ANPR presented two illustrative variations of the payments method. Under Variation 1, the Board could, as under the fund balance method, initially divide the 2006 fund balance based on each institution's share of the December 1996 assessment base. Eligible premiums after 1996 would be added to that amount. Under Variation 2, only premiums paid over some prior period (such as the previous 15 years) would be considered. When the prior period covered any year before 2007, the years 1997 through 2006 would be skipped, since the great majority of institutions paid no deposit insurance premiums then. Thus, for example, to determine dividend shares at the end of 2009, the method would consider premiums paid from 1985 through 1996 and from 2007 through 2009. Premiums paid during 2007, 2008 and 2009 would include only eligible premiums. However, because the weight accorded the 1996 ratio would effectively decline to zero over time, eligible premiums after 2006 would include eligible premiums offset with credits. An eligible premium paid

Corporation (''FICO'') used to pay interest on outstanding FICO bonds, although the FDIC collects those assessments on behalf of FICO. Beginning in 1997, the FDIC collected separate FICO assessments from both SAIF and BIF members.

[5] Prior to issuing the temporary final rule, the FDIC published and received comment on a proposed temporary final rule. 71 FR 28804.

[6] The sole focus of the ANPR was on the type of assessment dividend allocation method the FDIC should adopt. The ANPR indicated that whether and how the FDIC should retain or revise the other aspects of the Temporary Final Rule would be addressed in this proposed rule.

[7] However, an eligible premium would never be negative.

in 1996 or any earlier year would be calculated as an institution's share of the 1996 assessment base times total deposit insurance fund assessment income in that year.[8]

The ANPR provided additional details and variations on the alternate allocation methods, addressing issues including: risk reduction incentives, the treatment of older versus newer institutions, simplicity, relative dividend shares, the treatment of institutions chartered in the future and remaining decision-making for the Board. The ANPR also included charts and tables on the alternate allocation methods as well as formulas for determining dividends under different scenarios.

II. Comments on the ANPR

We received five comment letters on the ANPR: two from banking trade associations; one from a trade association representing large financial services companies; one from a coalition of four insured depository institutions; and one from a single depository institution that also was a member of the coalition. As the single institution's comments and recommendations were virtually identical to the coalition's, its response is not included separately in the following summary.

The two banking trade associations recommended that conservative fund management ensure that the fund be kept below the 1.35 percent statutory level that would trigger dividends. Both argued that low and steady premiums would limit the effect on both the old and new segments of the industry and not unfairly favor one set of institutions over the other. The financial services trade association concurred with the bank trade associations on the importance of keeping the fund balance below the level that would trigger dividends.

The two banking trade associations took no position on either of the two proposed dividend allocation methods, the fund balance method or the payments method. The depository institution coalition recommended adopting a modified form of the ANPR's Variation 2 of the payments method: instead of a 15-year look-back period that would exclude the years 1997–2006, it recommended a shortened look-back period of 5 years, without skipping the years 1997–2006. Unlike the ANPR's Variation 2, it did not explicitly describe how, if at all, the 1996 assessment base would be considered in determining an institution's dividends. The financial services trade association recommended that, if the FDIC is not able to maintain the fund below 1.35 percent, it adopt the payments method, structured as simply as possible. Specifically, it supported a 3–5 year look-back period for premiums, with no weight given to the 1996 assessment base.

The three trade associations recommended that eligible premiums be defined as premiums charged up to the maximum rate for a Risk Category I institution. The coalition did not explicitly discuss this aspect of the ANPR.[9] The financial services association and the coalition recommended that premiums offset with credits be excluded from eligible premiums. One banking trade association argued that, if the fund balance method were adopted, premiums offset by credits should be excluded.

Respondents generally were interested in simplicity and transparency. One trade association cautioned that any method adopted should be simple, transparent, and not require constant FDIC intervention and decision-making.

III. Explanation of the Proposed Rule

A. Overview

As part of the proposed rule, the FDIC, in accordance with requirements in the Reform Act, must establish the process for the Board's annual determination of whether a declaration of a dividend is required and whether circumstances indicate that a dividend should be limited or suspended. In addition, the FDIC must establish procedures for calculating the aggregate amount of any dividend, allocating that aggregate amount among insured depository institutions and paying dividends to individual insured depository institutions. The regulations also must allow an insured depository institution a reasonable opportunity to challenge the amount of its dividend.

B. Annual Determination of Whether Dividends Are Required/Declaration of Dividends

The provisions in the proposed rule for the annual determination of whether dividends are required and the declaration of dividends are unchanged, with one minor exception, from the provisions in the Temporary Final Rule.

Under the proposed rule, the FDIC would determine annually whether the Reserve Ratio at the end of the prior year equals or exceeds 1.35 percent of estimated insured deposits or exceeds 1.50 percent, thereby triggering a dividend requirement. At the same time, if a dividend is triggered, the FDIC would determine whether it should limit or suspend the payment of dividends based on the statutory factors. Any determination to limit or suspend dividends would be reviewed annually and would have to be justified to renew or make a new determination to limit or suspend dividends. Each decision to limit or suspend dividends must be reported to Congress. As proposed, any declaration with respect to dividends would be made on or before May 10th for the preceding calendar year. The May 10th date for the declaration of dividends differs from the May 15th date in the Temporary Final Rule. This slightly revised timing still would provide enough time for the Board to consider final data for the end of the preceding year regarding the Reserve Ratio, as well as to perform an analysis of what amount is necessary to maintain the fund at the required level and whether circumstances warrant limiting or suspending the payment of dividends. In addition, the May 10th date would allow more time, operationally, for the notification and payment of dividends and the FDIC's handling of requests for review of dividend amounts.

Under the proposed rule, if the FDIC does not limit or suspend the payment of dividends or does not renew such a determination, then the aggregate amount of the dividend would be determined as provided by the Reform Act. When the Reserve Ratio equals or exceeds 1.35 percent (but is not higher than 1.50 percent), then the FDIC generally is required to declare the amount that is equal to one-half the amount in excess of the amount required to maintain the Reserve Ratio at 1.35 percent as the aggregate amount of dividends to be paid to insured depository institutions. When the Reserve Ratio exceeds 1.50 percent, the FDIC generally is required to declare the amount in the DIF in excess of the amount required to maintain the Reserve Ratio at 1.50 percent as dividends to be paid to institutions.

C. Allocation of Dividends

As noted, in the Temporary Final Rule the FDIC adopted a simple system for allocating dividends, which will remain in place until December 31,

[8] For years prior to 1990, deposit insurance fund assessment income used to produce Chart 5 and Table 5 includes such income for both the FDIC and the Federal Savings and Loan Insurance Corporation.

[9] The coalition did, however, argue against skipping the 1997–2006 period in determining the look-back period. During these years, however, only institutions that were not in what is now called Risk Category I would have paid premiums.

2008, when the Temporary Final Rule terminates. Under that allocation method, any dividends awarded in 2007 or 2008 would have been distributed simply in proportion to an institution's 1996 assessment base ratio. However, no dividend was awarded in 2007 and none will be awarded in 2008 because the Reserve Ratio at the end of 2006 and 2007 was less than 1.35 percent.

After thoroughly considering the comments received, the FDIC is proposing a variation of the payments method for allocating future assessment dividends to FDIC-insured institutions. The proposed rule would divide the total dividend in any year into two parts. One of the two parts would be allocated based on the ratio of each institution's (including any predecessors') 1996 assessment base compared to the total of all existing eligible institutions' 1996 assessment bases (an institution's ''1996 assessment base share''). The other part of the total dividend would be allocated based on each institution's (including any predecessors') ratio of cumulative eligible premiums (defined below) over the previous five years to the total of cumulative eligible premiums paid by all existing institutions (or their predecessors) over the previous five years (an institution's ''eligible premium share''). The part of any potential dividend that would be allocated based upon 1996 assessment base shares would decline steadily from 100 percent to zero over 15 years; the part of any potential dividend that would be allocated based upon eligible premium shares would increase steadily over the same 15-year period from zero to 100 percent. After the 15-year period, any dividend would be allocated solely based on eligible premium shares.

The 15-year period would run from the end of 2006 to the end of 2021 and would govern dividends based upon the Reserve Ratio at the end of the years 2008 through 2021.[10] Actual dividends, if any, would be allocated and paid the following year. Table A shows the change in the allocation of potential dividends over time.

TABLE A.—TOTAL DIF DIVIDEND DISTRIBUTION TABLE

Based upon the DIF reserve ratio at year-end	Part of total DIF dividend determined by:	
	1996 Assessment base shares	Eligible premium shares
2006 [10]	1 (100.0%)	0 (0%)
2007 [10]	14/15 (93.3%)	1/15 (6.7%)
2008	13/15 (86.7%)	2/15 (13.3%)
2009	4/5 (80.0%)	1/5 (20.0%)
2010	11/15 (73.3%)	4/15 (26.7%)
2011	2/3 (66.7%)	1/3 (33.3%)
2012	3/5 (60.0%)	2/5 (40.0%)
2013	8/15 (53.3%)	7/15 (46.7%)
2014	7/15 (46.7%)	8/15 (53.3%)
2015	2/5 (40.0%)	3/5 (60.0%)
2016	1/3 (33.3%)	2/3 (66.7%)
2017	4/15 (26.7%)	11/15 (73.3%)
2018	1/5 (20.0%)	4/5 (80.0%)
2019	2/15 (13.3%)	13/15 (86.7%)
2020	1/15 (6.7%)	14/15 (93.3%)
2021	0 (0%)	1 (100.0%)
Thereafter	0%	100.0%

[10] As discussed earlier, had dividends actually been awarded based upon the 2006 and 2007 reserve ratios, the dividends would have been allocated pursuant to the existing rule governing dividends.

Thus, for example, if a dividend were awarded based upon the Reserve Ratio at the end of 2018, one-fifth of the total dividend would be allocated based upon 1996 assessment base shares and four-fifths of the total dividend would be allocated based upon eligible premium shares.[11]

The 15-year period over which the influence of 1996 assessment bases would decline represents a compromise between two legitimate, but opposing, arguments. On one hand, a 15-year period recognizes the significant contributions made by some institutions in the early 1990s to capitalize the deposit insurance fund and that the interest earned on this capital continues to help fund the FDIC. On the other hand, a 15-year period does not give these institutions an advantage that could last indefinitely in obtaining dividends, as would occur under the fund balance method absent very large insurance losses. It is also consistent with an argument noted in a comment letter that the $4.7 billion one-time assessment credit, which was awarded under the Reform Act and distributed according to the 1996 assessment base shares, was intended to compensate institutions that helped capitalize the insurance funds in the early 1990s.

Cumulating eligible premiums over the 5-year period preceding the year of the dividend is consistent with the specific recommendations made by the large financial services company trade association and the coalition in their comment letters. A 5-year look-back period recognizes that the Reform Act enhances the FDIC's ability to control the growth of the fund over time through the level of assessment rates. Certain events, however, such as an unanticipated decline in estimated insured deposits or unexpectedly high investment income, could raise the fund over the 1.35 percent dividend threshold. Thus, assessments charged over some relatively short period preceding the unexpected events would have proven in retrospect to be too high, and the dividend would serve as a rebate of excess funds.[12]

Eligible Premiums

Based upon the unanimous recommendations of all respondents

[11] The dividend would actually be awarded and paid in 2019.

[12] One of the banking trade associations that commented on the ANPR cited essentially the same argument as a justification for adopting the payments method.

who commented specifically on the issue, the FDIC is proposing that an eligible premium be defined as the part of any actual assessment that is charged at no more than the maximum rate then applicable to a Risk Category I institution. Under the assessment rate schedule presently in effect, the minimum and maximum rates that can be charged a Risk Category I institution differ by two basis points. At present, the minimum annual rate applicable to a Risk Category I institution is 5 basis points and the maximum rate is 7 basis points. Thus, the entire assessment of an institution charged anywhere between 5 and 7 basis points would be an eligible premium, but only 7/10 of the assessment of an institution in Risk Category II (charged 10 basis points under the current schedule) would be eligible so long as this rate schedule is in effect.[13]

Under the proposed rule, whether an institution paid its assessment in cash or offset it with assessment credits would not affect its eligible premiums. Thus, again assuming present assessment rates, the entire assessment of an institution charged 7 basis points would be an eligible premium, whether the institution paid in cash or offset its assessment liability with an assessment credit. The FDIC currently anticipates that the great bulk of assessment credits (over 95 percent) will have been used by the end of 2008.

An institution's eligible premiums would include eligible premiums paid by a predecessor.

How the Dividend Allocation Method Would Affect Different Institutions

The proposed dividend allocation method would affect institutions differently depending upon their 1996 assessment base and the amount of eligible premiums charged during the five years before a dividend is declared. Assume, for example, that a hypothetical dividend of $1 billion were awarded based upon the 2018 Reserve Ratio. Of the $1 billion total dividend, $200 million-one-fifth (20 percent)—would be allocated based upon 1996 assessment base shares and $800 million—four-fifths (80 percent)—would be allocated based upon eligible premium shares.[14] An institution that held 0.1 percent of the 1996 assessment base and had made 0.05 percent of total eligible premiums from 2014 through 2018 would receive a dividend of $600,000 (0.1 percent of $200 million—which equals $200,000—plus 0.05 percent of $800 million—which equals $400,000). An institution that had no 1996 assessment base but had made the identical percentage (0.05 percent) of total eligible premiums from 2014 through 2018 would receive $400,000.

An institution that consistently paid the lowest rate applicable to Risk Category I would receive a smaller dividend than one that paid the highest rate applicable to Risk Category I, assuming identical future assessment bases and identical 1996 assessment base shares, since the institution paying the higher rate would have paid higher premiums and would have a larger eligible premium share. However, an institution that consistently paid a rate outside of Risk Category I (for example, the Risk Category II rate) would receive the same dividend as an institution that paid the highest rate applicable to Risk Category I, again assuming identical future assessment bases and identical 1996 assessment base shares.

An addendum explains the dividend allocation calculation in greater detail.

Predecessor Insured Depository Institutions

Under the proposed rule, consistent with the requirements of the Reform Act, the allocation of dividends to an insured depository institution would in part be based on the 1996 assessment base ratio of, and the post-l996 assessments paid by, insured depository institutions of which the insured depository institution is the successor. As in the Temporary Final Rule, the proposed rule would define a predecessor insured depository institution by cross referencing the definition of successor insured depository institution in the one-time assessment credit rule. (See 12 CFR 327, subpart B.) In effect, a predecessor institution is the mirror image of a successor institution. Notably, the definition of successor in the one-time credit regulation includes a de facto rule, applicable in transactions in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of another insured depository institution.

D. Notification and Payment of Dividends

Under the proposed rule, the FDIC would advise each institution of its dividend amount as soon as practicable after the Board's declaration of a dividend on or before May 10th. Individual dividend amounts would be paid to institutions no later than 45 days, or as soon as practicable, after the issuance of the special notice. This timeframe would allow the FDIC to freeze payment of an individual institution's dividend amount, if that amount is in dispute.

Depending on the timing of the Board's declaration, which could occur prior to May 10th, and the expiration of the 30-day period for requesting review (explained below), it is possible that dividends could be paid at the same time as the collection of the quarterly assessment and would offset those payments. Dividends would be paid through the Automated Clearing House (''ACH''). If they are paid at the time of assessment payments, offsets would be made. If the institution owes assessments in excess of the dividend amount, there would be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owes an additional dividend amount in excess of the assessment to the institution, there would be a net credit (resulting in payment from the FDIC). The FDIC plans to notify institutions whether dividends would offset the next assessment payments with the next invoice.

Under the proposed rule, the FDIC would freeze the payment of the disputed portion of dividend amounts involved in requests for review. In the absence of such action, institutions would receive the amount indicated on the notice. Any adjustment to an individual institution's dividend amount resulting from its request for review would be handled through ACH in the same manner as existing procedures for underpayment or overpayment of assessments.

The FDIC intends, beginning no later than 2010, to include with its quarterly assessment invoices to insured depository institutions the institution's 1996 assessment base share and its rolling five-year eligible premium share.

E. Requests for Review

The Reform Act requires the FDIC to include in its dividend regulations provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of its dividend. The FDIC's determination under such procedures is to be final and not subject to judicial review.

The request-for-review provisions of the proposed rule, for dividend amounts, are similar to those in the Temporary Final Rule, but they reflect

[13] If the year-end reserve ratio in 2009 or 2010 exceeds 1.35 percent and the FDIC declares a dividend for that year, the 5-year look-back period would include years before 2007. Institutions in what is now termed Risk Category I (formerly the ''1A'' risk classification), however, were charged a zero rate from 1997 through 2006. Thus, under the proposal, no premium paid before 2007 would be eligible.

[14] Again, the dividend would actually be awarded and paid in 2019.

the FDIC's intention to provide, beginning in 2010, quarterly dividend-related information with each institution's assessment invoice. If a dividend were declared before 2010, an institution would have 30 days from the date of the notice advising it of its dividend amount to request review. Review could be requested if an institution disagrees with the computation of the dividend or if it believes that it does not accurately reflect appropriate adjustments to the institution's 1996 assessment base ratio or eligible premium share, such as for a purchase and assumption transaction that triggers application of the de facto rule for purposes of determining any predecessor institutions. Once the quarterly invoice updates become available as contemplated under the proposed rule, an institution generally would have 90 days from the date of the invoice to request review of that dividend-related information, except in a year in which a dividend is declared. If the FDIC were to declare a dividend, the institution would have 30 days from the date of its notice of dividend amount to request review either of that amount or of any dividend-related information in its March invoice for that year; the institution would not have the full 90-day period following the March invoice to request review.

An institution must timely request review of its dividend-related information and must request review within 90 days of the first invoice that fails to reflect accurate information. If an institution does not submit a timely request for review of its dividend-related information, it would be barred from subsequently requesting review of that information.

The requirement that insured depository institutions monitor their dividend-related information quarterly and promptly request review is necessitated by the proposed timing for the payment of dividends. In the absence of such a strict quarterly requirement, the FDIC would need to reconsider both the timing of dividend payment and possibly the look-back period for calculating institutions' dividend shares, which at 5 years is longer than the 3-year recordkeeping requirement in the FDI Act and longer than the 3-year statute of limitations for bringing action on assessment underpayments and overpayments.

As under the current rule, at the time of the request for review, the requesting institution also would be required to notify all other institutions of which it knew or had reason to believe would be directly and materially affected by granting the request for review and would be required to provide those institutions with copies of the request for review, supporting documentation, and the FDIC's procedures for these requests for review. In addition, the FDIC would make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

These institutions would then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request for review. If an institution notified through this process does not submit a timely response, that institution would be foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process. Also under the proposed rule, the FDIC could request additional information as part of its review, and the institution from which such information is requested would be required to supply that information within 21 days of the date of the FDIC's request.

The proposed rule would require a written response from the FDIC's Director of the Division of Finance (''Director''), or his or her designee, notifying the requesting institution and any materially affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible: (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional institutions are notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or (3) if the FDIC has requested additional information, within 60 days of its receipt of the additional information, whichever is latest.

If a requesting institution disagrees with the determination of the Director, that institution could appeal its dividend determination to the FDIC's Assessment Appeals Committee (''AAC''). Under the proposed rule, an appeal to the AAC must be filed within 30 calendar days of the date of the Director's written determination. Notice of the procedures applicable to appeals of the Director's determination to the AAC would be included with the written response. The AAC's determination would be final and not subject to judicial review.

As noted, and as under the Temporary Final Rule, the FDIC proposes to freeze temporarily the distribution of the dividend amount in dispute for the institutions involved in the challenge until the challenge is resolved.

IV. Request for Comments

The FDIC requests comments on all aspects of the proposed rule. Comments are specifically requested on the proposed dividend allocation method.

V. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires a federal agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a ''small entity'' includes a bank holding company, commercial bank or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule, if adopted in final form, would provide the procedures for the FDIC's declaration,

distribution, and payment of dividends to insured depository institutions under the circumstances set forth in the FDI Act. While each insured depository institution would have the opportunity to request review of the amount of its dividend each time a dividend is declared, the proposed rule would rely on information already collected and maintained by the FDIC in the regular course of business. The proposed rule, if adopted, would not directly or indirectly impose any reporting, recordkeeping or compliance requirements on insured depository institutions.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. Ch. 3501 *et seq.*) are contained in the proposed rule.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Addendum

The illustrations below provide a more detailed description of the dividend allocation calculation. Both illustrations again assume that a hypothetical dividend of $1 billion is awarded based upon a hypothetical 2018 Reserve Ratio. In the illustrations, Institution A and Institution B are assumed to be identical except that A has a 1996 assessment base, and B does not. They both pay Risk Category I premiums at the same rate. Institution C is identical to Institution A (it has a 1996 assessment base), but it differs from both A and B in that it pays the higher Risk Category II assessment rate.

ILLUSTRATION 1.—DIVIDEND OF $1 BILLION BASED ON 2018 RESERVE RATIO

20 percent ($200 million) allocated based on 1996 assessment base shares
80 percent ($800 million) allocated based upon eligible premium shares

Bank A's 1996 assessment base = $400 million (0.01203% of industry total)
Bank B's 1996 assessment base = $0
Banks have identical assessment bases and pay the lowest assessment rate applicable to Risk Category I (assumed to be 2 basis points) [15]

Year	Assessment base ($000)	Rate (B.P.)	Premium ($000)	Eligible premium ($000)
2014	500,000	2	100	100
2015	522,500	2	105	105
2016	546,013	2	109	109
2017	570,583	2	114	114
2018	596,259	2	119	119
5-year sum				547
Industry 5-year sum				12,000,000
Each bank's share of industry 5-year eligible premium				0.00456%
Bank A's dividend ($000) = 0.01203% of $200 million + 0.00456% of $800 million:				60.531
Bank B's dividend ($000) = 0.0456% of $800 million:				36.471

ILLUSTRATION 2.—DIVIDEND OF $1 BILLION BASED ON 2018 RESERVE RATIO

[20 percent ($200 million) allocated based on 1996 assessment base shares]
[80 percent ($800 million) allocated based upon eligible premium shares]

Bank C's 1996 assessment base = $400 million (0.01203% of industry total).
Bank C's 1996 assessment base is identical to Banks A and B (Illustration 1).
Pays rate applicable to Risk Category II (assumed to be 7 basis points).

Year	Assessment base ($000)	Rate (B.P.)	Premium ($000)	Eligible premium ($000)
2014	500,000	7	350	200
2015	522,500	7	366	209
2016	546,013	7	382	218
2017	570,583	7	417	239
2018	596,259	7	417	239
5-year sum				1,094
Industry 5-year sum				12,000,000
Bank C's share of industry 5-year eligible premium				0.00912%
Bank C's dividend ($000) = 0.01203% of $200 million + 0.00912% of $800 million:				97.003

[15] The illustrations assume that assessment rates charged in 2014–2018 equal the base assessment rates adopted by the Board at the end of 2006: 2–4 basis points for Risk Category I and 7 basis points for Risk Category II.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended by revising subpart C to read as follows:

PART 327—ASSESSMENTS

Subpart C—Implementation of Dividend Requirements

Sec.
327.50 Purpose and scope.
327.51 Definitions.
327.52 Annual dividend determination.
327.53 Allocation and payment of dividends.
327.54 Requests for review.

Subpart C—Implementation of Dividend Requirements

Authority: 12 U.S.C. 1817(e)(2), (4).

§ 327.50 Purpose and scope.

(a) Scope. This subpart C of part 327 implements the dividend provisions of section 7(e)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(2), and applies to insured depository institutions.

(b) Purpose. This subpart C of part 327 provides the rules for:

(1) The FDIC's annual determination of whether to declare a dividend and the aggregate amount of any dividend;

(2) The FDIC's determination of the amount of each insured depository institution's share of any declared dividend;

(3) The time and manner for the FDIC's payments of dividends; and

(4) An institution's appeal of the FDIC's determination of its dividend amount.

§ 327.51 Definitions.

For purposes of this subpart:

(a) *Assessment base share* means an *insured depository institution's 1996 assessment base ratio* divided by the total of all existing, eligible insured depository institution's shares of the 1996 assessment base (rounded to seven decimal places).

(b) *Board* has the same meaning as under subpart B of this part.

(c) *DIF* means the Deposit Insurance Fund.

(d) An *eligible premium* means an assessment paid by an insured depository institution (or its predecessor) that did not exceed, for the applicable assessment period, the maximum assessment applicable in that assessment period to a Risk Category 1 institution under subpart A of this part.

(e) An insured depository institution's *eligible premium share* means that institution's cumulative eligible premiums over the previous five years (ending on December 31st of the year prior to the year in which the dividend is declared) divided by the cumulative total of all eligible premiums paid by all existing insured depository institutions or their predecessors over that five-year period (rounded to seven decimal places).

(f) An *insured depository institution's 1996 assessment base ratio* means an institution's 1996 assessment base ratio, as determined pursuant to the § 327.33 of subpart B of this part, adjusted as necessary to reflect subsequent transactions in which the institution succeeds to another institution's assessment base ratio, or a transfer of the assessment base ratio pursuant to § 327.34. The 1996 assessment base ratio shall be rounded to seven decimal places.

(g) *Predecessor,* when used in the context of insured depository institutions, refers to the institution merged with or into a resulting institution or acquired by an institution under § 327.33(c) of subpart B under the de facto rule, consistent with the definition of *successor* in section 327.31.

§ 327.52 Annual dividend determination.

(a) On or before May 10th of each calendar year, beginning in 2007, the Board shall determine whether to declare a dividend based upon the reserve ratio of the DIF as of December 31st of the preceding year, and the amount of the dividend, if any.

(b) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and does not exceed 1.50 percent, the Board shall declare the amount that is equal to one-half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as the aggregate dividend to be paid to insured depository institutions.

(c) If the reserve ratio of the DIF exceeds 1.50 percent of estimated insured deposits, except as provided in paragraph (d), the Board shall declare the amount in excess of the amount required to maintain the reserve ratio at 1.50 percent as the aggregate dividend to be paid to insured depository institutions and shall declare a dividend under paragraph (b) of this section.

(d) (1) The Board may suspend or limit a dividend otherwise required to be paid if the Board determines that:

(i) A significant risk of losses to the DIF exists over the next one-year period; and

(ii) It is likely that such losses will be sufficiently high as to justify the Board concluding that the reserve ratio should be allowed:

(A) To grow temporarily without requiring dividends when the reserve ratio is between 1.35 and 1.50 percent; or

(B) To exceed 1.50 percent.

(2) In making a determination under this paragraph, the Board shall consider:

(i) National and regional conditions and their impact on insured depository institutions;

(ii) Potential problems affecting insured depository institutions or a specific group or type of depository institution;

(iii) The degree to which the contingent liability of the FDIC for anticipated failures of insured institutions adequately addresses concerns over funding levels in the DIF; and

(iv) Any other factors that the Board may deem appropriate.

(3) Within 270 days of making a determination under this paragraph, the Board shall submit a report to the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs, providing a detailed explanation of its determination, including a discussion of the factors considered.

(e) The Board shall annually review any determination to suspend or limit dividend payments and must either:

(1) Make a new finding justifying the renewal of the suspension or limitation under paragraph (d) of this section, and submit a report as required under paragraph (d)(3) of this section; or

(2) Reinstate the payment of dividends as required by paragraph (b) or (c) of this section.

§ 327.53 Allocation and payment of dividends.

(a) (1) The allocation of any dividend among insured depository institutions shall be based on the institution's 1996 assessment base share and the institution's eligible premium share.

(2) As set forth in the following table, the part of a dividend allocated based upon an institution's 1996 assessment base share shall decline steadily from 100 percent to zero over fifteen years, and the part of a dividend allocated based upon an institution's eligible premium share shall increase steadily over the same fifteen-year period from zero to 100 percent. The 15-year period shall begin as if it had applied to a dividend based upon the reserve ratio at

the end of 2006 and shall end with respect to any dividend based upon the reserve ratio at the end of 2021. Dividends based upon the reserve ratio as of December 31, 2021, and thereafter shall be allocated among insured depository institutions based solely on eligible premium shares.

TOTAL DIF DIVIDEND DISTRIBUTION TABLE

Based upon the DIF reserve ratio at year-end	Part of total DIF dividend determined by:	
	1996 Assessment base shares	Eligible premium shares
2006	1 (100.0%)	0 (0%)
2007	14/15 (93.3%)	1/15 (6.7%)
2008	13/15 (86.7%)	2/15 (13/3%)
2009	4/5 (80.0%)	1/5 (20.0%)
2010	11/15 (73.3%)	4/15 (26.7%)
2011	2/3 (66.7%)	1/3 (33.3%)
2012	3/5 (60.0%)	2/5 (40.0%)
2013	8/15 (53.3%)	7/15 (46.7%)
2014	7/15 (46.7%)	8/15 (53.3%)
2015	2/5 (40.0%)	3/5 (60.0%)
2016	1/3 (33.3%)	2/3 (66.7%)
2017	4/15 (26.7%)	11/15 (73.3%)
2018	1/5 (20.0%)	4/5 (80.0%)
2019	2/15 (13.3%)	13/15 (86.7%)
2020	1/15 (6.7%)	14/15 (93.3%)
2021	0 (0%)	1 (100.0%)
Thereafter	0 (0%)	1 (100%)

The 15-year period shall be computed as if it had applied to dividends based upon the reserve ratios at the end of 2006 and 2007.

(b) The FDIC shall notify each insured depository institution of the amount of such institution's dividend payment based on its share as determined pursuant to paragraph (a) of this section. Notice shall be given as soon as practicable after the Board's declaration of a dividend through a special notice of dividend.

(c) The FDIC shall pay individual dividend amounts, unless they are the subject of a request for review under § 327.54 of this subpart, to insured depository institutions no later than 45 days, or as soon as practicable thereafter, after the issuance of the special notices of dividend. The FDIC shall notify institutions whether dividends will offset the next collection of assessments at the time of the invoice. An institution's dividend amount may be remitted with that institution's assessment or paid separately. If remitted with the institution's assessment, any excess dividend amount will be a net credit to the institution and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A of this part. If remitted with the institution's assessment and the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited by the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution's dividend amount is subject to review under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC shall withhold the payment of the disputed portion of the dividend amount involved in the request for review. Adjustments to an individual institution's dividend amount based on the final determination of a request for review will be handled in the same manner as assessment underpayments and overpayments.

§ 327.54 Requests for review.

(a) An insured depository institution may submit a request for review of the FDIC's determination of the institution's 1996 assessment base share and/or its eligible premium share as shown on the institution's quarterly assessment invoice. Such requests shall be subject to the provisions of § 327.3(f)(3) of subpart A of this part, except for the invoice provided by the FDIC in March of any calendar year in which the FDIC declares a dividend. If the FDIC declares a dividend, any request for review of an institution's 1996 assessment base share and/or its eligible premium share as shown on the institution's March quarterly assessment invoice must be filed within 30 days of the date that the FDIC notifies the institution of its dividend amount. If an institution does not submit a timely request for review for the first invoice in which the dividend-related information that forms the basis for the request appears, the institution shall be barred from subsequently requesting review of that information.

(b) An insured depository institution may submit a request for review of the FDIC's determination of the institution's dividend amount as shown on the special notice of dividend. Such review may be requested if:

(1) The institution disagrees with the calculation of the dividend as stated on the special notice of dividend; or

(2) The institution believes that the 1996 assessment base ratio attributed to the institution has not been adjusted to include the 1996 assessment base ratio of an institution acquired by merger or transfer pursuant to §§ 327.33 and 327.34 of subpart B of this part and § 327.51(g) of this subpart, and the institution has not had a prior opportunity to request review or appeal under subpart B of this part or paragraph (a) of this section; or

(3) The institution believes that the special notice does not fully or accurately reflect its eligible premiums or those of any of its predecessors and the institution has not had a prior opportunity to request review or appeal under subpart B of this part or paragraph (a) of this section.

(c) Any such request for review under paragraph (b) of this section must be submitted within 30 days of the date of the special notice of dividend for which a change is requested. The request for review shall be submitted to the

Division of Finance and shall provide documentation sufficient to support the change sought by the institution. If an institution does not submit a timely request for review, that institution may not subsequently request review of its dividend amount, subject to paragraph (d) of this section. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. The FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(d) During the FDIC's consideration of a request for review, the amount of dividend in dispute will not be available for use by any institution.

(e) Within 30 days of receiving notice of the request for review under paragraph (b) of this section, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (c) of this section does not submit a response to the request for review, that institution may not subsequently:

(1) Dispute the information submitted by any other institution on the transaction(s) at issue in that review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(f) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(g) Any institution submitting a timely request for review under paragraph (b) of this section will receive a written response from the FDIC's Director of the Division of Finance (''Director''), or his or her designee, notifying the affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information, whichever is later. Notice of the procedures applicable to appeals under paragraph (g) of this section will be included with the Director's written determination.

(h) An insured depository institution may appeal the determination of the Director to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (b) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

Dated at Washington, DC, this 14th day of March, 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–5670 Filed 3–21–08; 8:45 am]

BILLING CODE 6714–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Lender Oversight and Credit Risk Management Program; Public Comment Meetings

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Public Comment Meetings.

SUMMARY: The U.S. Small Business Administration (SBA) announces that it will be holding a series of public comment meetings on SBA's proposed lender oversight/credit risk management rule. These public comment meetings will be held in selected cities across the country. The purpose of the meetings is to broaden the opportunity for public participation in the rulemaking. Comments presented at these public comment meetings will become part of the administrative record for SBA's consideration in promulgating SBA's lender oversight/credit risk management regulations.

DATES: The public comment meetings will be held on the dates, times and at the locations specified in the Meetings Schedule section below. All attendees should register at least one week prior to the scheduled meeting date.

ADDRESSES: Parties interested in commenting at or attending a public comment meeting must register by providing a request to Keri Pessagno, SBA Office of Credit Risk Management, at *keri.pessagno@SBA.gov,* or (202) 205–6496, or by facsimile to (202) 481–0744.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, SBA Office of Credit Risk Management, at *bryan.hooper@SBA.gov,* or (202) 205–3049, or by facsimile (202) 205–6891.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 2007, SBA published a proposed rule to incorporate SBA's risk based lender oversight program into SBA regulations (72 FR 61752) and, on December 20, 2007, extended the comment period on the proposed rule to February 29, 2008. (72 FR 72264). SBA included in the proposed rule a proposed regulatory framework for SBA's oversight of participants in the 7(a), 504 and Microloan lending programs. This regulatory framework would enhance SBA's Office of Credit Risk Management's (OCRM) ability to maximize the efficiency of SBA's lending programs by effectively managing program credit risk, monitoring lender performance, and enforcing lending program requirements. It is SBA's intent that the proposed framework would also incorporate the mission of SBA to assist small business access to credit. While the comments received on the proposed rule are greatly assisting SBA with its deliberations, SBA would like to broaden public participation by offering the public an opportunity to meet with SBA in person and communicate their comments. This Notice provides information on the purpose, format, scheduling, and registration for the public comment meetings.

II. Public Comment Meetings

The purpose of these public comment meetings is to broaden the opportunity for public participation in the rulemaking by providing a mechanism beyond the single written round of notice and comment and enable SBA to more fully comprehend the views of the public. SBA considers public comment meetings a valuable component of its deliberations and believes that these comment meetings will allow for constructive input by the lending community, their appointed representatives, and other members of the public. The comments conveyed would assist SBA in assessing and refining SBA's proposed rule.

The format will consist of a panel of SBA representatives who will represent the Agency and moderate the oral comments. The panel will listen to the views of the oral commenters on the proposed regulations. SBA respectfully

requests that the comments focus on the regulations as discussed in the proposal, SBA's incorporation of the Agency mission into the proposed rule, or on any unique concerns of the lending communities and other stakeholders potentially affected by this rule. SBA requests that commenters do not raise issues pertaining to other SBA small business programs or issues outside the scope of the proposed rule. Issues not raised in the proposed rule are more properly suited to a different forum than these meetings.

Individuals orally commenting before SBA will be limited to a 5 minute oral comment. SBA officials may ask questions of a commenter to clarify or further explore the oral comments. Since the purpose of the meeting is to assist SBA with gathering comments for the proposed rule, SBA will not respond as to whether it agrees with the view or position of the commenter.

Commenters may provide a written copy of their comments. SBA will accept written material that the commenter wishes to provide that further supplements his or her oral comments, at or before the meeting. Written comments may be submitted in lieu of oral comments. Electronic or digitized copies are encouraged. SBA will consider the comments, both oral and written, along with any written comments received. Oral and written comments will become part of the rulemaking record for SBA's consideration.

III. Meeting Schedule

Location	Address	Meeting date	Registration closing date
San Francisco, CA	SBA District Office, 455 Market Street, 6th Floor, San Francisco, CA 94105.	Tuesday, April 1, 2008. Begins 9:30 a.m., Ends 12:30 p.m.	Tuesday, March 25, 2008.
Los Angeles, CA	SBA District Office, 330 N. Brand Blvd., Suite 1200, Glendale, CA 91203.	Thursday, April 3, 2008. Begins 9:30 a.m., Ends 12:30 p.m.	Thursday, March 27, 2008.
Boston, MA	O'Neil Federal Office Building, 10 Causeway Street, Auditorium, Boston, MA 02222.	Tuesday, April 8, 2008. Begins 9:30 a.m., Ends 12:30 p.m.	Tuesday, April 1, 2008.
Philadelphia, PA	Robert N.C. Nix Building, 900 Market Street, 2nd Floor, Courtroom Number 7, Philadelphia, PA 19107.	Wednesday, April 9, 2008. Begins 9:30 a.m., Ends 12:30 p.m.	Wednesday, April 2, 2008.
Atlanta, GA	Kennesaw State University, Continuing Education Center, 3333 Busbee Drive, Room 400, Kennesaw, GA 30144–3089.	Tuesday, April 15, 2008. Begins 10 a.m., Ends 1 p.m.	Tuesday, April 8, 2008.
Dallas, TX	SBA Disaster Office, 14925 Kingsport Road, Ft. Worth, TX 76155.	Wednesday, April 16, 2008. Begins 9:30 a.m., Ends 12:30 p.m.	Wednesday, April 9, 2008.
Kansas City, MO	SBA District Office, 1000 Walnut Street, Suite 500, Kansas City, MO 64106.	Thursday, April 17, 2008. Begins 8 a.m., Ends 11 a.m.	Thursday, April 10, 2008.
Chicago, IL	Citicorp Center, 500 West Madison Street, 3rd Floor Conference Center, Chicago, IL 60661.	Friday, April 18, 2008. Begins 9:30 a.m., Ends 12:30 p.m.	Friday, April 11, 2008.

Each public comment meeting will begin 9:30 a.m. and end at 12:30 p.m. (local time) for San Francisco, CA, Los Angeles, CA, Boston, MA, Philadelphia, PA, Dallas, TX and Chicago, IL. For Atlanta, GA, the meeting will begin at 10 a.m. and end at 1 p.m. For Kansas City, MO the meeting will begin at 8 a.m. and end at 11 a.m. SBA will adjourn early if all those scheduled have delivered their testimony.

IV. Registration

SBA respectfully requests that any elected or appointed representative of any lender or other stakeholder communities that is interested in attending please register in advance and indicate whether you would like to orally comment at the meeting. Registration requests should be received by SBA at least one week prior to the respective public comment meeting date. Please contact Keri Pessagno of SBA's Office of Credit Risk Management at *keri.pessagno@sba.gov,* or (202) 205–6496, or by facsimile to (202) 481–0744. If you are interested in orally commenting please include the following information relating to the person orally commenting and the location they will be attending: Name, Title, Organization affiliation, Address, Telephone number, E-mail address and Fax number.

SBA will attempt to accommodate all interested parties that wish to orally comment. However, time considerations limit the total number of oral commenters at each meeting. If the number of individuals seeking to orally comment at a specific meeting exceeds the number permitted due to time limitations, SBA will ask if any interested parties are able to attend a different meeting, and if that is not possible, will ask those requesting to orally comment last in time to submit their comments in writing. To afford all interested parties an opportunity to orally comment at the meetings, an individual can register for only one meeting location.

Parties that plan to attend the meeting but not orally comment must also pre-register. For those parties, please indicate in your registration that you will be attending the meeting but not making an oral comment.

SBA will confirm in writing the registration of commenters and attendees for the meetings.

Eric Zarnikow,

Associate Administrator, Office of Capital Access.

[FR Doc. E8–5856 Filed 3–21–08; 8:45 am]

BILLING CODE 8025–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0871; FRL–8545–1]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of 8-Hour Ozone Section 110(a)(1) Maintenance Plans for the Parishes of Lafayette and Lafourche

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Louisiana State Implementation Plan (SIP) concerning the 8-hour ozone maintenance plans for the parishes of Lafayette and Lafourche. On October 13, 2006, and December 19, 2006, the State of Louisiana submitted maintenance plans for Lafayette and Lafourche Parishes, respectively, which ensure continued attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. These maintenance plans meet the statutory and regulatory requirements, and are consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the Federal Clean Air Act (CAA).

DATES: Written comments must be received on or before April 23, 2008.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul Kaspar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7459; fax number 214–665–7263; e-mail address *kaspar.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: March 6, 2008.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E8–5798 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ—OAR–2006–0971; FRL–8544–1]

RIN 2060–AO86

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the National Volatile Organic Compound Emission Standards for Aerosol Coatings final rule, published elsewhere in this **Federal Register**, which is a rule that establishes national reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under the Clean Air Act (CAA). In the ''Rules and Regulations'' section of this **Federal Register**, we are making these same amendments as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments. Written comments must be received by April 23, 2008. Public Hearing. If anyone contacts EPA requesting to speak at a public hearing concerning the proposed regulation by April 3, 2008, we will hold a public hearing on April 8, 2008. Additional information about the opportunity for a public hearing is contained in the direct final rule located in the rules section of this **Federal Register**.

ADDRESSES: Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0429 by mail to National Volatile Organic Compound Emission Standards for Aerosol Coatings, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–2509; facsimile number (919) 541–3470; e-mail address: *whitfield.kaye@epa.gov.* For information concerning the CAA section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460, facsimile number (919) 541–3470, e-mail address: *moore.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take action on the National Emission Standards for Aerosol Coatings to clarify and amend certain explanatory and regulatory text in the rule concerning how compounds are added to the lists in Tables 2A, 2B and 2C, and when distributors and retailers are regulated entities responsible for compliance with the final rule. We have published a direct final rule to make these same amendments in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action 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, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in

any subsequent final rule base on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

II. Does This Action Apply to Me?

The entities potentially affected by this proposed rule are the same entities that are subject to the Aerosol Coatings final rule, published elsewhere in this **Federal Register**. The entities affected by the Aerosol Coatings final rule, published elsewhere in this **Federal Register**, include: Manufacturers, processors, distributors, importers of aerosol coatings for sale or distribution in the United States, and manufacturers, processors, distributors, or importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States.

III. Statutory and Executive Order Reviews

For a complete discussion of all the administrative requirements applicable to this action, see the Direct Final Rule in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 13, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–5588 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA–2007–27748]

RIN 2126–AB06

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators: Updated Information and Extension of Comment Period

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Proposed rule; Updated information and extension of comment period.

SUMMARY: In response to a request, the Federal Motor Carrier Safety Administration (FMCSA) extends until May 23, 2008, the comment period for its notice of proposed rulemaking (NPRM) published on December 26, 2007. FMCSA also updates information in the Paperwork Reduction Act section in the preamble to the NPRM.

DATES: Please submit comments regarding the NPRM to the docket by May 23, 2008. Please submit comments regarding updated information under the Paperwork Reduction Act by May 23, 2008.

ADDRESSES: You must submit comments, identified by Docket ID Number FMCSA–2007–27748, by one of the following methods:

- *Electronically:* Through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Courier:* U.S. Department of Transportation, Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.
- *Docket:* For access to the docket to read comments received and background material, go to the Federal Docket Management System (FDMS) at: *http://www.regulations.gov,* and search for docket ID Number FMCSA–2007–27748. Comments may also be inspected at the U.S. Department of Transportation, Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Privacy Act:* Regardless of the method used for submitting comments, all comments or material will be posted without change to the FDMS, including personal information. Anyone can search the electronic form of all of our dockets in FDMS by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19476) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division (MC–PSD), telephone (202) 366–4325 or e-mail *mcpsd@dot.gov.*

SUPPLEMENTARY INFORMATION: On December 26, 2007 (72 FR 73226), FMCSA published for public comment a notice of proposed rulemaking (NPRM) concerning minimum training requirements for entry-level commercial motor vehicle operators. The original comment period for the NPRM expires on March 25, 2008. In response to a letter dated February 26, 2008 from the American Trucking Associations, FMCSA has extended the comment period, which now expires on May 23, 2008.

The FMCSA has updated the NPRM, on page 73241, second column, under the headings *Respondents, Frequency,* and *Annual Burden Estimate,* so that it reads as follows:

Respondents: The annual number of drivers providing training certificates under the current rule, which would remain in effect during the 3-year implementation period, is 32,426. The number of training institutions (public and private) that would provide training under the terms of this proposed rule is uncertain, but FMCSA estimates it to be between 200 and 500. The number of State licensing agencies is 51. The total of these three groups of potential respondents will range between 32,677 and 32,977 during the initial 3-year implementation period.

Frequency: Information would not be collected with any specific frequency during the 3-year life of the information collection. The initial burdens on training institutions and SDLAs will be limited to startup activities.

''*Annual Burden Estimate:* This proposal would result in an annual recordkeeping and reporting burden estimated to be 134,990 hours, calculated as follows:

Entry-level CDL drivers after the first year under the currently approved information collection incur a burden of 5,400 hours, and this burden would remain in effect until OMB approval of a pending revision of the information collection. In addition, during the 3-year phase-in period the CDL-training institutions would incur an estimated burden of 125,000 hours to revise their processes to conform to the requirements of this rule. During the same period, State driver-

licensing agencies would incur a burden of 4,590 hours to modify their systems. The total proposed annual burden is 134,990 hours (5,400 + 125,000 + 4,590).

Following the 3-year implementation period, calculation of the PRA burden would be revised by FMCSA because the rule would be fully operational.

''FMCSA has submitted this NPRM and a supporting statement to OMB, estimating the paperwork burdens of this proposal. The Agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility,

(2) Evaluate the accuracy of the Agency's estimate of the burden,

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. You may submit comments on the PRA aspects of this proposed rule directly to OMB. The deadline for such submissions is May 23, 2008. You must mail or hand-deliver your comments to:

Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.''

Issued on: March 19, 2008.

David H. Hugel,

Deputy Administrator.

[FR Doc. E8–5905 Filed 3–21–08; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 73, No. 57
Monday, March 24, 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

Rural Housing Service

USDA Rural Development Voucher Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of USDA Voucher Program Availability.

SUMMARY: This notice informs the public that the United States Department of Agriculture (USDA) has established a demonstration USDA Rural Development Voucher Program, as authorized under section 542 of the Housing Act of 1949 as amended, (without regard to section 542(b)), which is being administered by the USDA. This notice informs the public that USDA shall make $4,965,000.00 available for this purpose, as appropriated under the Consolidated Appropriations Act, 2008. The notice also sets forth the general policies and procedures for use of these vouchers.

DATE: March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie B.M. White, Director, Multi-Family Housing Portfolio Management Division, Rural Development, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0782, Washington, DC 20250–0782, telephone (202) 720–1615. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Appropriations Act, 2008 (Pub. L. 110–161) (December 26, 2007) (Consolidated Appropriations Act, 2008), appropriates $4,965,000.00 to the USDA for the Rural Development Voucher Program as authorized under section 542 of the Housing Act of 1949, as amended 42 U.S.C. 1471 *et seq.* (without regard to section 542(b)).

The Consolidated Appropriations Act, 2008, provides that the Secretary of the United States Department of Agriculture shall carry out the USDA Rural Development Voucher Program as follows:

''That of the funds made available under this heading, $5,000,000 shall be available for rural housing vouchers to any low-income household (including those not receiving rental assistance) residing in a property financed with a section 515 loan which has been prepaid after September 30, 2005:

Provided further, That the amount of such voucher shall be the difference between comparable market rent for the section 515 unit and the tenant paid rent for such unit: *Provided further,* That funds made available for such vouchers shall be subject to the availability of annual appropriations: *Provided further,* That the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (including the ability to pay administrative costs related to delivery of the voucher funds)''. This notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a section 515 loan or Agency action results in a foreclosure after September 30, 2005.

II. Design Features of the USDA Voucher Program

This section sets forth the design features of the USDA Rural Development Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

Rural Development vouchers under this part are administered by the Rural Housing Service, an Agency under the Rural Development mission area, in accordance with requirements set forth in, ''The Rural Development Voucher Program Guide,'' which can be obtained by contacting any Rural Development office. Contact information for Rural Development offices can be found at *http://offices.sc.egov.usda.gov/locator/app.* These requirements are generally based on the housing choice voucher program regulations of the United States Department of Housing and Urban Development (HUD) set forth at 24 CFR part 982, unless otherwise noted by this Notice.

The Rural Development Voucher Program is intended to offer protection to eligible multifamily housing tenants in properties financed through Rural Development's section 515 Rural Rental Housing Program (515 property) who may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of a 515 property pays off the loan, the Rural Development affordable housing requirements and rental assistance subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. Whether or not the rent increases, the tenant will be responsible for the full payment of rent. The USDA Rural Development Voucher Program applies to any 515 property where the mortgage is paid off prior to the maturity date in the promissory note after September 30, 2005. This includes foreclosed properties. Tenants in foreclosed properties are eligible for a Rural Development voucher under the same conditions as properties that go through the standard prepayment process. The Rural Development voucher will help tenants by providing a short-term rental subsidy, up to 36 monthly payments, that will supplement the tenant's rent payment. This short-term subsidy enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property, or take to any other rental unit in the United States and its territories. In order to utilize a voucher, the rental unit must pass a Rural Development health inspection, and the owner must be willing to accept a USDA Rural Development voucher. USDA Rural Development vouchers cannot be used for units in subsidized housing like Section 8 and public housing, where two housing subsidies would result. The USDA Rural Development voucher may be used for rental units in other properties financed by Rural Development, but it cannot be used in combination with the Rural Development Rental Assistance program. The USDA Rural Development voucher may not be used for the purchase of a home.

1. Family Eligibility

In order to be eligible for the USDA Rural Development voucher under this notice, a family must be residing in the

section 515 project on the date of the prepayment of the section 515 loan or upon foreclosure by Rural Development. Furthermore, the date of the prepayment or foreclosure must be after September 30, 2005. As stated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the tenant must be a citizen, United States non-citizen national, or qualified alien. Rural Development will determine if the family is a low-income family on the date of the prepayment or foreclosure. When Rural Development determines a family is low-income, Rural Development will send the primary tenant a letter offering the family a voucher and will enclose a Voucher Obligation Form. If the family wants to participate in the USDA Rural Development Voucher Program, the tenant has 10 months from the date of prepayment, but no later than September 15, 2008, to return the Obligation Request Form to the local Rural Development office. A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area. If Rural Development makes a determination that the tenant is ineligible based on income, Rural Development will provide administrative appeal rights. The voucher is issued to the household in the name of the primary tenant. If the primary tenant dies during the term of the voucher, the use of the voucher passes to the co-tenant.

2. Obtaining a Voucher

Rural Development will monitor the prepayment request process or foreclosure process, and as part of that process will obtain a rent comparability study prior to the date of prepayment or foreclosure. The rent comparability study will be used to calculate the amount of voucher each tenant is entitled to receive. All tenants will be notified of eligibility determinations and voucher calculations by Rural Development by the date of prepayment. As previously stated, such notice will include a description of the USDA Rural Development Voucher Program, an Obligation Request Form, and an offer to participate in the USDA Rural Development Voucher Program if the family is eligible to receive such voucher. Once the primary tenant returns the Obligation Request Form to Rural Development, a voucher will be issued. All information necessary for a housing search, explanations of unit acceptability, and Rural Development contact information will be provided by Rural Development to the tenant at that time.

The family receiving a USDA Rural Development voucher has an initial search period of 60 calendar days to find a housing unit. At its discretion, the Agency may grant one or more extensions of the initial search period for up to an additional 60 days. The maximum voucher search period for any family participating in the USDA Rural Development Voucher Program is 120 days. If the family needs and requests an extension of the initial search period as a reasonable accommodation to make the program accessible to a disabled family member, the Agency will extend the voucher search period. If the USDA Rural Development voucher remains unused after a period of 150 days from issuance, the USDA Rural Development voucher will become void and funding will be cancelled. The tenant will no longer be eligible to receive a USDA Rural Development voucher.

3. Initial Lease Term

The initial lease term for the housing unit where the family wishes to use its voucher must be for one year.

4. Inspection of Units and Unit Approval

The inspection standards currently in effect for the Rural Development section 515 Multi-Family Housing Program apply to the USDA Rural Development Voucher Program.

Rural Development must inspect the unit and ensure that the unit meets the housing inspection standards of the program at 7 CFR 3560.103. Under no circumstances may Rural Development make voucher rental payments for any period of time prior to the date that Rural Development physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by Rural Development under the Section 515 program, Rural Development may accept the results of physical inspections performed no more than one year prior to the date of receipt by Rural Development of Form HUD 52517, ''Request for Tenancy Approval,'' in order to make determinations on acceptable housing standards. Before approving a family's assisted tenancy or executing a Housing Assistance Payments contract, Rural Development must determine that the following conditions are met: (1) The unit has been inspected by Rural Development and passes the housing standards inspection or has otherwise been found acceptable as noted previously; and (2) the lease includes the HUD tenancy addendum.

Once the conditions for a Housing Assistance Payments contract are met, Rural Development will approve the unit for leasing. Rural Development will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD–52641. The HAP contract must be executed before USDA Rural Development voucher payments can be made. While Rural Development must use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, Rural Development will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. Any HAP contract executed after the 60-day period is untimely and Rural Development will not pay any housing assistance payment to the owner for that period. In establishing the effective date of the voucher HAP contracts, Rural Development may not execute a housing voucher contract that is effective prior to the section 515 loan prepayment.

5. Subsidy Calculations for USDA Rural Development Vouchers

The monthly housing assistance payment for the USDA Rural Development Voucher Program is the difference between the comparable market rent for the family's former section 515 unit and the tenant contribution on the date of the prepayment. The tenant can appeal Rural Development's determination of the voucher amount through USDA's administrative appeal process, 7 CFR part 11. Since the USDA Rural Development voucher amount will be based on the comparable market rent, the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if they choose to stay in-place. Also, in no event may the USDA Rural Development voucher subsidy payment exceed the actual tenant lease rent. The amount of the voucher does not change over time. Due to the short-term nature of the USDA Rural Development Voucher Program, there are no continued income eligibility tests or income recertifications after the family is determined income-eligible at the time of prepayment or foreclosure.

6. Mobility and Portability of USDA Rural Development Vouchers

An eligible family that is issued a USDA Rural Development voucher may elect to use the assistance in the same project or may choose to move from the property. The USDA Rural Development voucher may be used at the prepaid

property or any other rental unit in the United States and its territories that passes Rural Development physical inspection standards, and where the owner will accept a USDA Rural Development voucher. HUD Section 8 and Federally-assisted public housing is excluded from the USDA Rural Development Voucher Program because these units are already federally subsidized. Tenants with a USDA Rural Development voucher would have to give up the USDA Rural Development voucher to accept the assistance at those properties. The USDA Rural Development voucher may be used in other properties financed by Rural Development, but it cannot be used in combination with the Rural Development Rental Assistance Program. Tenants with a USDA Rural Development voucher that apply for housing in a Rural Development-financed property must choose between using the voucher or Rental Assistance (RA). If the tenant relinquishes the USDA Rural Development voucher in favor of RA, the tenant is not eligible to receive another USDA Rural Development voucher.

7. Term of Funding for Rural Development Vouchers

The USDA Rural Development Voucher Program provides voucher assistance for 12 monthly payments, subject to the availability of appropriations to the USDA.

8. Non-Discrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

9. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: March 14, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8–5817 Filed 3–21–08; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census Employment Inquiry.

Form Number(s): BC–170A, BC–170B, BC–170D.

OMB Control Number: 0607–0139.

Type of Request: Revision of a currently approved collection.

Burden Hours: 250,000.

Number of Respondents: 1,000,000.

Average Hours per Response: 15 minutes.

Needs and Uses: The Census Bureau requests continued OMB approval for the BC–170A, BC–170B, and the BC–170D, Census Employment Inquiry forms for Field Division.

The BC–170 is used throughout the census and intercensal periods for the special census, pretests, and dress rehearsals for short-term time limited appointments. Applicants completing the form for a census related position are applying for temporary jobs in office and field positions, such as clerks, enumerators, crew leaders, and supervisors. In addition, as an option to the OF–612, Optional Application for Federal Employment, the BC–170 may be used when applying for temporary/permanent office and field positions, such as clerks, field representatives, and supervisors on a recurring survey in one of the Census Bureau's 12 Regional Offices (ROs) throughout the United States.

During the decennial census, the BC–170 is intended to expedite hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The use of this form is limited to only situations which require the establishment of a temporary office and/or involve special, one-time or recurring survey operations at one of the ROs. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management (OPM) Optional Forms that are available for use by the public when applying for federal positions. For the 2010 Census, Census expect to recruit 3,000,000 applicants for jobs.

The recurring survey form is identified as the BC–170A. The form for special censuses is identified as the BC–170B, and the form for decennial as the BC–170D. The variation of forms by operation, is to collect specific data needed based on the nature of the operation. The major area of difference relates to the collection of work history. A cover sheet will be attached to each respective BC–170 to provide applicants with a brief description of their prospective job duties with the Census Bureau; the cover sheet message will vary for decennial, special censuses, or recurring survey positions. The modified cover sheet is attached to each form.

The changes to the forms for this period included updating the identification that is allowed to be used as employment eligibility verification, the addition of place of birth, and the collection of the name of the educational institution the applicant attended.

The BC–170 (A, B, and D) is completed by job applicants before or at the time they are tested. Selecting officials will review the information shown on the form and determine the applicant's employment suitability. Failure to collect this information could result in the hiring of unsuitable and/or unqualified workers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13, United States Code, Section 23 a and c.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dhynek@doc.gov*).

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 18, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–5826 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Billfish Certificate of Eligibility.

Form Number(s): None.

OMB Approval Number: 0648–0216.

Type of Request: Regular submission.

Burden Hours: 43.

Number of Respondents: 200.

Average Hours per Response: Initial dealer information, 20 minutes; subsequent dealer information, 2 minutes.

Needs and Uses: Persons who are first receivers of billfish, except for billfish landed in a Pacific state and remaining in the state of landing, are required to complete a Certificate of Eligibility for Billfish as a condition for the domestic trade of fresh and frozen billfish shipments. The dealers or processors who subsequently receive or possess billfish must retain a copy of the Certificate of Eligibility for Billfish while processing the billfish. The purpose of this requirement is to ensure that Atlantic billfish are retained as a recreational resource, and that any billfish entering the commercial trade have not been harvested from the Atlantic Ocean management unit.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: March 19, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–5872 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Implantation and Recovery of Archival Tags.

Form Number(s): None.

OMB Approval Number: 0648–0338.

Type of Request: Regular submission.

Burden Hours: 21.

Number of Respondents: 30.

Average Hours per Response: Tag recovery, 30 minutes; written notification of beginning of tagging activity, 30 minutes; reports, 1 hour.

Needs and Uses: Under a scientific research exemption any person may catch, possess, retain, and land any Highly Migratory Species Division-regulated species in which an archival tag has been affixed or implanted, provided that the person immediately reports the landing to National Marine Fisheries Service (NMFS). In addition, any person affixing or implanting an archival tag to a regulated species is required to provide NMFS with written notification in advance of beginning the tagging activity, and to provide a written report upon completion of the activity.

Affected Public: Individual or household; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: March 19, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–5873 Filed 3–21–08; 8:45am

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Charting Programs.

Form Number(s): None.

OMB Approval Number: 0648–0022.

Type of Request: Regular submission.

Burden Hours: 4,400.

Number of Respondents: 1,025.

Average Hours per Response: Chart updating Excel form, 3 hours; website reporting, 2 hours.

Needs and Uses: In accordance with 33 U.S.C Sections 883a and b, NOAA's National Ocean Service (NOS) produces the official nautical charts of the United States. U.S. Coast Guard Auxiliary members report observations of changes that require additions, corrections, or revisions to nautical charts on the NOAA Form 77–5. The U.S. Power Squadrons use a website to report the same information. The information provided is used by NOS cartographers to maintain and prepare new editions of nautical charts that are used nationwide by commercial and recreational navigators.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington,

DC 20230 (or via the Internet at: *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 19, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–5874 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463 as amended by Public Law 94–409, Public Law 96–523, Public Law 97–375 and Public Law 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address the new classification system for consumer expenditures, how ''offshoring'' might bias the GDP statistics, and some sources of the moderation in GDP volatility.

DATES: Friday, May 2, 2008, the meeting will begin at 9: a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Newman, Media and Outreach Lead, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9265.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Jeffrey Newman of BEA at (202) 606–9265 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Jeffrey Newman at (202) 606–9265.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's seventeenth meeting.

Dated: March 17, 2008.

Rosemary D. Marcuss,

Deputy Director, Bureau of Economic Analysis.

[FR Doc. E8–5895 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Foreign-Trade Zone Application

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before May 23, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher J. Kemp, Foreign-Trade Zones Staff, (202) 482–0862 or via e-mail, *christopher_kemp@ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Foreign-Trade Zone Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, subzone status, or expansion of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24–26) before a license can be issued or a zone can be expanded. They also require that applications contain detailed information on facilities, financing, operational plans, proposed manufacturing operations, need, and economic impact. The manufacturing activity in zones, which is primarily conducted in subzones, can involve issues related to domestic industry and trade policy impact. These applications must include specific information on the Customs tariff-related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board requires complete and accurate information on the proposed operation and its economic effects because the regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

II. Method of Collection

The applications are in paper format.

III. Data

OMB Control Number: 0625–0139.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government; not-for-profit institutions.

Estimated Number of Respondents: 145.

Estimated Time per Response: 20 to 120 hours, depending on type of application.

Estimated Total Annual Burden Hours: 9,180 hours.

Estimated Total Annual Costs: $0.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–5825 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Steel Import License

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before May 23, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julie Al-Saadawi, Import Administration, Office of Policy, (202) 482–2105, Fax: (202) 501–1377, or via e-mail: *Julie_Al-Saadawi@ita.doc*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The President's Proclamation on Steel Safeguards mandated that the Departments of Commerce and Treasury institute an import licensing system to facilitate the monitoring of certain steel imports. Regulations were established that implemented the Steel Import Monitoring and Analysis (SIMA) system and expanded on the licensing system for steel that was part of those safeguards. The import license information is necessary to assess import trends of steel products.

In order to effectively monitor steel imports, Commerce must collect and provide timely aggregated summaries about imports. The Steel Import License is the tool used to collect the necessary information. The Census Bureau currently collects import data and disseminates aggregate information about steel imports. However, the time required to collect, process, and disseminate this information through Census can take up to 90 days after importation of the product, giving interested parties and the public far less time to respond to injurious sales.

II. Method of Collection

The license application can be submitted electronically or completed electronically and faxed.

III. Data

OMB Control Number: 0625–0245.

Form Number(s): ITA–4141P.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations.

Estimated Number of Respondents: 3,500.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 100,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–5875 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of the New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2008, the Department of Commerce (''Department'') issued the preliminary results of these new shipper reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Rescission and Preliminary Results of the First New Shipper Review*, 73 FR 6125 (February 1, 2008) (''*Preliminary Results*''). The final results are currently due on April 21, 2008.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

The Department is extending the deadline for the completion of the final results of these new shipper reviews of the antidumping duty order on certain frozen fish fillets from Vietnam because the case is extraordinarily complicated. Specifically, these new shipper reviews involve complicated affiliation and data issue issues, which require further analysis. Such analysis is necessary in order for the Department to obtain accurate sales and factors of production.

Additionally, the Department is extending the deadline for the final results to accommodate parties' request to extend the deadline for the submission of publicly available information to value factors of production, case briefs, and rebuttal briefs. For the reasons noted above, we are extending the time for the completion of the final results of these new shipper reviews by 30 days to May 21, 2008.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: March 4, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–5887 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Paul Walker or Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207, (202) 482–0413, and (202) 482–3208 respectively.

SUPPLEMENTARY INFORMATION:

CASE HISTORY

On September 19, 2007, the Department of Commerce (the ''Department'') published in the **Federal Register** the preliminary results of this administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 72 FR 53527 (September 19, 2007) (''*Preliminary Results*''). Since the *Preliminary Results*, the following events have occurred.

From September 24–26, 2007, the Department conducted the verification of QVD USA LLC in Bellevue, Washington. From October 1–2, 2007, the Department verified QVD in Ho Chi Minh City, from October 3–4, 2007, the Department verified QVD Dong Thap Food Co., Ltd., from October 5–9, 2007, the Department verified Thuan Hung Co., Ltd., and from October 10–12, 2007, the Department verified QVD Choi Moi Farming Cooperative.

On December 28, 2007, the Petitioners, Catfish Farmers of America and individual U.S. catfish processors, and QVD Food Company (''QVD'') submitted case briefs. QVD's case brief included issues for Lian Heng Trading Co., Ltd. (''Lian Heng'') as well. On January 10, 2008, the Petitioners, QVD, Lian Heng, and East Sea Seafoods Joint Venture Co., Ltd. (''ESS'') submitted rebuttal briefs.

On January 23, 2008, the Department extended the time limit for completion of the final results of this administrative review by sixty days. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of the Third Antidumping Duty Administrative Review*, 73 FR 3945 (January 23, 2008).

On March 6, 2008, the Department conducted a public and a closed hearing. Counsel for the Petitioners, QVD, and ESS attended.

SCOPE OF THE ORDER

The product covered by this order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus (also known as Pangasius Pangasius), and Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000[1], 1604.19.5000[2], 0305.59.4000[3], 0304.29.6033[4] (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5] This order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

ANALYSIS OF COMMENTS RECEIVED

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (''*Final Decision Memo*''), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (''CRU''), room 1117 of the main Department building. In addition, a copy of the *Final Decision Memo* can be accessed directly on our website at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Final Decision Memo* are identical in content.

VERIFICATION

As provided in section 782(i) of the of the Tariff Act, as Amended (''the Act''), we conducted verification of the information submitted by QVD, its affiliated Vietnamese companies, QVD USA LLC, QVD Dong Thap Food Co.,

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[1] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number*, (March 1, 2007). This HTS went into effect on March 1, 2007.

[2] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number*, (March 1, 2007). This HTS went into effect on March 1, 2007.

[3] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Second Addition of Harmonized Tariff Number*, (February 2, 2007). This HTS went into effect on February 1, 2007.

[4] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Addition of Harmonized Tariff Number*, (January 30, 2007). This HTS went into effect on February 1, 2007.

[5] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

Ltd., Thuan Hung Co., Ltd., and QVD Choi Moi Farming Cooperative, for use in our final results. *See* Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Michael Holton, Senior Case Analyst, AD/CVD Operations, Office 9, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification of QVD Food Company, Ltd., dated December 11, 2007; Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Michael Holton, Senior Case Analyst, AD/CVD Operations, Office 9, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification of QVD USA LLC, dated December 11, 2007; Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Michael Holton, Senior Case Analyst, AD/CVD Operations, Office 9, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification of QVD Dong Thap Food Co., Ltd. and Thuan Hung Co., Ltd., dated December 11, 2007; and, Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from Michael Holton, Senior Case Analyst, AD/CVD Operations, Office 9, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification of QVD Choi Moi Farming Cooperative, dated December 13, 2007. For all companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the Respondents.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to the margin calculation for QVD and ESS for the final results. For all changes to the calculations of QVD and ESS, see the *Final Decision Memo* and company specific analysis memoranda.

ADVERSE FACTS AVAILABLE

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

In the *Preliminary Results*, the Department assigned a rate based on the use of total adverse facts available (''AFA'') to the Vietnam-Wide Entity, and Can Tho Agricultural and Animal Products Import Export Company (''CATACO'') because it failed to respond to the Department's two quantity and value questionnaires. We continue to find it is appropriate to apply total AFA to the Vietnam-wide entity and CATACO, as no parties provided comments on these issues. Therefore, we are continuing to apply AFA to the Vietnam-Wide Entity and CATACO.

In the Preliminary Results, we determined to apply total AFA to certain sales by Lian Heng. We are continuing to apply AFA to these sales by Lian Heng in these final results. *See* Comment 9D of the *Final Decision Memo*.

FINAL PARTIAL RESCISSION

In the *Preliminary Results*, the Department preliminarily rescinded this review with respect to the following nine companies: FAQUIMEX; Hung Vuong Co., Ltd.; NAVICO; Phu Thuan Company; DOCIFISH; Thuan Hung; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; and Vietnam Fish-One. These companies reported that they had no shipments of subject merchandise to the United States during the POR. As we stated in the *Preliminary Results*, our examination of shipment data from CBP for these nine companies confirmed that there were no entries of subject merchandise from them during the POR. *See Preliminary Results* at 53530. Therefore, we are rescinding this administrative review with respect to the following nine companies: FAQUIMEX; Hung Vuong Co., Ltd.; NAVICO; Phu Thuan Company; DOCIFISH; Thuan Hung; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; and Vietnam Fish-One.

In the *Preliminary Results*, the Department also preliminarily rescinded the review with respect to QVD Dong Thap Food Co., Ltd. (''QVD Dong Thap''), because QVD reported that QVD Dong Thap did not ship any subject merchandise to the United States during the POR.

We are continuing to find that QVD Dong Thap did not export subject merchandise to the United States during the POR, and therefore, we are rescinding this review with respect to QVD Dong Thap.

FINAL RESULTS OF REVIEW

The weighted-average dumping margins for the POR are as follows:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted-Average Margin (Percent)
QVD	0.00
ESS	0.00
Vietnam-Wide Entity[1]	63.88

[6] The Vietnam-wide Entity includes CATACO.

Regarding Lian Heng, entries which are not accompanied by a country of origin certification (''Certification'') stating that the entry is not produced from Vietnamese-origin fish are subject to the Vietnam-wide rate of 63.88 percent.

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Lian Heng with Certification	0.00%
Lian Heng without Certification	63.88%

ASSESSMENT

The Department will determine, and the U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer-specific duty assessment rates on a per-unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and

export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. In this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (**I.E.**, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

CASH DEPOSIT REQUIREMENTS

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period of review; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the Vietnam-wide rate of 63.88 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

ADMINISTRATIVE PROTECTIVE ORDERS

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I Decision Memorandum

GENERAL ISSUES:

COMMENT 1: SURROGATE FINANCIAL RATIOS
- A. BINOIC
- B. GEMINI

COMMENT 2: CEP PROFIT METHODOLOGY
COMMENT 3: PER–UNIT CASH DEPOSIT AND ASSESSMENT RATE
COMMENT 4: WHOLE LIVE FISH SURROGATE VALUES

COMPANY–SPECIFIC ISSUES:

COMMENT 5: QVD
A. QVD'S SALES TO BSF
B. COLLAPSING QVD/DONG THAP AND THUAN HUNG
- C. COLLAPSING QVD/DONG THAP AND CHOI MOI
- D. INTERNATONAL FREIGHT
- E. BANDING SURROGATE VALUE
- F. TAPE SURROGATE VALUE
- G. LABELS SURROGATE VALUE
- H. WATER SURROGATE VALUE

COMMENT 6: DONG THAP
- A. LABOR HOURS FOR CERTAIN WORKERS
- B. BYPRODUCTS
- C. CARTONS
- D. BROKEN FILLETS
- E. PALLETS AND PLASTIC SHEETS

COMMENT 7:THUAN HUNG
- A. LABOR HOURS RECONCILIATION
- B. ELECTRICITY
- C. WASTE

COMMENT 8: ESS
- A. BONA FIDE STATUS OF ESS'S SALES
- B. INDIRECT SELLING EXPENSES
- C. BYPRODUCTS
- D. WHOLE LIVE FISH FACTOR OF PRODUCTION
- E. FISH OIL SURROGATE VALUE

COMMENT 9: LIAN HENG
- A. CERTIFICATIONS
- B. ASSESSMENT OF DUTIES
- C. ASSESSMENT FOR CERTAIN INVOICES
- D. APPLICATION OF AFA
- E. SELECTED AFA RATE

[FR Doc. E8–5889 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–804

Ball Bearings and Parts Thereof from Japan: Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 30, 2002, the Department of Commerce (the Department) published *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002), as amended on October 15, 2002, by *Ball Bearings and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 63608 (October 15, 2002). The review covered the period May 1, 2000, through April 30, 2001. NTN Corporation (and its affiliates) and other parties appealed the results pertaining to subject merchandise from Japan. Because there is now a final and conclusive decision, the Department is issuing these amended final results of review. We will instruct U.S. Customs and Border Protection (CBP) to liquidate entries subject to these amended final results of review.

EFFECTIVE DATE: March 24, 2008.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION: Catherine Cartsos or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1757 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION: SUPPLEMENTAL INFORMATION:

Background

On August 30, 2002, the Department published the final results of administrative reviews of the antidumping duty order on ball bearings and parts thereof from Japan for the period May 1, 2000, through April 30, 2001. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002) (*AFBs 12*). On October 15, 2002, the Department amended the final results. See Ball Bearings and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review, 67 FR 63608 (October 15, 2002) (*Amended AFBs 12*). NTN Corp., NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp., NTN Driveshaft, and NTN–BCA Corp. (collectively NTN) filed a lawsuit challenging the final results of *AFBs 12* as amended by Amended *AFBs 12*.

On August 20, 2004, the United States Court of International Trade (CIT) affirmed the Department's final results in part and remanded the review to the Department in part to correct certain ministerial errors concerning the treatment of NTN's freight and warehouse expenses. *See NSK Ltd. v. United States*, 346 F. Supp. 2d 1312 (CIT 2004) (*NSK Ltd.*). Specifically, the CIT directed the Department to exclude NTN's export-price sales from the calculation of NTN's U.S. freight and warehouse expenses.[1] In accordance with the CIT's remand order in *NSK Ltd.*, the Department filed its remand results on October 19, 2004. In those remand results, the Department excluded export-price sales from the calculation of U.S. freight and warehouse expenses and recalculated NTN's margin accordingly.

On January 27, 2005, the CIT sustained the Department's final results of redetermination. See *NSK Ltd. v. United States*, 358 F. Supp. 2d 1313 (CIT 2005). NTN appealed the portion of the CIT's decision in which it sustained the Department's use of facts otherwise available and adverse inferences when determining NTN's antidumping duty margin. NTN did not appeal the CIT's decision with respect to the remand determination.

On March 7, 2007, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the CIT's decision. See *NSK Ltd. v. United States*, 481 F.3d 1355 (CAFC 2007). On May 3, 2007, the CAFC denied a rehearing request.

On July 11, 2007, the Department published amended final results pertaining to NTN for the period May 1, 2000, through April 30, 2001. See *Ball Bearings and Parts Thereof from Japan: Amended Final Results of Antidumping Duty Administrative Review*, 72 FR 37702 (July 11, 2007) (*Second Amended Final Results*). Because the Department published the *Second Amended Final Results* mistakenly before a final and conclusive court decision, on July 23, 2007, the Department rescinded the *Second Amended Final Results*. See *Ball Bearings and Parts Thereof from Japan: Rescission of Amended Final Results of Antidumping Duty Administrative Review*, 72 FR 40113 (July 23, 2007).

On September 28, 2007, NTN filed a petition for a writ of certiorari with the United States Supreme Court in connection with the final results of the 2000–2001 administrative review of the antidumping duty order on ball bearings and parts thereof from Japan. The two issues NTN raised in its petition for a writ of certiorari were the Department's treatment of non-dumped sales and the Department's use of facts otherwise available and adverse inferences when determining NTN's antidumping duty margin.

On January 22, 2008, the United States Supreme Court denied NTN's petition for a writ of certiorari. Therefore, there is now a final and conclusive court decision in this case.

Amendment to Final Results

We are now amending the final results of this review to reflect the final and conclusive decision of the CIT. Our revised calculations for NTN changed the weighted-average margin for ball bearings and parts thereof from Japan from 9.34 percent to 9.30 percent for the period May 1, 2000, through April 30, 2001. The Department will instruct CBP to liquidate entries of subject merchandise from Japan from NTN during the review period in accordance with these amended final results of review. We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–5886 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] NSK Ltd., NSK Corp., NSK Bearings Europe, MPB Corp., 3Asahi Seiko Co., and Isuzu Motors, Ltd., also appealed the Department's determination but the dumping margins the Department had calculated for the period of review did not change as a result of the litigation.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG56

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: NOAA's National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

ACTION: Notice of receipt of a permit application; request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit to conduct research for scientific purposes from Rosi Dagit, Senior Conservation Biologist for the Resource Conservation District of the Santa Monica Mountains, in southern California. The requested permit would affect the Southern California Coast Distinct Population Segment of endangered steelhead trout (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NMFS either approves or disapproves the application.

DATES: Written comments on the permit application must be received at the appropriate address or fax number on or before April 23, 2008.

ADDRESSES: Written comments on the permit application should be sent to Matt McGoogan, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Comments may also be sent using email (*FRNpermits.lb@noaa.gov*) or fax (562–980–4027). The permit application is available for review, by appointment only, at the foregoing address.

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at phone number (562–980–4026) or e-mail: *matthew.mcgoogan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority:

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed

species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Permit Application Received

Rosi Dagit has applied for a permit to conduct a study with the Southern California Coast Distinct Population Segment of endangered steelhead trout (*Oncorhynchus mykiss*) in streams emptying to the Santa Monica Bay of southern California, with specific focus on Topanga, Arroyo Sequit, and Malibu Creeks. The purpose of this study is to use monitoring methods to gather information that will contribute to the understanding of migration patterns and the abundance and distribution of steelhead in Topanga Creek and the Santa Monica Bay streams. Monitoring methods include using mask and snorkel as the methods for estimating abundance and distribution of juvenile and adult steelhead in the streams of Santa Monica Bay including Topanga, Arroyo Sequit, and Malibu Creeks. In addition to snorkel surveys, study activities in Topanga Creek will also include migratory trapping and Passive Integrated Transponder (PIT) tagging. In addition to migratory trapping, sampling methods to obtain steelhead for PIT tagging may include use of a seine, angling, or electro fishing. Field activities related to this study will occur between June 2008 and May 2010. For this 2 year study, Rosi Dagit has requested an annual non-lethal take of 140 juvenile steelhead (ranging in length up to 250 mm) and 50 adult class steelhead (steelhead ≤250 mm). Of these adult class steelhead, it is expected that annually not more than 10 of those 50 would be large adults migrating in from the ocean. An annual collection and possession of up to 190 steelhead tissue samples is being requested as well as permission to recover up to five carcasses per year (if found). All samples and carcasses would be sent to NMFS science center for genetic research and processing. The unintentional lethal take that may occur during trapping, sampling, and PIT tagging activities on Topanga Creek is up to six steelhead per year or no more than 3 percent of the total captured.

Dated: March 19, 2008.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–5901 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB83

Marine Mammals; Pinniped Removal Authority; Partial Approval of Application

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

ACTION: Notice.

SUMMARY: NMFS announces partial approval of an application from the States of Oregon, Washington, and Idaho to intentionally take, by lethal methods, individually identifiable California sea lions (*Zalophus californianus*) that prey on Pacific salmon and steelhead (*Onchorhynchus* spp.) listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. This authorization is pursuant to the Marine Mammal Protection Act (MMPA). NMFS also announces availability of an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) that analyzes impacts on the human environment from NMFS' authorization to the States to lethally remove California sea lions.

ADDRESSES: Documents and information on this topic are available at: *http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions* or by making a request to Garth Griffin, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005, or Tom Eagle, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Background

Section 120 of the MMPA (16 U.S.C. 1361 *et seq.*), as amended in 1994, provides the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, NMFS, the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that are either: (1) listed under the ESA, (2) approaching a threatened or endangered status, or (3) migrate through the Ballard Locks in Seattle. The authorization applies only to pinnipeds that are not: (1) listed under the ESA, (2) designated as depleted, or (3) designated a strategic stock.

The process for determining whether to implement the authority in section 120 commences with a state submitting an application that provides a detailed description of the interaction, the means of identifying the individual pinnipeds, and expected benefits of the taking. Within 15 days of receiving an application, NMFS must determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to address the situation described in the application. If the application provides sufficient evidence, NMFS must publish a notice in the **Federal Register** requesting public comment on the application, and establish a task force consisting of:

(1) NMFS/NOAA staff,

(2) Scientists who are knowledgeable about the pinniped interaction that the application addresses,

(3) Representatives of affected conservation and fishing community organizations,

(4) Treaty Indian tribes,

(5) The states, and

(6) Such other organizations as NMFS deems appropriate.

The Task Force must, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests. Meetings of the Task Force must be open to the public. Within 60 days after establishment, and after reviewing public comments in response to the **Federal Register** document, the Task Force is to recommend to NMFS approval or denial of the state's application along with recommendations of the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority. The Task Force must also suggest non-lethal alternatives, if

available and practicable, including a recommended course of action. Within 30 days after receipt of the Task Force's recommendations, NMFS must either approve or deny the application. If such application is approved, NMFS must immediately take steps to implement the intentional lethal taking. The intentional lethal taking is to be performed by Federal or state agencies, or qualified individuals under contract to such agencies.

On December 5, 2006, NMFS received an application from the Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) (collectively referred to as the States), to authorize the intentional lethal taking of individually identifiable California sea lions that prey on ESA listed salmon and steelhead (salmonids) in the Columbia River below Bonneville Dam (Oregon and Washington Border, river mile 146).

NMFS, determined that the States' application provided sufficient evidence to warrant establishing a Task Force. On January 30, 2007 (72 FR 4239), NMFS announced receipt of the States' application and solicited public comments on the application and any additional information that should be considered. On August 9, 2007 (72 FR 44833), NMFS announced establishment of the Task Force and provided information about its first public meeting. Convened in September 2007, the Task Force held three two-day meetings, which were open to the public, and during which it reviewed the States' application, public comments on the application, and other information related to sea lion predation on salmonids at Bonneville Dam. The Task Force completed and submitted its report to NMFS on November 5, 2007. Of the 18 Task Force members, all recommended that non-lethal sea lion deterrence measures continue. Seventeen of the eighteen members supported lethal removal of California sea lions while one member opposed the States' application and any lethal removal. Details of the Task Force recommendations are discussed in detail in the EA and their full report is available on NMFS's web page (see **ADDRESSES**).

After receiving and reviewing the Task Force recommendations, NMFS developed a proposed action and a range of reasonable alternatives and evaluated the environmental impacts of the proposed action and alternatives in a draft EA under NEPA. The draft EA was made available for public comment for a 30–day public comment period. More than 3,500 comments were received during the comment period, including comments from several Task Force member organizations (e.g., States, Tribes, Humane Society of the United States) and others including the Marine Mammal Commission and the Congressional office of Representative Doc Hastings.

Discussion

In considering a state's request to lethally remove pinnipeds, NMFS is required, pursuant to section 120(b)(1), to determine that individually identifiable pinnipeds are having a significant negative impact on the decline or recovery of at-risk salmonid fishery stocks. The discussion that follows addresses NMFS' application of this standard to the facts at Bonneville Dam.

Significant Negative Impact

Section 120 provides for the lethal removal of ''individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery'' of at-risk salmonids. In its comments on the Task Force report, the Marine Mammal Commission recommended a two-part test in which we would first determine whether pinnipeds collectively are having a significant negative impact on listed salmonids and next determine which pinnipeds are significant contributors to that impact and therefore may be authorized for removal. The application of this two-step test is reasonable in light of the statute's ambiguity and the specific facts and circumstances surrounding the proposal to lethally remove pinnipeds at Bonneville Dam. The subordinate clause ''which are having a significant negative impact'' modifies the plural noun ''pinnipeds,'' supporting the proposition that our inquiry is whether pinnipeds (plural) are having the described impact, not whether a specific individual is having the described impact. With that interpretation, once there is a finding that pinnipeds are having a significant negative impact, the task becomes one of identifying which of the individual pinnipeds are contributing to the impact (discussed below).

In their application the States contend that pinniped predation at Bonneville Dam is significant for two reasons. First, ''it is a new, growing, and unmanageable source of mortality, while other sources of in-river mortality are actively managed and are stable or decreasing (e.g., through harvest reductions, fish passage and habitat improvements, and hatchery reform).'' Second, ''the hydromodification of the river has altered the natural predator-prey relationship to artificially favor predatory California sea lions.'' The States' section 120 application specifies that they do not contend ''that California sea lion predation is more significant than other sources of mortality to Columbia River ESA-listed salmonids, but simply that it is significant, and that it must be dealt with as are other sources of mortality.''

The Task Force also considered whether pinniped predation at Bonneville Dam was having a significant negative impact. The Task Force was unable to agree on quantitative criteria to assist NMFS in defining ''significant negative impact,'' but 17 of the 18 members agreed on the following set of factors for NMFS to consider:

1. Whether pinnipeds are present at the same time that ESA listed salmonids are migrating;
2. Whether data indicate that predation has increased beyond historic levels;
3. Whether the problem is likely to persist over time if the impact remains unchecked; and
4. Whether the mortality resulting from pinniped predation is comparable to other forms of in-river mortality that are currently being managed

The Task Force outlined additional considerations for taking action:

1. There is a comprehensive salmon recovery framework in place that includes multiple actions, monitoring, and evaluation;
2. California sea lion predation should be addressed and its impacts evaluated in the context of other limiting factors (i.e., not on their own);
3. Non-lethal hazing has been ineffective at reducing predation;
4. The proposed level of lethal removal will have no long term negative impact on California sea lion populations;
5. California sea lion abundance is within the range of OSP and at or near carrying capacity; and
6. The problem is related to/resulting from human caused factors.

Applying these factors and considerations, all but one member of the Task Force concluded that California sea lions are having a significant negative impact on the decline or recovery of Columbia Basin threatened and endangered salmonids. The dissenting member maintained that the level of pinniped predation at Bonneville Dam is not significant when considered in the context of other sources of mortality such as hydropower operations and harvest.

NMFS agrees with the States and the majority of the Task Force members that collectively California sea lions at Bonneville Dam are having a significant negative impact on ESA listed salmon and steelhead species, based on information in the record and in particular on the following factors:

1. The predation is measurable, growing, and could continue to increase if not addressed;

2. The level of adult salmonid mortality is sufficiently large to have a measurable effect on the numbers of listed adult salmonids contributing to the productivity of the affected ESUs/DPSs; and

3. The mortality rate for listed salmonids is comparable to mortality rates from other sources that have led to corrective action under the ESA.

The number of listed and non-listed adult salmonids observed taken by California sea lions in the Bonneville Dam tailrace increased from 2002 to 2007. The percentage of run taken in any given year varied due to run size. California sea lions took approximately 1,000 returning adult salmonids in 2002 (0.4 percent of that year's return) and 3,900 in 2007 (4.2 percent of that year's return).

The actual number of salmonids consumed is certainly larger than the numbers actually observed, since not all sea lions are observed nor are all predation events. NMFS calculated the potential consumption of salmonids based on the average number of California sea lions actually observed (86) and their bioenergetic needs. The calculation shows that 86 California sea lions at the dam can consume up to 17,458 salmonids annually. Of these, up to 6,003 salmonids would be listed spring Chinook and up to 611 would be listed steelhead. Using the observed minimum rate of predation averaged over 2005–2007, and the estimated maximum potential predation rate, yields predation rates ranging from 3.6 percent to 12.6 percent for listed spring Chinook and 3.6 percent to 22.1 percent for listed steelhead.

In addition to salmonids actually observed being consumed or estimated as being consumed, observations of adult salmonids in the Bonneville Dam fishways reveal that a large proportion of salmonids are being injured by pinnipeds. The proportion of salmonids with pinniped scarring rose from 11 percent in 1999 to 37 percent in 2005. It is unknown how many of these injuries occurred at Bonneville Dam, or how many salmonids die from their injuries before spawning. These data nevertheless reveal a high rate of interaction between adult salmonids and pinnipeds generally.

Available information suggests that pinniped predation could continue to increase at Bonneville Dam if not checked. The numbers of salmonids consumed increased by more than three times from 2002 to 2007, in spite of non-lethal deterrence efforts. While these efforts may have slowed the rate of increase, an increase nevertheless occurred. The experience at Ballard Locks in Washington suggests that where human caused conditions cause adult salmonids to congregate and delay, California sea lions can effectively consume a majority of the salmonids present. While the area at Bonneville is larger than the area at Ballard Locks, the observed increase in predation over recent years suggests that predation can continue to increase in spite of non-lethal deterrence efforts.

Both the observed and estimated mortality rates described above represent levels of mortality that can have a significant effect on the survival and recovery of the listed stocks. In preparing its biological opinion on the federal Columbia River power system, NMFS estimated the current survival rates for each of the listed salmonid ESUs/DPSs, and the survival improvements required to achieve a low likelihood of extinction. For Snake River spring/summer Chinook, needed survival improvements for different populations within the ESU range from no improvement to a fivefold improvement. Survival impacts on the order of those observed can measurably affect the survival improvements needed for many of these populations.

The estimated mortality rates for listed salmonids from pinnipeds at Bonneville Dam are comparable to mortality rates from other sources that have led to corrective action under the ESA. Because the listed salmonids are subject to mortality from a variety of sources, NMFS has imposed reductions on all sources of mortality under section 7(a)(2) of the ESA, allocating those reductions based on the action's contribution to the historic decline of the species, the current magnitude of the mortality, the impact to other values (particularly the exercise of Indian treaty rights), and the feasibility of achieving the reduction. As an example, although harvest rates on Snake River and upper Columbia River spring Chinook were already restricted prior to ESA listing (from historical highs in excess of 40 percent to an average of 8 percent prior to listing), NMFS nevertheless required a harvest schedule that ensured harvest rates would remain low when the run size was depressed. At the time of listing harvest rates were limited to 4.1 percent for non-treaty fisheries and 7 percent in tribal fisheries. Following listing, through a sequence of ESA section 7 consultations, harvest impacts in non-treaty fisheries were reduced to a range of 1 percent to 3 percent depending on run size. Tribal fisheries continued to be subject to a 7 percent limit largely in an effort to accommodate, to the degree possible, the tribes' treaty right to fish. In 2001, the parties to U.S. v. Oregon developed a more comprehensive abundance based harvest rate schedule that restricted fisheries further when the runs were particularly depressed, and allowed modest increases in harvest when run size was substantially higher.

That harvest rate schedule is still in place and allows harvest to vary between 5.5 percent and 17 percent. Since 2001 when this harvest rate schedule was first implemented, the harvest rate has averaged 10.3 percent reflecting the higher abundance observed particularly in the first part of this decade. Abundance has generally been lower since 2005, and accordingly harvest as been reduced to just over 8 percent over the last three years. In contrast to a managed harvest regime, which can reduce mortality in response to decreased run sizes, pinniped predation has the potential to increase even when run sizes are depressed, magnifying the impact. This was the case from 2006 to 2007, when observed pinniped predation increased from 3,023 salmonids to 3,859, even as the run size decreased from 105,063 to 88,474.

Another example is the survival improvements sought from the federal Columbia River power system. In its draft biological opinion on operation of the hydropower system, NMFS included as a reasonable and prudent alternative a program to reduce northern pikeminnow predation on Snake River spring/summer Chinook sufficient to increase survival by a relative 1 percentage point and bird predation by 2 percentage points (NMFS 2007). The overall proportional survival improvement of 8 percent that NMFS is seeking from the hydropower system is made up of myriad actions that contribute fractions to the overall percentage. No single one of these mortality reductions will by itself recover listed salmonids. Rather, as with other actions, NMFS' approach is to seek reductions in all sources of mortality, with the goal of reducing overall mortality to the point that the species can survive and recover. In the draft biological opinion on the FCRPS, NMFS concludes that the accumulation

of proposed mortality reductions will measurably improve the chances of survival and recovery of all five of the ESUs/DPSs considered here.

NMFS has placed a cap on the number of California sea lions that may be lethally removed either 1 percent of PBR or the number required to reduce the observed predation rate to 1 percent of the salmonid run at Bonneville Dam, whichever is lower. This criterion is not equivalent to a finding that a one percent predation rate represents a quantitative level of salmonid predation that is ''significant'' under section 120, and that less than one percent would no longer be significant. Rather, it is an independent limit on the numbers of sea lions that can be lethally removed to address the predation problem and is intended to balance the policy value of protecting all pinnipeds, as expressed in the MMPA, against the policy value of recovering threatened and endangered species, as expressed in the ESA. Similarly, limiting the numbers of California sea lions that may be removed to 1 percent of PBR, as requested by the States, is intended to emphasize that the removal authority is for a small fraction of animals that can safely be taken from the population.

The limited authorization given to the States will not eliminate pinniped predation in the lower Columbia River or at Bonneville Dam, but that is not a requirement of section 120 or of prudent wildlife management. The authorization to the States to remove a limited number of predatory California sea lions under carefully controlled circumstances will create an additional tool in our efforts to control a significant source of mortality for threatened and endangered Columbia River salmonids.

Individually Identifiable Pinnipeds Which are Having the Impact

NMFS' authorization extends only to predatory animals with physical features distinguishing them from other pinnipeds (natural features, brands, or other applied marks), thus meeting the requirement that they be ''individually identifiable.'' To be considered predatory, an animal must (1) have been observed eating salmonids in the observation area below Bonneville Dam between January 1 and May 31 of any year, (2) have been observed in the observation area below Bonneville Dam on a total of any 5 days (consecutive days, days within a single season, or days over multiple years) between January 1 and May 31 of any year, and (3) be sighted in the observation area below Bonneville Dam after having been subjected to active non-lethal deterrence.

An animal meeting all of these criteria has learned that the area contains a preferred prey item and is successful in pursuing it in that area (criterion 1), is persistent in pursuing that prey item (criteria 2 and 3), and is not likely to be deterred from pursuing that prey item by non-lethal means (criterion 3). Given its success at obtaining prey in the area and its resistance to non-lethal deterrence efforts, such an animal has shown itself to be making a significant contribution to the pinniped predation problem at Bonneville Dam, and is not a naive animal that can be driven away from the area through non-lethal means. A list of animals presently identified as meeting these criteria is attached to the letter of authorization to the States, and the letter describes the process by which additional animals may be included on the list.

Consideration of Other Factors

In considering whether to approve the States' application, NMFS and the Task Force are to consider several factors, enumerated above under ''MMPA Section 120'' and discussed individually below.

Populations Trends and Feeding Habits of the Pinnipeds; Location, Timing and Manner of the Interaction; and Number of Pinnipeds Involved

The United States stock of California sea lions is currently at or near carrying capacity with a population of about 238,000 animals. California sea lions are opportunistic feeders, feeding on a variety of fishes that are locally and seasonally abundant. In the Columbia River, California sea lions follow migrating salmonids as far as Bonneville Dam, where the fish concentrate prior to entering the fish ladders. For the period 2002 to 2007, almost 80 percent of the fish observed being eaten below Bonneville Dam were salmonids. Pinniped predation on salmonids occurs from mid-February through May 31.

It is likely that more pinnipeds are present than are observed, since observations are recorded only from observation stations at the dam, observations do not occur at all hours, and only sea lions with distinguishing features are counted. The observation areas are large and poor weather conditions, murky and turbulent water, and heavy debris can make it difficult to identify animals that might only surface for seconds. Because of these limitations, the exact number of California sea lions arriving in the area each season is uncertain. For purposes of calculating the potential benefits to salmonid survival from removing California sea lions, NMFS used a conservative estimate that only 30 sea lions would be removed, given the limitations of the authorization (particularly the location of animals that may be removed) (NMFS 2008). At the same time, to ensure the analysis was adequately protective of the California sea lion population, NMFS evaluated impacts on the population of removing the full number authorized (1 percent of PBR, or 85 sea lions at current population abundance) (NMFS 2008).

Past Non-lethal Deterrence Efforts and Whether the Applicant Has Demonstrated That No Feasible and Prudent Alternatives Exist and That past Efforts Have Been Unsuccessful

In 2006 and 2007 the Corps, NMFS, and the states of Oregon and Washington attempted to deter pinniped predation at Bonneville Dam using non-lethal methods. These included physical barriers and acoustic devices to keep sea lions out of fishways, and vessel chasing, underwater firecrackers, aerial pyrotechnics, and rubber bullets to chase sea lions away from the tailrace area immediately below the dam. Based on experience with non-lethal deterrence measures in 2006 and 2007, NMFS has concluded that non-lethal methods may have reduced pinniped presence in the fishways but did not reduce pinniped predation on salmonids. This is reflected in the increased numbers of salmonids observed being eating by sea lions below the dam in 2007 compared with 2006, notwithstanding the fact that fewer sea lions were observed. NMFS' conclusion is shared by the states and the Task Force. Non-lethal deterrence measures are currently not a feasible alternative to lethal removal. Although several of those who commented on the EA recommended that additional non-lethal methods be attempted instead of lethal removal, there are no additional known methods beyond those already tried. One manufacturer has proposed an electrified field to deter pinnipeds, but the technology is untested.

Extent to Which Such Pinnipeds Are Causing Undue Injury or Impact, or Imbalance With, Other Species in the Ecosystem, Including Fish Populations

California sea lions are opportunistic feeders and consume many species other than salmonids. While salmonids are by far their primary prey at Bonneville Dam, California sea lions have also been observed consuming lamprey and shad. From 2002 through 2007, between 2.5 percent and 25.1 percent of all observed California sea lion takes were of lamprey. There is presently not enough evidence to

support a conclusion that this level of consumption represents undue injury or impact to lamprey at Bonneville Dam.

For Steller sea lions, the primary prey item is sturgeon. The states have not requested authority to lethally remove Steller sea lions, which are listed as threatened under the ESA. Harbor seals are present in small numbers and the states have not requested authority to lethally remove these pinnipeds.

Extent to Which the Pinniped Behavior Presents an Ongoing Threat to Public Safety

There is no evidence that pinnipeds in the area immediately below Bonneville Dam present a threat to public safety.

Terms and Conditions

In accordance with section 120 of the MMPA, NMFS has approved the lethal taking of individually identifiable California sea lions preying on at-risk salmonid stocks below Bonneville Dam and sent the States a letter of authorization stipulating the conditions on the authorization for lethal removal. Lethal removal is authorized only if the States are in compliance with the following terms and conditions.

1. The States may lethally remove individually identifiable predatory California sea lions that are having a significant negative impact on ESA-listed salmonids. NMFS considers California sea lions to be individually identifiable predatory California sea lions that are having a significant negative impact on ESA-listed salmonids if they display natural or applied features that allow them to be individually distinguished from other California sea lions and:

a. have been observed eating salmonids in the ''observation area'' below Bonneville Dam between January 1 and May 31 of any year; and

b. have been observed in the observation area below Bonneville Dam on a total of any 5 days (consecutives days, days within a single season, or days over multiple years) between January 1 and May 31 of any year; and

c. are sighted in the observation area below Bonneville Dam after they have been subjected to active non-lethal deterrence.

2. The California sea lions currently identified as meeting the description in paragraph 1 are included in an appendix to the letter of authorization. In consultation with the states, the NMFS Northwest Regional Administrator may periodically amend the list appended to the Letter of Authorization to accurately report those individuals that meet the description in paragraph 1 and, thus, are authorized for removal. Such amendments shall be in writing.

3. The States may not lethally remove more than 1 percent of the potential biological removal level (PBR) annually. The current PBR for this population of California sea lions is 8,511. NMFS periodically revises the PBR of California sea lions as new information becomes available. Any revised PBR calculations would be reported in annual marine mammal stock assessment reports.

4. The States shall appoint a standing Animal Care Committee (ACC), to be approved by NMFS, composed of qualified veterinarians and biologists to advise the States on protocols for capturing, holding, and euthanizing predatory sea lions.

5. The States, in consultation with NMFS, will assume the lead role for the capture of predatory sea lions. Individually identifiable predatory sea lions that are captured in a trap must be held in a temporary holding facility approved by the ACC for at least 48 hours prior to being euthanized, pending a determination of the availability of NMFS pre-approved permanent holding facilities. Such sea lions may, in coordination with NMFS, be transferred to a NMFS pre-approved holding facility (research, zoo, aquarium) to be maintained in permanent captivity. If no pre-approved research, zoo, or aquarium facility is willing to accept an animal within 48 hours of its capture, the States may euthanize it. The method of euthanizing captured predatory sea lions must be approved by the ACC.

6. Free-ranging individually identifiable predatory sea lions may be shot by a qualified marksman when hauled out on the concrete apron along the North side of Cascade Island, on the flow deflectors along the base of the dam's spillway, or in the water within 50 feet of the concrete apron or the face of the dam at power houses one and two. In all cases the marksman must shoot from land, the dam, or other shoreline structures. Potential options for lethal removal using firearms are: (1) the marksman may shoot sea lions at close range (less than 25 yards) using a shotgun loaded with a slug or 00 buckshot, when the animal is on shore; or (2) the marksman may shoot sea lions from the powerhouse deck or other shoreline area at ranges greater than 25 yards using a hunting rifle with a minimum caliber of .240, when the animal is on shore or in the water as described above. Ammunition shall not contain lead.

7. The States shall make all reasonable efforts to retrieve carcasses of animals that have been shot. The States shall monitor nearby downstream areas for stranded animals that have been shot but not retrieved immediately.

8. Safety and security during lethal removal activities shall be provided by the States of Oregon and Washington in coordination with the Columbia Basin Law Enforcement Council. The States shall establish an Incident Command Center (ICC) during lethal removal activities. The ICC shall direct safety and security and provide a media interface. The ICC shall coordinate security and safety activities with the Corps of Engineers, the Coast Guard, and other agencies as necessary.

9. The States shall notify the Corps of Engineers , Portland District, and the Project Manager at Bonneville Locks and Dam, prior to lethal removal operations. The ICC shall consult with the Corps regarding road closures or changes to visitation on Corps of Engineers property/dam facilities.

10. The States shall ensure that the transfer or disposal of any carcasses is in accordance with applicable law. At NMFS' request and to the extent practicable the States shall make the carcasses, or tissues from them, of sea lions killed pursuant to this authorization available for use in scientific research or for educational purposes.

11. The States shall report any permanent removals of predatory sea lions (either transferred to permanent captivity or lethally) to the Regional Adminstrator, NMFS Northwest Region, within 3 days following removal.

12. The States shall develop and implement a monitoring plan to evaluate (1) the impacts of predation, (2) the effectiveness of non-lethal deterrence, and (3) the effectiveness of permanent removal of individually identifiable predatory sea lions as a method to reduce adult salmonid mortality. To the extent practicable the States shall use data collected by the Corps or other agencies to help fulfill the monitoring requirement, avoid duplication of effort, and ensure data consistency across programs.

13. The States shall submit monitoring reports to the Regional Administrator, NMFS Northwest Region, annually, on or before November 1. The reports shall include a summary of actions taken to reduce predation (non-lethal and lethal), the States' compliance with the terms and conditions of this authorization, and plans for future actions in compliance with this authorization.

14. The States shall periodically review observation data collected by the Corps Fisheries Field Unit to determine if additional individually identifiable California sea lions qualify as predatory (as defined in paragraph 1) and notify the NMFS Northwest Regional Administrator if any additional sea lions are identified. NMFS may amend the Appendix, as described in paragraph 2.

15. After the third year of sea lion removals (in June of 2010), the States and NMFS shall review whether the average observed salmonid predation rate has fallen below 1 percent of the observed fish passage at the dam. If the Regional Administrator, NMFS Northwest Region determines that such predation rate has fallen below 1 percent, no lethal removal is authorized for the following year.

16. This authorization may be modified or revoked by NMFS at any time with 72 hours notice.

17. This authorization is valid until June 30, 2012, at which time it may be extended for an additional period of five years.

Pursuant to MMPA section 120(c)(5), and after receipt of reports from the States covering the first three years of authorized activity, NMFS will reconvene the Task Force to evaluate the States' reports and the effectiveness of the actions and any lethal take. NMFS will consider the reports, the Task Force recommendations, and the issues set out in section 120(c) of the MMPA, and may modify the authorization and conditions for the coming year(s), or revoke the authorization for lethal take.

NMFS requests that the States continue to cooperate in the pursuit of alternative technologies or methods to reduce California sea lion predation on salmonids in order to reduce the number of permanent removals of sea lions to the extent practicable. Additionally, if resources are available, the States are encouraged to monitor pinniped impacts on salmonids elsewhere in the lower Columbia River.

National Environmental Policy Act (NEPA)

NEPA requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Depending on the action and whether the impacts to the environment would be significant, Federal agencies may prepare and EA or environmental impact statement. When NMFS announced its intention to convene a Task Force, it advised the public that it would conduct the necessary analysis under NEPA. Prior to convening the first Task Force meeting, NMFS conducted internal scoping under NEPA. Based on information in the States' application and public comments received on that application, NMFS concluded the appropriate level of analysis was an EA. After receiving and reviewing the Task Force recommendations, NMFS developed a proposed action, a range of reasonable alternatives and evaluated the environmental impacts of the proposed action in a draft EA. The proposed action, which NMFS has determined is the agency's preferred alternative is the partial approval of the States' section 120 application for lethal removal of California sea lions at Bonneville Dam, under certain conditions.

The draft EA was made available for public comment for 30 days. More than 3,500 comments were received during the public comment period, including comments from several Task Force member organizations (e.g., States, Tribes, Humane Society of the United States) and others including the Marine Mammal Commission, and Congressional office of Representative Doc Hastings.

After reviewing public comments on the draft EA, NMFS has completed its evaluation of the environmental consequences of the proposed action and concluded that it will not result in any significant impacts on the human environment and, therefore, has made a finding of no significant Impact (FONSI). The draft EA, EA and FONSI were prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA Administrative Order 216–6.

Magnuson-Stevens Fishery Conservation and Management Act

Pursuant to section 305(b) of the Magnuson-Stevens Act, NMFS conducted an essential fish habitat consultation on its decision to partially approve the States' application. NMFS determined that lethal removal activities would not result in adverse effects to freshwater EFH for Chinook and coho salmon.

Dated: March 17, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–5902 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG21

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of cancelation of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council has canceled its Shrimp Advisory Panel (AP) meeting via conference call.

DATES: The Shrimp AP conference call will not be held March 31, 2008 at 10 a.m. e.s.t.

ADDRESSES: *Meeting address*: The meeting was to be held via conference call and listening stations are no longer available. For specific locations see **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida, 33607.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Deputy Director, Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION: The Gulf Council has canceled the conference call meeting of the Shrimp AP. The meeting published at 73 FR 13211, March 12, 2008, and it will not be rescheduled.

Dated: March 19, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–5864 Filed 3–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG55

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council (SAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will

hold a meeting of its Scientific and Statistical Committee (SSC) to orient new members and introduce them to the Council system. The meeting will be held in Charleston, SC.

DATES: The SSC meeting will be held April 29–30, 2008. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The SSC meeting will be held at 4055 Faber Place Drive, North Charleston, SC 29405; telephone: (843) 571–4366.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *Kim.Iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Act, the SSC is the body responsible for reviewing the Council's scientific materials. The South Atlantic Fishery Management Council will hold a meeting of its SSC to provide orientation for new members appointed in March 2008. Members will be briefed on SAFMC operating procedures and administrative issues, and discuss the tasks and responsibilities of SSC membership.

SSC Meeting Schedule:

April 29, 2008, 1 p.m.–5 p.m., April 30, 2008, 9 a.m.–1 p.m.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Dated: March 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–5801 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–44]

36(b)(l) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–44 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 17, 2008.

L.M. Bynum

Alternate OSD Federal Register Liaison Officer Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

MAR 1 2 2008
In reply refer to:
USP003043-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-44, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $1,389 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-44

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 270 million
Other	$1,119 million
TOTAL	$1,389 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 700 M1151 High Mobility Multi-Purpose Wheeled Vehicles (HMMWV) Armored Gun Trucks, 4,000 AN/PVS-7D Night Vision Devices, and 100,000 M16A4 Assault Rifles . Also included are: (200) Commercial Ambulances, (16) Bulldozers, (300) Light Gun Trucks, (150) Motorcycles, (90) Recovery Trucks, (30) 20 ton Heavy Trailer, (1,400) 8 ton Medium Trailers, (3,000) 4X4 Utility Trucks, (120) 12K Fuel Tank Trucks, (80) Heavy Tractor Trucks, (120) 10K Water Tank Trucks, (208) 8 ton Heavy Trucks, (800) Light Utility Trailers, (8) Cranes, (60) Heavy Recovery Vehicles, (16) Loaders, (300) Sedans, (200) 500 gal Water Tank Trailers, (1,500) 1 ton Light Utility Trailers, (50) 40 ton Low Bed Trailers, (40) Heavy Fuel Tanker Trucks, (20) 2000 gal Water Tanker Trucks, (2,000) 5 ton Medium Trucks, (120) Armored IEDD Response Vehicles, (1,200) 8 ton Medium Cargo Trucks, (1,100) 40mm Grenade Launchers, (3,300) 9mm Pistols with Holsters, (400) Aiming Posts, (140,000) M16A4 Magazines, (100,000) M4 Weapons, (65) 5K Generators, (5,400) hand-held VHF radio sets, (3,500) vehicular VHF radio sets, (32) Air Conditioner Charger kits, (32) Air Conditioner Testers, (4,000) binoculars, (20) electrician tool kits, (600) large general purpose tents, (700) small command general purpose tents, medical equipment, organizational clothing and individual equipment, standard and non-standard vehicle spare and repair parts, maintenance, support equipment, publications and documentation, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (VBO-VBZ)

(v) Prior Related Cases, if any: none

*** as defined in Section 47(6) of the Arms Export Control Act.**

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: MAR 1 2 2008

POLICY JUSTIFICATION

Iraq – Various Vehicles, Small Arms and Ammunition, Communication Equipment, Medical Equipment, and Clothing and Individual Equipment

The Government of Iraq has requested a possible sale of 700 M1151 High Mobility Multi-Purpose Wheeled Vehicles (HMMWV) Armored Gun Trucks, 4,000 AN/PVS-7D Night Vision Devices, and 100,000 M16A4 Assault Rifles. Also included are: (200) Commercial Ambulances, (16) Bulldozers, (300) Light Gun Trucks, (150) Motorcycles, (90) Recovery Trucks, (30) 20 ton Heavy Trailer, (1,400) 8 ton Medium Trailers, (3,000) 4X4 Utility Trucks, (120) 12K Fuel Tank Trucks, (80) Heavy Tractor Trucks, (120) 10K Water Tank Trucks, (208) 8 ton Heavy Trucks, (800) Light Utility Trailers, (8) Cranes, (60) Heavy Recovery Vehicles, (16) Loaders, (300) Sedans, (200) 500 gal Water Tank Trailers, (1,500) 1 ton Light Utility Trailers, (50) 40 ton Low Bed Trailers, (40) Heavy Fuel Tanker Trucks, (20) 2000 gal Water Tanker Trucks, (2,000) 5 ton Medium Trucks, (120) Armored IEDD Response Vehicles, (1,200) 8 ton Medium Cargo Trucks, (1,100) 40mm Grenade Launchers, (3,300) 9mm Pistols with Holsters, (400) Aiming Posts, (140,000) M16A4 Magazines, (100,000) M4 Weapons, (65) 5K Generators, (5,400) hand-held VHF radio sets, (3,500) vehicular VHF radio sets, (32) Air Conditioner Charger kits, (32) Air Conditioner Testers, (4,000) binoculars, (20) electrician tool kits, (600) large general purpose tents, (700) small command general purpose tents, medical equipment, organizational clothing and individual equipment, standard and non-standard vehicle spare and repair parts, maintenance, support equipment, publications and documentation, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $1,389 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country.

The proposed sale of these vehicles, equipment, and support will enhance the ability of the Iraqi forces to sustain themselves in their efforts to bring stability to Iraq and to prevent overflow of unrest into neighboring countries.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The contractors are unknown as this time. There are no known offset agreements proposed in connection with this potential sale.

With the volume and wide range of items and equipment in this proposed sale, levels of US Government and Contractor technical assistance will be required, but cannot be fully defined at this time. The use of existing deployed U.S. military personnel will be maximized.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-44

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/PVS-7D Night Vision Device is the U.S. military standard issue goggle that uses a single generation 2I image tube in a dual eye configuration. The PVS-7D incorporates an infrared illuminator with a momentary and continuous on switching function. The PVS-7D is an unclassified system but has embedded technology that is considered sensitive.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–5744 Filed 3–21–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee

AGENCY: Department of Defense; Missile Defense Agency (MDA).

ACTION: Notice of Closed Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place.

Name of Committee: Missile Defense Advisory Committee.

Dates of Meeting: Wednesday, April 2 and Thursday, April 3, 2008.

Time: 8 a.m. to 5 p.m. Security clearance and visit requests are required for access.

Location: 7100 Defense Pentagon, Washington, DC 20301–7100.

Purpose of the Meeting: At this meeting, the committee will receive classified briefings by Missile Defense Agency senior staff, Program Managers, senior Department of Defense leaders, representatives from industry and the Services on the appropriate role for the Missile Defense Agency in Cruise Missile Defense.

Agenda: Topics tentatively scheduled for discussion include, but are not limited to administrative work; Service (Air Force and Navy) Cruise Missile Defense Capabilities and Perspectives; the Asymmetric Threat Study; and development of draft outbrief to the Director, Missile Defense Agency.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 the Missile Defense Agency has determined that the meeting shall be closed to the public. The Director, Missile Defense Agency, in consultation with the Missile Defense Agency Office of General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. Al Bready, *mdac@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Missile Defense Advisory Committee about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is as stated above and can also be obtained from the GSA's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be

provided to or considered by the Missile Defense Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Missile Defense Advisory Committee Chairperson and ensure they are provided to all members of the Missile Defense Advisory Committee before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Al Bready, Designated Federal Officer at *mdac@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Dated: March 18, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–5869 Filed 3–21–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee

AGENCY: Department of Defense; Missile Defense Agency (MDA).

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place.

Name of Committee: Missile Defense Advisory Committee.

Dates of Meeting: Tuesday, May 13 and Wednesday, May 14, 2008.

Time: 8 a.m. to 5 p.m. Security clearance and visit requests are required for access.

Location: 7100 Defense Pentagon, Washington, DC 20301–7100.

Purpose of the Meeting: At this meeting, the Committee will receive classified briefings by Missile Defense Agency senior staff, Program Managers, senior Department of Defense leaders, representatives from industry and the Services on the appropriate role for the Missile Defense Agency in Cruise Missile Defense.

Agenda: Topics tentatively scheduled for discussion include, but are not limited to administrative work; Integrated Air and Missile Defense Evaluation of Alternatives; Single Integrated Air Picture Follow-up; and development of final outbrief to the Director, Missile Defense Agency.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 the Missile Defense Agency has determined that the meeting shall be closed to the public. The Director, Missile Defense Agency, in consultation with the Missile Defense Agency Office of General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. Al Bready, *mdac@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Missile Defense Advisory Committee about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is as stated above and can also be obtained from the GSA's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Missile Defense Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Missile Defense Advisory Committee Chairperson and ensure they are provided to all members of the Missile Defense Advisory Committee before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Al Bready, Designated Federal Officer at *mdac@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Dated: March 18, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–5870 Filed 3–21–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2008–OS–0030]

Privacy Act of 1974; Systems of Records

AGENCY: DoD; Defense Intelligence Agency.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Intelligence Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 23, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2008.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

LDIA 05–0003

SYSTEM NAME:

Joint Intelligence Virtual University (JIVU II) (November 25, 2005, 70 FR 71098).

* * * * *

CHANGES:

SYSTEM LOCATIONS:

Delete entry and replace with ''Regional Support: Command (RSC) Northeast Continental United States (CONUS).

SECONDARY LOCATION:

Defense Intelligence Agency, Washington, DC 20340''.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary-destroy when 5 years old or when superseded or obsolete, whichever is sooner''.

* * * * *

LDIA 05–0003

SYSTEM NAME:

Joint Intelligence Virtual University (JIVU II)

SYSTEM LOCATIONS:

Regional Support: Command (RSC) Northeast Continental United States (CONUS).

SECONDARY LOCATION:

Defense Intelligence Agency, Washington, DC 20340.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals with access to the Joint Worldwide Intelligence Communication System (JWICS) and the Secret Internet Protocol Router Network (SIPRNET) networks.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of education, training, and Career Development material and employee information such as name, email address, organization, Social Security Number, position number, position job code and other optional data to include title, address, city, state, zip code, country, phone number, and brief biography.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, (50 U.S.C. 401 et seq.); 10 U.S.C. 113; 10 U.S.C. 125; and E. O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to establish a system of records for the JIVU, an Intelligence Community training system which permits users on the Joint Worldwide Intelligence Communication System (JWICS) and the Secret Internet Protocol Router Network (SIPRNET) system, to take training courses for career advancement and job performance and to link such training to the user's personal Human Resource records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Defense Intelligence Agency's compilation of systems records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Data will be retrievable by name or user login identifier.

SAFEGUARDS:

The servers hosting the JIVU application and the servers hosting the Oracle database are located in a secure area under employee supervision 24/7. Records are maintained and accessed by authorized personnel via the JWICS and SIPRNET internal, classified networks.

RETENTION AND DISPOSAL:

Temporary-destroy when 5 years old or when superseded or obsolete, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Directorate of Personnel (DP), Defense Intelligence Agency, Washington DC 20340–3191.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington DC 2030–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial Agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency officials, employees, educational institutions, parent Services of individuals and immediate supervisor on station, and other Government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–5871 Filed 3–21–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete two Systems of Records.

SUMMARY: The Department of the Navy is deleting two systems of records in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 23, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of Navy proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: March 19, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05330–2

SYSTEM NAME:

Naval Aviation Workload Control System (February 22, 1993, 58 FR 10753).

REASON:

This system was replaced. The module for tracking time and attendance data now falls under NM07421–1, Time and Attendance Feeder Records (August 15, 2007, 72 FR 45798).

N05520–2

SYSTEM NAME:

Listing of Personnel/Sensitive Compartmented Information (February 22, 1993, 58 FR 10761).

REASON:

This information now comes under N05520–5, Personnel Security Management Records System (May 9, 2003, 68 FR 24974).

[FR Doc. E8–5877 Filed 3–21–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Electricity Delivery and Energy Reliability (OE), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The Office of Electricity Delivery and Energy Reliability is soliciting comments on the proposed revisions and three-year extension to the OE–417, ''Electric Emergency Incident and Disturbance Report.''

DATES: Comments must be filed by May 23, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Alice Lippert. To ensure receipt of the comments by the due date, submission by Fax 202–586–2623 or e-mail: *Alice.Lippert@hq.doe.gov* is recommended. The mailing address is (name of component), (routing symbol), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Alice Lippert may be contacted by telephone at 202–586–9600.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Alice Lippert at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the DOE to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the DOE to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the DOE will later seek approval of this collection of information by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The DOE collects information on the generation, distribution, and transmission of electric energy. The DOE collects information on emergency situations in electric energy supply systems so that appropriate Federal emergency response measures can be implemented in a timely and effective manner.

The purpose of this notice is to seek public comment on the revised Form OE–417, ''Emergency Incident and Disturbance Report,'' used to report electric emergency incidents and disturbances to the DOE. The Form OE–417 reports will enable the Department to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the U.S. Trust Territories) so that the Government may help prevent the physical or virtual disruption of the operation of any critical infrastructure.

Currently, DOE's Office of Electricity Delivery and Energy Reliability (OE) uses Form OE–417 to monitor major system incidents on electric power systems and to conduct after-action investigations on significant interruptions of electric power. The information is used to meet DOE national security responsibilities and requirements as set forth in the U.S. Department of Homeland Security's National Response Framework. The information may also be used in developing legislative recommendations/reports to Congress and coordinating Federal efforts regarding activities such as incidents/disturbances in critical infrastructure protection, continuity of electric industry operations, and continuity of operations. The information submitted may also be used by the Energy Information Administration to analyze significant interruptions of electric power.

II. Current Actions

The OE is considering adding an additional criterion under the ''Criteria for Filing'' which would require facilities to report and contingencies involving extreme events which put stress on part(s) of an electric grid. These events may or may not cause service interruptions to customers.

The information requested in Schedule 2 will be revised to allow respondents to have one area of the OE–417 form in which all the information is treated as protected. Previously, contact information included in Schedule 1 will be moved into Schedule 2 with no additional changes. In the Narrative of Schedule 2, a box has been added which allows respondents to put in the date of the ''Estimated Restoration Date for all Affected Customers Who

Can Receive Power.'' This will allow the DOE to know when all customers affected by the incident will have their power restored.

In Schedule 1, line 12 asked for the ''Estimated Date/Time of Restoration.'' That line has been taken off of the form, but an inquiry about the estimated restoration time has been added into Schedule 2 to be considered protected information.

Line 9 of Schedule 1 which asked for a ''Teleconference Number'' has been deleted from the form. This line will not appear in the contact information lines which were moved to Schedule 2, discussed above.

The data will continue to be filed with the DOE's Emergency Operations Center. This DOE facility operates 24 hours daily, 7 days a week. Electronic submission is the preferred method of notification. Fax and telephone contact are also accepted. However, optional filing modes are being considered. The DOE is investigating an online submission process whereby the OE–417 form could be filled via a secure internet data collection system. This system would allow companies to submit forms directly to the DOE without having to e-mail or fax completed forms into the DOE Emergency Operations Center.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 10 minutes for the Emergency Incident Report (Schedule 1, Part A) that is to be filed within 1 hour; the overall public reporting burden for the form is estimated at 2 hours to cover any detailed reporting in the Normal/Update Report (Schedule 1, Part B and Schedule 2) which is filed later (up to 48 hours), if required. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*), and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*).

Issued in Washington, DC, March 19, 2008.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E8–5865 Filed 3–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation, and Research.''

DATES: Comments must be filed by May 23, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group, EI–70, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Grace Sutherland may be contacted by telephone at 202–586–6264.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Grace Sutherland at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 et seq.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and

disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval of this collection of information by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Form EIA–882T is a generic clearance, which is a plan for conducting one or more customer surveys. A generic clearance is considered by DOE only when DOE is able to demonstrate that there is a need for multiple, similar collections, but that the specifics of each collection cannot be determined until shortly before the data are to be collected. Form EIA–882T is used to conduct various projects, including pretest/pilot surveys (in-person interviews, telephone interviews, mail questionnaires, and electronic reporting options), focus groups, and cognitive interviews. The information collections that would be conducted as part of this approval will facilitate EIA's use of techniques to improve our current information collections and to develop new collections. Other goals are to reduce respondent burden and improve the quality of the information collected. The number and type of respondents varies depending upon the activities being conducted. Form EIA–882T was last extended for three years on August 17, 2005, and expires August 31, 2008.

The information collections will include:

1. *Pretests*. Pretest methods will include face-to-face interviews, telephone interviews, mail questionnaires, and electronic questionnaires. Pretests conducted will generally be methodological studies of limited size, normally involving either purposive or statistically representative samples. They will include a variety of surveys, the exact nature and sample designs will be determined at the time of development of the pretests. The samples will be designed to clarify particular issues rather than to be representative of the universe of interest. Collection may be on the basis of convenience, e.g., limited to specific geographic locations. The needs of a particular sample will vary based on the content of the information collection being tested, but the selection of sample cases will be made using sound statistical procedures.

2. *Pilot surveys*. Pilot surveys will generally be methodological studies of limited size, but will always employ statistically representative samples. The pilot surveys will replicate components of the methodological design, sampling procedures (where possible), and questionnaires of a full-scale survey. Pilot surveys may be utilized when EIA is undertaking a complete revamping of a survey methodology (e.g., moving to computer-assisted information collections) or when EIA is undertaking a new information collection.

3. *Focus groups*. Focus groups involve group sessions guided by a monitor who follows a topical outline containing questions or topics focused on a particular issue, rather than adhering to a standardized questionnaire. Focus groups are useful for surfacing and exploring issues. Focus groups are typically used with specific groups of stakeholders.

4. *Cognitive interviews*. Cognitive interviews are one-on-one interviews in which a respondent is typically asked to ''think aloud'' as he or she answers survey questions, reads survey materials, or completes other activities as part of a survey process. A number of different techniques may be involved, including asking respondents to paraphrase questions, probing questions to determine how respondents come up with their answers, and similar inquiries. The objective is to identify problems of ambiguity, misunderstanding, or other difficulties respondents have answering questions. This may be used as the first stage of questionnaire development.

A wide variety of uses are made of the data obtained through this generic clearance. These projects represent significant strides in our efforts to improve the pretesting of EIA surveys. As EIA gains more experience, we are broadening our involvement in testing, evaluation, and research, including working with staff at the National Science Foundation.

II. Current Actions

EIA plans to request a three-year extension of the OMB approval for this collection. No changes are being proposed to the types of surveys being conducted under the generic clearance. For each information collection that EIA proposes to undertake under this generic clearance, OMB will be notified at least two weeks in advance, and provided with an information copy of the collection instrument and all other materials describing the testing activity. EIA will only undertake a collection if OMB does not object to EIA's proposal.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Public reporting burden for this collection is estimated to average .25 hours (15 minutes) per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

C. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35), Federal Energy Administration Act of 1974 (Pub. L.

No. 93–275, 15 U.S.C. 761 et seq.), and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 et seq.).

Issued in Washington, DC, March 19, 2008.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E8–5867 Filed 3–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–101]

Georgia Power Company; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 18, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2413–101.

c. *Date filed:* March 3, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Hydroelectric Project.

f. *Location:* The project is located on Lake Oconee in Morgan County, Georgia. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Lee Glenn, Georgia Power Company, 125 Wallace Dam Road, NE., Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Christopher Yeakel at 202–502–8132, or e-mail *christopher.yeakel@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* April 18, 2008.

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. Please include the project number (P–2413–101) on any comments or motions filed. 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 e-filings.

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 whose name appears on 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to allow Patrick Malloy Communities to construct dock facilities with 90 watercraft slips and 975 feet of seawall for a private residential development along the shoreline of the Apalachee River section of Lake Oconee in Morgan County, Georgia. There would be a total of nine floating docks each with a capacity of 10 watercraft. Each dock would consist of a 6 foot by 20 foot walkway placed perpendicular to the center of a 6 foot by 113 foot walkway with five 5 foot by 24 foot fingers extending off one side. The proposed facility would occupy 0.29 acre of project waters and 2.98 acres of project lands, and would extend along 3151 linear feet of shoreline.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's 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. You may also register online at: *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 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. *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.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *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.

q. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5850 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–218–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Amendment To Petition for Temporary Waiver of Tariff Provisions and Request for Expedited Action

March 14, 2008.

Take notice that on March 13, 2008, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing an amendment in the referenced docket to its February 28, 2008 Petition for Temporary Waiver of Tariff Provisions.

Gulfstream states that the purpose of the amendment is to change the period over which its temporary waiver with respect to loan service will be

applicable during the April 2008 outages to the period commencing on the first gas day of the first outage through and including the 30th gas day following the second outage. This amendment will allow Gulfstream's firm customers who take loans of line pack during the April 2008 outages up to 30 days following the end of the second outage to return all line pack taken during both outages. In addition, in order to ensure that the firm shippers have a timely understanding of the availability of, and cost associated with, the parking and lending services described in the Petition, as amended, Gulfstream requests that the Commission expedite action on the amended Petition, shorten the notice period to five days from the date of this filing, and grant the Petition by March 21, 2008.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Tuesday, March 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5827 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13000–000]

Howell Heflin Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13000–000.

c. *Date filed:* September 7, 2007.

d. *Applicant:* Howell Heflin Hydro, LLC.

e. *Name of Project:* Howell Heflin Lock and Dam Hydroelectric Project.

f. *Location:* Tombigbee River in Greene County, Alabama. It would use the U.S. Army Corps of Engineers' Howell Heflin Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

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: 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–13000–000) 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 using the U.S. Army Corps of Engineers' Howell Heflin Lock and Dam and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) four turbine/generator units with a combined installed capacity of 44 megawatts; (3) a new 2-mile-long above ground 69-kilovolt transmission line extending from the switchyard to an interconnection point with the utility distribution system owned by Black Warrior Electric Membership Corporation; and (4) appurtenant facilities. The proposed Howell Heflin Lock and Dam Project would have an average annual generation of 125 gigawatt-hours.

l. 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 ''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. *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.

n. *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.

o. *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.

p. *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.

q. *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.

r. *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.

s. *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. E8–5845 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 618–175]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 14, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 618–175.

c. *Date Filed:* March 13, 2008.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Dam.

f. *Location:* On the Coosa River, in Elmore, Chilton, and Coosa Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Barry Lovett, Alabama Power Company, 600 N. 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257–1258.

i. *FERC Contact:* Peter Yarrington, *peter.yarrington@ferc.gov,* (202) 502–6129.

j. *Deadline for filing comments, motions to intervene and protests:* March 28, 2008.

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.

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 whose name appears on 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power Company (APC) is requesting a temporary variance of the Jordan Dam Project's minimum flow requirements due to continuing drought conditions in the southeast, and to ensure, to the extent possible, that there will be sufficient water available in the Coosa River to support both reservoir and downstream environmental, municipal and industrial water supply and navigation needs. Beginning April 1, the project license requires a continuous minimum base flow of 4,000 cubic feet per second (cfs) for 18 hours per day and a pulse flow release for 6 hours per day. During June, the base and pulse flows are ramped down in daily increments, to a continuous 2,000 cfs, which is required up to March 31. APC is requesting a variance to release from Jordan Dam no less than a continuous flow of 2,000 cfs (± 5 percent) from April 1 through December 31, 2008, unless further reduction in flows becomes necessary to address emergency operating conditions. Any reduction in flows would be achieved by ramping down flows by no more than 66.7 cfs per day. The licensee is also proposing to conduct weekly conference calls with the resource agencies to discuss project releases and operations to address drought related issues.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–618) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail or new filings and issuances related to this or other pending projects. For assistance, call 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. *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.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *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.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(I)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5832 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12991–000]

Kentucky Hydro 2, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12991–000.

c. *Date filed:* September 10, 2007.

d. *Applicant:* Kentucky Hydro 2, LLC.

e. *Name of Project:* Kentucky River Lock and Dam #2 Hydroelectric Project.

f. *Location:* Kentucky River in Henry County, Kentucky. It would use the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #2.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

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: 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–12991–000) 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 using the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #2 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 13 megawatts; (3) a new 3-mile-long above ground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Kentucky River Lock and Dam #2 Project would have an average annual generation of 39 gigawatt-hours.

l. 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 ''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. *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.

n. *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.

o. *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.

p. *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.

q. *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.

r. *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.

s. *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. E8–5841 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12997–000]

Kentucky Hydro 4, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12997–000.

c. *Date filed:* September 10, 2007.

d. *Applicant:* Kentucky Hydro 4, LLC.

e. *Name of Project:* Kentucky River Lock and Dam #4 Hydroelectric Project.

f. *Location:* Kentucky River in Franklin County, Kentucky. It would use the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #4.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

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: 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–12997–000) 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 using the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #4 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 10 megawatts; (3) a new 0.1-mile-long aboveground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Kentucky River Lock and Dam #4 Project would have an average annual generation of 30 gigawatt-hours.

l. 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 ''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. *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.

n. *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.

o. *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.

p. *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.

q. *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.

r. *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.

s. *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. E8–5843 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12998–000]

Kentucky Hydro 8, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12998–000.

c. *Date filed:* September 10, 2007.

d. *Applicant:* Kentucky Hydro 8, LLC.

e. *Name of Project:* Kentucky River Lock and Dam #8 Hydroelectric Project.

f. *Location:* Kentucky River in Jessamine County, Kentucky. It would use the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #8.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

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: 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–12998–000) 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 using the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #8 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 14 megawatts; (3) a new 0.14-mile-long above ground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Kentucky River Lock and Dam #8 Project would have an average annual generation of 44 gigawatt-hours.

l. 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 ''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. *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.

n. *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.

o. *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.

p. *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.

q. *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.

r. *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.

s. *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. E8–5844 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12995–000]

Tom Bevill Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12995–000.

c. *Date filed:* September 10, 2007.

d. *Applicant:* Tom Bevill Hydro, LLC.

e. *Name of Project:* Tom Bevill Lock and Dam Hydroelectric Project.

f. *Location:* Tombigbee River in Pickens County, Alabama. It would use the U.S. Army Corps of Engineers' Tom Bevill Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

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: 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–12995–000) 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 using the U.S. Army Corps of Engineers' Tom Bevill Lock and Dam and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 25 megawatts; (3) a new 1-mile-long aboveground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the utility distribution system owned by Black Warrior Electric Membership Corporation; and (4) appurtenant facilities. The proposed Tom Bevill Lock and Dam Project would have an average annual generation of 75 gigawatt-hours.

l. 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 ''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. *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.

n. *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.

o. *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.

p. *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.

q. *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.

r. *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.

s. *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. E8–5842 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12967–000]

Tuttle Creek Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12967–000.

c. *Date filed:* August 30, 2007.

d. *Applicant:* Tuttle Creek Hydro, LLC.

e. *Name of Project:* Tuttle Creek Dam Hydroelectric Project.

f. *Location:* Big Blue River in Riley County, Kansas. It would use the U.S. Army Corps of Engineers' Tuttle Creek Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

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: 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–12967–000) 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 using the U.S. Army Corps of Engineers' Tuttle Creek Dam and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) a 400-foot-long, 108-inch-diameter steel penstock; (3) one turbine/generator unit with an installed capacity of 3 megawatts; (4) a new 2-mile-long above ground 12.5-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (5) appurtenant facilities. The proposed Tuttle Creek Dam Project would have an average annual generation of 18 gigawatt-hours.

l. 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 ''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. *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.

n. *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.

o. *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.

p. *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.

q. *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.

r. *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.

s. *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. E8–5840 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–100]

Georgia Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 17, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2413–100.

c. *Date Filed:* February 13, 2007.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Hydroelectric Project.

f. *Location:* The proposal would be located on the Oconee River, in Greene County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Lee Glenn, Lake Resources Manager, 125 Wallace Dam Road, NE., Eatonton, GA 31024; (706) 485–8704.

i. *FERC Contact:* Gina Krump, Telephone (202) 502–6704, and e-mail: *Gina.Krump@ferc.gov*.

j. *Deadline for Filing Comments, Motions to Intervene, and Protest:* April 18, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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 whose name appears on 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Georgia Power Company (GPC) is seeking Commission approval to issue a permit to Vintage Communities/Del Webb for the construction of 4 boat docks, totaling 37 slips, a dual boat ramp, and 826 feet of seawall and riprap on approximately 0.12 acre of project lands along the shore of Lake Oconee. The proposed facilities would be located in Greene County, Georgia and serve the residents of the Vintage Communities located outside the project boundary. All proposed work is consistent with GPC's current permitting requirements and U.S. Army Corps of Engineers permits.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's 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. You may also register online

at: *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 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. *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.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *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.

q. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5838 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–90–000]

Sword Energy Limited; Eagle Rock Exploration Ltd.; Notice of Application To Transfer Natural Gas Act Section 3; Authorization and Presidential Permit

March 14, 2008.

On March 11, 2008, Sword Energy Limited (Sword) and Eagle Rock Exploration Ltd. (Eagle Rock) filed an application in Docket No. CP08–90–000 pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, and the Secretary of Energy's Delegation Order No. 00–004.00A, effective May 16, 2006, seeking authorization to transfer Sword's existing NGA section 3 authorization and Presidential Permit to Eagle Rock, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to: Ron Chapman, Vice President of Operations, Sword Energy Limited, 300, 340–12th Avenue, SW., Calgary, Alberta T2R IL5 or call (403) 269–4040, facsimile (403) 261–1978, or e-mail: *rchapman@eagler.ca*.

Specifically, Sword and Eagle Rock request the Commission to issue an order: (1) Transferring Sword's NGA section 3 authorization to Eagle Rock for the operation and maintenance of facilities for the importation of natural gas from the Province of Alberta, Canada, into Glacier County, Montana; and (2) authorizing the assignment of Sword's October 6, 2006, Presidential Permit for the operation and maintenance of facilities at the Alberta, Canada/Montana import point.

The import facilities consist of: (1) A gas meter station in LSD 8–4–1–16 W4M in the Province of Alberta; (2) a 4-inch (114.3 mm) diameter pipeline located directly south of this meter station across the Canada-United States border at Section 1 T37N R5W, extending a distance of approximately 2,300 feet. The pipeline crosses the International Boundary for a distance of 30 feet (the Pipeline) and interconnects with a 4-inch (114.3 mm) diameter pipeline (the Connector Pipeline) operated by Sword. The Connector Pipeline connects with an existing North Western-operated gathering system in northern Montana at SE ¼ Section 8, Township 37N, Range 4W downstream of the North Western-operated North Moulton compressor station.

Sword and Eagle Rock state that the border facilities will remain in place and operation following the requested transfer and assignment. Sword and Eagle Rock also state that there are no current third party service agreements associated with the Sword pipeline, although Eagle Rock would be prepared to offer transportation services to any other shipper.

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, 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.

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: April 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5833 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–35–001]

EcoEléctrica, L.P.; Notice of Application

March 18, 2008.

Take notice that on March 5, 2008 EcoEléctrica, L.P. (EcoEléctrica) filed an application in Docket No. CP95–35–001, pursuant to section 3 of the Natural Gas Act (NGA), for modification of a prior Section 3 Order (dated May 15, 1996) to construct, install, own, operate and maintain certain facilities at the EcoEléctrica LNG import terminal at Penuelas, Puerto Rico. The details of this proposal are more fully set forth in the application that is on file with the Commission and open to public inspection.

The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY(202) 502–8659. Any initial questions regarding this application should be directed to Lynn R. Coleman, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005, or by phone at (202) 371–7600.

EcoEléctrica seeks Commission approval to make two modifications to the original Section 3 Order. First, the Section 3 Order of May 15, 1996 authorized the construction of a stub natural gas pipeline that extends to the facility fenceline and which was originally intended for use in providing natural gas to the Puerto Rico Electric Power Authority's (PREPA) Costa Sur Power Plant. The stub pipeline has been constructed but is not used to supply natural gas to the Costa Sur Power Plant because that plant was never converted to natural gas firing. In lieu of this, EcoEléctrica seeks Commission approval to use the stub line to deliver gas to PREPA's proposed Gasoducto del Sur pipeline for use at PREPA's Aguirre Combined Cycle Power Plant upon its conversion from fuel oil to natural gas as power plant fuel.

Second, the Section 3 Order authorized EcoEléctrica to construct an LNG vaporization system. In the Section 3 Order, EcoEléctrica was authorized to install two LNG storage tanks, each with one million barrels storage capacity, and up to six vaporizers, consisting of two vertical shell and tube heat exchanger vaporizers and four open rack type vaporizers. Only one of the LNG storage tanks has been installed. Therefore, only the two vertical shell and tube heat exchanger vaporizers were installed when the LNG terminal was constructed. As part of the project to supply natural gas to the Aguirre plant, EcoEléctrica proposes to install two additional vertical shell and tube heat exchanger vaporizers. All of the additional equipment, including the two vaporizers, will be installed within the existing 36-acre facility site. The single LNG storage tank that is part of the current facility has sufficient volume capacity to supply the natural gas demand for the Aguirre Combined Cycle Power Plant. This proposed EcoEléctrica modification package does not include the construction of the second LNG storage tank.

The proposed modifications will allow EcoEléctrica to increase throughput but EcoEléctrica says that it will remain well within the annual import volume authorized for the EcoEléctrica LNG Terminal by the Department of Energy (DOE) Order Granting Long-Term Authorization to Import LNG, April 19, 1995, DOE/FE Order No. 1042, FE Docket No. 94–91–LNG.

The application includes an Environmental Assessment Report which demonstrates that the potential environmental impacts of the proposed modifications are either negligible or were adequately assessed in the environmental review for the original Section 3 Order for EcoEléctrica.

EcoEléctrica requests that the Commission grant the requested authorization at the earliest practicable date, in order to ensure an in-service date of September 2008.

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, 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.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to 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 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: 5 p.m. Eastern Time on April 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5849 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101–084; Project No. 2155–024]

Sacramento Municipal Utility District (California); Pacific Gas & Electric Company (California); Notice of Availability of the Final Environmental Impact Statement for the Upper American River Project and the Chili Bar Project

March 14, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for relicense for the Upper American River Project (FERC No. 2101) and the Chili Bar Project (FERC No. 2155), located on the South Fork of the American River near Placerville,

California, and has prepared a Final Environmental Impact Statement (final EIS) for the projects.

The existing 688-megawatt (MW) Upper American River Project occupies 6,375 acres of federal land administered by the U.S. Department of Agriculture, Forest Service (Forest Service), in Eldorado National Forest and 42.3 acres of federal land administered by the U.S. Department of the Interior, Bureau of Land Management (BLM). The Forest Service is reviewing an application for a special use permit for constructing the Iowa Hill development on National Forest System lands. The Forest Service is also a cooperating agency in preparing this final EIS for the Upper American River Project.

Pacific Gas & Electric Company's 7–MW Chili Bar Project is located on the South Fork of the American River immediately downstream of the Upper American River Project. The project occupies 47.81 acres of federal land administered by the BLM.

In the final EIS, staff evaluates the applicant's proposals and alternatives for relicensing the projects. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Internet at *http://www.ferc.gov* under the eLibrary link. Enter the docket number (either P–2101 or P–2155) 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.

CD versions of the final EIS have been mailed to everyone on the mailing list for the projects. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

For further information, contact James Fargo at (202) 502–6095 or at: *james.fargo@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5831 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–46–000]

MMC Energy, Inc., Complainant, v. California Independent System Operator, Inc., Respondent; Notice of Complaint

March 14, 2008.

Take notice that on March 13, 2008, MMC Energy, Inc. (MMC), filed a formal complaint against California Independent System Operator, Inc. (CASIO), pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2000), and Rule 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206 (2007), alleging that the CAISO has unlawfully failed to allow three generating facilities owned by MMC to fully participate in the spinning reserve ancillary services market.

MMC certifies that copies of the complaint were served on the contacts for CAISO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 2, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5828 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF08–419–000]

Food Lion 1194 Wilson, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

March 18, 2008.

Take notice that on March 5, 2008, Food Lion, LLC, 2110 Executive Drive, Salisbury, NC 28145 filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consist of a 350 kW packaged diesel engine generator set operating on #2 fuel oil. This package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 2021 Lipscombe Road, Wilson, NC 27893.

This qualifying facility interconnects with Wilson Energy's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making the filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5848 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF08–418–000]

Food Lion 2552 Wilson, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

March 18, 2008.

Take notice that on March 5, 2008, Food Lion, LLC, 2110 Executive Drive, Salisbury, NC 28145 filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 350 kW packaged diesel engine generator set operating on #2 fuel oil. This package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 3711 Peppermill Drive North, Wilson, NC 27893.

This qualifying facility interconnects with Wilson Energy's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making the filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5851 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–36–001]

South Carolina Electric & Gas Company; Notice of Filing

March 14, 2008.

Take notice that on February 28, 2008, South Carolina Electric & Gas Company filed a compliance filing in response to the Commission's January 31, 2008 Order, *South Carolina Electric & Gas Company*, 122 FERC ¶ 61,070 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 20, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5829 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12707–001]

Hook Canyon Energy, LLC; Notice of Intent to File License Application, Filing of Pre-Application Document (PAD), Commencement of Licensing Proceeding, Scoping, Solicitation of Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

March 14, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 12707–001.

c. *Dated Filed:* September 10, 2007.

d. *Submitted by:* Hook Canyon Energy, LLC.

e. *Name of Project:* Hook Canyon Pump Storage Project.

f. *Location:* The project would be located in Rich County, Utah and Bear Lake County, Idaho. The project's upper reservoir would be constructed in Hook Canyon on the eastern side of Bear Lake. Bear Lake would be the project's lower reservoir. The proposed project would not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Brent Smith, Symbiotics LLC, P.O. Box 535, Rigby, ID 83442; (208) 745–0834.

i. *FERC Contact:* Steve Hocking at *steve.hocking@ferc.gov* or (202) 502–8753.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of an environmental document cannot also intervene in that same proceeding. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S.

Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and, (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. By letters dated February 13 and 14, 2008, we designated Hook Canyon Energy, LLC to be the Commission's non-federal representative for consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act, respectively.

m. Hook Canyon Energy, LLC 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.

n. 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 (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction using the contact information in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects at the Commission. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (an original and eight copies) must be filed with the Commission at: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Hook Canyon Pump Storage Project) and project number (P–12707–001), and include the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by May 13, 2008.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

p. As of this time, Commission staff intend to prepare an Environmental Impact Statement for this project.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of these meetings and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, April 9, 2008.

Time: 9 a.m. to 2 p.m. (MST).

Location: Bear Lake West Restaurant and Sports Bar, 554 Lewis Loop, Fish Haven, ID 83287.

Phone: (208) 945–2222.

Evening Scoping Meeting

Date: Wednesday, April 9, 2008.

Time: 7 p.m.–10 p.m (MST).

Location: Oregon Trail Center, 320 North 4th Street, Montpelier, ID 83254.

Phone: (208) 847–3800.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues identified through the scoping process.

Site Visit

Hook Canyon Energy, LLC and Commission staff will visit the site of the proposed project on Tuesday, April 8, 2008, from 8 a.m. to about 12 noon. To attend the site visit, meet at 8 a.m. at the Bear Lake State Park, Rainbow Cove Launch Area, which is located on the eastern side of Bear Lake on Cisco Beach Road just north of Cisco beach. All participants are responsible for their own transportation and access to the site is limited to four-wheel drive vehicles only. Lunch will be from about 12 to 1 p.m. All participants should bring their own bag or box lunch with them to the site visit.

From 1 p.m. to about 5 p.m., Hook Canyon Energy, LLC and Commission staff will tour PacifiCorp's Lifton pump station on the north end of Bear Lake, associated dikes, and possibly Stewart dam. To attend the tour, meet at 1 p.m. at the Bear Lake State Park, North Beach Parking Area which is located on the eastern side of Bear Lake on Eastshore Road just north of the Utah/Idaho state line. Road just north of the Utah/Idaho state line. All participants are responsible for their own transportation. Access to the Lifton pump station and other PacifiCorp facilities is at PacifiCorp's discretion.

The site visit and tour scheduled for April 8, 2008, is weather dependent. If the site visit and tour are cancelled, notice will be placed on the Commission's April 8, 2008, calendar, on its Web site (*http://www.ferc.gov*). Please check the Commission's April 8, 2008, calendar before leaving in the morning to attend the site visit and tour.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

Scoping meetings will be recorded by a stenographer and will become part of the Commission's formal record for this proceeding.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5830 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–45–001; CP06–401–001]

TransColorado Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Love Ranch Relocation Project and Request for Comments on Environmental Issues

March 18, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the Love Ranch Relocation Project involving the relocation of previously authorized, but uninstalled, natural gas transmission system facilities by TransColorado Gas Transmission Company (TransColorado) in Rio Blanco County, Colorado. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 18, 2008. Details on how to submit comments are provided in the ''Public Participation'' section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

TransColorado proposes to relocate two compressor units previously authorized for installation at the existing Greasewood Compressor Station to an alternative site about 6 miles west (referred to as the Love Ranch Compressor Station site). Both locations are in Rio Blanco County, Colorado. Specifically, TransColorado proposes to amend its authorizations for both the North Expansion Project in Docket No. CP05–45–000 and the Blanco-Meeker Expansion Project in Docket No. CP06–401–000 to relocate a 2,370 horsepower unit and a 3,550 horsepower unit, respectively, to the Love Ranch Compressor Station site. TransColorado further seeks authority to construct and operate a new interconnect with Rockies Express Pipeline, LLC (Rockies Express) at the existing Meeker Compressor Station.

Both compressor units were originally authorized to allow TransColorado to deliver up to 300,000 dekatherms per day (Dth/d) to Williams Energy Marketing and Trading Company (Williams) through Wyoming Interstate Company's pipeline system. Installation of the units was deferred to coincide with an increase in Williams' contract quantities beginning January 1, 2008. TransColorado states that relocating the compressor units and the new interconnect would accommodate the changing market needs of Williams on the TransColorado pipeline system and increases the overall delivery flexibility of the pipeline. Upon installation of the two compressors at the Love Ranch Compressor Station site, TransColorado would be capable of delivering 130,000 Dth/d to WIC at the Greasewood Compressor Station and 210,000 Dth/d to Rockies Express via the proposed interconnect at the Meeker Compressor Station.

Construction and operation of the proposed project would affect 7.2 acres, including the compressor station (6.75 acres), access road (0.25 acre), and the meter station (0.2 acre). The compressor station would be located immediately adjacent to TransColorado's existing natural gas transmission pipeline system on privately-owned rangeland that is currently used for grazing. TransColorado would access the site by a new 230-foot-long by 50-foot-wide access road off of Rio Blanco County Road 5.

The general location of the proposed facilities is shown in appendix 1.[1]

The EA Process

We [2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes TransColorado's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- land use and visual quality
- cultural resources
- vegetation and wildlife (including threatened and endangered species)
- air quality and noise
- reliability and safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

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[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to TransColorado.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, local libraries and newspapers, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are received and considered, please carefully follow the instructions in the ''Public Participation'' section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and alternatives to the proposal, including alternative compressor station sites and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket Nos. CP05–45–001 and CP06–401–001; and
- Mail your comments so that they will be received in Washington, DC, on or before April 18, 2008.

Please note that the Commission strongly encourages electronic filing of any comments, interventions, or protests to this proceeding. See Title 18 of the Code of Federal Regulations (CFR), Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a project. The *Quick-Comment User Guide* can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid email address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

As described above, we may publish and distribute the EA for comment. If you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Form (appendix 3). If you do not return the Environmental Mailing List Form, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any public meetings or site visits scheduled for this proposed project will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5852 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–23–000; ER08–23–001; ER08–23–002]

Massie Power, LLC; Notice of Issuance of Order

March 17, 2008.

Massie Power, LLC (Massie Power) filed an application for market-based rate authority, with an accompanying market-based rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Massie Power also requested waivers of various Commission regulations. In particular, Massie Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and

assumptions of liability by Massie Power.

On March 11, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Massie Power, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submission of protests using the FERC Online link at: *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is April 10, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Massie Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Massie Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Massie Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5839 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 1881–050

PPL Holtwood, LLC; Notice of Scoping Meeting and Soliciting Scoping Comments

March 17, 2008.

a. *Application Type:* Amendment of license to increase the installed capacity.

b. *Project No.:* 1881–050.

c. *Date Filed:* December 20, 2007, and supplemented on January 4 and February 20, 2008.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Holtwood Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r

h. *Applicant Contact:* Dennis J. Murphy, Vice President & Chief Operating Officer, PPL Holtwood, LLC, Two North Ninth Street (GENPL6), Allentown, Pennsylvania 18101; telephone (610) 774–4316.

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and e-mail: *linda.stewart@ferc.gov.*

j. *Deadline for filing scoping comments:* May 2, 2008.

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.

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 on 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.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

k. *Description of Request:*

(i) *Amendment to Project Design:* PPL Holtwood LLC (PPL Holtwood or licensee) proposes to increase the installed capacity of the Holtwood Project by constructing a new powerhouse with two turbine generator units, installing two new generating units in the existing powerhouse, and refurbishing four generating units in the existing powerhouse (Units 1, 2, 4, and 7). The total installed capacity of the project would increase from 107.2 megawatts to 195.5 megawatts and the total hydraulic capacity of the project would increase from 31,500 cubic feet per second to approximately 61,460 cubic feet per second. PPL Holtwood also proposes to construct a new skimmer wall upstream of the powerhouses, and to perform excavation in the forebay to replace deteriorating infrastructure as well as enable flows to enter the new generating units. In order to improve fish passage at the project, PPL Holtwood proposes to: (1) Modify the existing fish lift; (2) reroute the discharge of Unit 1 in the existing powerhouse; and (3) excavate in the project tailrace and spillway. PPL Holtwood also proposes to implement additional measures to enhance migratory fish passage, provide for minimum flows, and perform studies and evaluations. PPL Holtwood requests the modification of license articles that are related to the above proposed design changes

(ii) *Extension of Term of License:* PPL Holtwood requests a 16-year extension of the current license term to September 1, 2030.

l. *Scoping Process:* The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments. This meeting will satisfy the NEPA scoping requirements.

Scoping Meetings

The licensee and Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the Environmental Impact Statement (EIS).

The times and locations of these meetings are as follows:

Daytime meeting	Evening meeting
Thursday April 17, 2008 2 p.m. to 4 p.m., Holtwood Environmental Center, 9 New Village Road, Holtwood, PA 17532	Thursday April 17, 2008 6:30 p.m. to 8:30 p.m., Travellodge Inn and Suites and Conference Center, 1492 Lititz Pike, Lancaster, PA 17601

To help focus discussions, Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the EIS, was mailed to the individuals and entities on the Commission's mailing list on March 17, 2008. Copies of the SD1 also will be available at the scoping meetings. SD1 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 ''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.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued, if needed. SD2 will include a revised list of issues, as determined by the scoping process.

Meeting Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the licensee and Commission staff in defining and clarifying the issues to be addressed in the EIS. Please review the SD1 in preparation for the scoping meetings. Instructions on how to obtain copies of the SD1 are included above.

Meeting Procedures

The meetings will be recorded by a court reporter and will become part of the formal record of the Commission proceeding on the project.

Site Visit

The licensee and Commission staff will conduct a site visit of the project on Thursday, April 17, 2008.

The site visit to Holtwood dam will take place at 10:30 a.m. on Thursday April 17, 2008. We will meet at the security gate; parking is limited so participants are encouraged to car pool. Access to the dam site is secure, and any individuals wishing to participate in the site visit will be required to meet the licensee's public safety requirements.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–5846 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI08–4–000]

Central Oregon Irrigation District; Notice of Petition for Declaratory Order and Soliciting Comments, Motions to Intervene, and Protests

March 17, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No:* DI08–4–000.

c. *Date Filed:* March 4, 2008.

d. *Applicant:* Central Oregon Irrigation District.

e. *Name of Project:* Cline Falls Hydro Project.

f. *Location:* The existing Cline Falls Hydro Project is located on the Deschutes River at River Mile 144.5, in Deschutes County, at Redmond, Oregon, affecting T. 15 S., R. 12 E, sec. 11, Willamette Meridian. The project does not occupy any tribal or federal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Steven Johnson, Central Oregon Irrigation District, 1055 SW Lake Court, Redmond, OR 97756; Telephone: (541) 548–6047; e-mail: *stevej@coid.org.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments and/or motions:* April 18, 2008.

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 at: *http://www.ferc.gov* under the ''e-Filing link.''

Please include the docket number (DI08–4–000) on any protests, comments and/or motions filed.

k. *Description of Project:* The existing project consists of: (1) A 5-foot-high, 300-foot-long diversion structure; (2) a pond with a storage capacity estimated at 1 to 2 acre-feet; (3) a canal and box flume, connected to a 96-inch-diameter, 45-foot-long steel penstock; (4) a powerhouse containing a 750-kW Francis turbine/generator; (5) a tailrace, leading from a rock chamber located under the turbine to the river; and (6) appurtenant facilities. The facility is connected to an interstate grid.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable,

has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, and/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.

o. *Filing and Service of Responsive Documents*—any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. *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. E8–5847 Filed 3–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects Firm Power, Colorado River Storage Project Transmission and Ancillary Services Rates—Rate Order No. WAPA–137

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Extension of Public Process for Rate Adjustment.

SUMMARY: Western initiated a public process to modify the Salt Lake City Area Integrated Projects (SLCA/IP) firm power rates and extend the Colorado River Storage Project (CRSP) transmission and ancillary services rates by publishing a notice in the **Federal Register** on January 4, 2008. Western held a Public Information Forum on February 5, 2008, and a Public Comment Forum on March 4, 2008.

Western is extending the comment and consultation period to allow sufficient time to finalize the 2010 Work Program Review (WPR), which forms the basis of the operation, maintenance and replacement (OM&R) expenses, to propose a two-step increase and to add clarification to the Spinning and Supplement Reserves (SP–SSR–3) rates. In conjunction with extending the comment and consultation period, Western will hold an additional public information forum and public comment forum on April 10, 2008. Information will be provided at this public information forum and also on the CRSP Management Center Web site under the ''FY 2009 SLCA/IP Rate Adjustment'' section located at: *http://www.wapa.gov/CRSP/ratescrsp/default.htm.*

Western mailed a brochure on January 11, 2008, that provided detailed information about the rates to all interested parties. The proposed rates in Rate Order No. WAPA–137 under Rate Schedules SLIP–F9, SP–PTP7, SP–NW3, SP–NFT6, SP–CF1, SP–SD3, SP–RS3, SP–EI3, SP–FR3, and SP–SSR3 are scheduled to go into effect on October 1, 2008.

DATES: The extended consultation and comment period begins today and will end May 5, 2008. A public information forum will be held on April 10, 2008, 1:30 p.m., at the Wallace F. Bennett Federal Building, Room 8102, 125 S. State Street, Salt Lake City, Utah. A public comment forum will follow the public information forum. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Send written comments to Mr. Bradley S. Warren, CRSP Manager, CRSP Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580; telephone (801) 524–5493; e-mail *CRSPMCadj@wapa.gov.* Western will post information about the rate process on its Web site under the ''FY 2009 SLCA/IP Rate Adjustment'' section located at: *http://www.wapa.gov/CRSP/ratescrsp/default.htm.*

Western will post official comments received by letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure consideration in Western's decision process.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580; telephone (801) 524–6380; e-mail *loftinc@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rates for SLCA/IP firm power are designed to return an annual amount of revenue to meet the repayment of power investment, payment of interest, purchased power, OM&R expenses, and the repayment of irrigation assistance costs as required by law.

The Deputy Secretary of Energy approved Rate Schedule SLIP–F8 for firm power service on August 1, 2005. Rate Schedule SLIP–F8 became effective on October 1, 2005, for a 5-year period ending September 30, 2010. The Deputy Secretary of Energy also approved a rate extension for the CRSP Transmission and Ancillary Services Rates through September 30, 2010.

Discussion

Western's SLCA/IP Firm Power, CRSP Transmission and Ancillary Services rates entered into a rate adjustment process with a **Federal Register** notice published on January 4, 2008, which began the initial public consultation and comment period that would have ended on April 3, 2008. Western seeks an extension of the public process to provide additional time to finalize the 2010 WPR, which forms the basis of the OM&R expenses. The 2010 WPR shows significant increases in some program areas, and Western and the firm power customers need more time to evaluate these proposed increases. The customers are requesting Western consider a rate increase that is phased in over a 2-year period, and Western will provide options for customers'

comments. In addition, Western is proposing to eliminate the reference to the ''Western System Power Pool'' in the Rate Schedule for Spinning and Supplement Reserves (SP–SSR–3) to make it consistent with the other regions within Western and to clarify better how those rates are determined. In conjunction with extending the comment and consultation period, Western will hold an additional public information and public comment forum.

Legal Authority

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR part 903, Western has held both a public information forum and a public comment forum and, as indicated in this notice, will hold an additional public information and public comment forum. After a review of public comments and possible amendments or adjustments, Western will recommend a proposed rate for the Deputy Secretary of Energy to approve on an interim basis.

Western is establishing firm electric service rates for the SCLA/IP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah. Many of these documents and supporting information are also available on its Web site under the ''FY 2009 SLCA/IP Rate Adjustment'' section located at: *http://www.wapa.gov/CRSP/ratescrsp/default.htm.*

Regulatory Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: March 14, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–5868 Filed 3–21–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–001; FRL–8545–8]

Protection of Stratospheric Ozone; Launch of Electronic Reporting System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is prepared to receive, in electronic form, certain documents required under the regulations at 40 CFR Part 82 for the Stratospheric Ozone Protection Program. EPA is launching an electronic reporting system that will allow producers, importers, and exporters of Class I ozone-depleting substances (except methyl bromide) and Class II ozone-depleting substances to submit quarterly reports electronically. EPA believes that, for many users, electronic reporting will allow reporting to occur with greater ease, speed, and accuracy than the paper-based reporting systems.

FOR FURTHER INFORMATION CONTACT: Jennifer Bohman, Stratospheric Protection Division, Office of Air and Radiation (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9548; fax number: (202) 343–2338; e-mail address: *bohman.jennifer@epa.gov.* Additional information, including the electronic reporting forms, training and guidance documents are found at *http://www.epa.gov/ozone/record/ereport.html.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Action is the Agency Taking?

EPA is launching an electronic reporting system that will allow the electronic submission of certain quarterly reports. Over the past year, EPA has conducted a pilot effort to use and evaluate an electronic reporting system. EPA has refined the system based on recommendations from the pilot participants. EPA is now launching the electronic reporting system and providing an opportunity for all eligible participants to use the system.

B. What Is the Agency's Authority for Taking This Action?

EPA is establishing this electronic reporting system under section 603(b) of the Clean Air Act which states that ''on a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported, or exported a class I or class II substance shall file a report with the Administrator. * * *''

EPA offers the electronic reporting system as an alternative to the existing paper-based reporting system. The electronic reporting system does not contain any new or additional requirements. The electronic reporting system is compliant with EPA's Cross Media Electronic Reporting Rule.

C. What Reports Can Be Submitted Electronically?

The electronic reporting system currently allows producers, importers, and exporters of Class I ozone-depleting substances (except methyl bromide) and Class II ozone-depleting substances to submit quarterly reports electronically. These quarterly reports, among others, are required under our regulations at 40 CFR 82.13 and 82.24. In addition to the quarterly report data, participants will also be able to submit supporting documents that would have been attached to hard copy reports under the previous system.

EPA anticipates expanding the electronic reporting system to include additional reports required by the Stratospheric Ozone Protection Program's regulations.

D. Am I Required To Submit Reports Electronically?

EPA strongly encourages companies to use the electronic reporting system.

EPA believes that electronic submission of data will be easier, faster, and more accurate. However, EPA will continue to accept paper reporting forms.

E. How Is EPA Protecting Information Submitted Electronically?

This electronic reporting system is compliant with the Cross Media Electronic Reporting Rule, a base standard that ensures the security of electronic data submissions. In addition, because reporting companies typically claim the quarterly report information as confidential, EPA has implemented robust measures to ensure protection of data submitted electronically, including digital electronic signatures and an encryption and decryption process that meets Agency and industry standards for data security.

F. How Will I Know if EPA Received Information Submitted Electronically?

EPA recognizes the importance of a smooth transition from a paper-based reporting system to an electronic reporting system. Submitters of electronic data will receive e-mail confirmation that EPA has received an electronic data submission. In addition, to ensure the new electronic process is established correctly on users' networks, EPA is requiring participants in electronic reporting to continue submitting hard-copy forms for the first two quarters they are submitting data electronically.

G. How Do I Find Out More About Electronic Reporting?

EPA is providing a number of training resources to assist companies who may wish to transition to the electronic reporting system. Interested companies will be able to download electronic reporting forms, training and guidance documents from EPA's Stratospheric Ozone Protection Program Web site at *http://www.epa.gov/ozone/record/ereport.html.* EPA will also host online training sessions to provide detailed instructions, demonstrations, and an open forum to discuss the online reporting system. Information on such outreach will be available on EPA's Web site. In addition, EPA will provide help desk assistance for companies as they develop and submit electronic reporting packages.

Dated: March 18, 2008.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E8–5879 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0208; FRL–8356–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective by April 23, 2008. for registrations for which the registrant requested a waiver of the 180-day comment period. The Agency will consider a withdrawal request no later than April 23, 2008. Comments must be received on or before April 23, 2008, for those registrations where the 180-day comment period has been waived.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before April 23, 2008, for those registrations where the 180-day comment period has been waived.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2008–0208, by one of the following methods:

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tracy Keigwin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6605; e-mail address: *keigwin.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0208. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
39967–10	Preventol A8 Technical Fungicide	Tebuconazole	Paint use
39967–13	Preventol A8 Preservative	Tebuconazole	Paint use
81598–2	Rotam Tebuconazole Technical	Tebuconazole	Terrestrial non-food (domestic outdoor) uses in paint as an additive against biodeterioration
82633–1	Sharda Tebuconazole Technical Fungicide	Tebuconazole	Use in the manufacture of paints and stains

The registrants listed in table 2 of this unit have requested a waiver of the 180-day comment period and have agreed to a 30-day comment period. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before April 23, 2008, to discuss withdrawal of the application for amendment. This 30-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in ascending sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
39967	Lanxess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275–1112
81598	IPM Resources LLC, Agent for Rotam Ltd., 660 Newton-Yardley Rd., Suite 105, Newtown, PA 18940
82633	Wagner Regulatory Associate, Inc., Agent for Sharda Worldwide Exports, Pvt. Ltd., P.O. Box 640, Hockessin, DE 19707

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Tracy Keigwin using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests no later than April 23, 2008.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 18, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–5878 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8545–7]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Brownfields Amendments, Section 104(k); Notice of Revisions to FY2009 Guidelines for Brownfields Assessment, Cleanup and Revolving Loan Fund Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 104(k)(5)(A)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires the U.S. Environmental Protection Agency (EPA) to publish guidance to assist applicants in preparing proposals for grants to assess and clean up brownfield sites. EPA's Brownfields Program provides funds to empower states, communities, tribes and nonprofits to prevent, inventory, assess, clean up and reuse brownfield sites. In FY2009 EPA has revised the Brownfields Grant Proposal Guidelines (guidelines) and is soliciting comments on those revisions. EPA provides brownfields funding for three types of grants: assessment, revolving loan fund and cleanup. The major changes to the guidelines include: three separate booklets for each of the grant types; Assessment Coalitions which allow eligible entities of 3 or more to request up to $1 M dollars for hazardous substance or petroleum (or combined) community-wide assessments; ranking criteria based on a total score of 100; Community Notification is a threshold criterion; ranking criteria is four sections: Community Need, Project Feasibility, Community Engagement and Project Benefits; community based organization letters of support are required; and a Phase II report complete at time of application for a cleanup grant is required.

DATES: Publication of this notice will start a ten working day comment period on revisions to the FY2009 Brownfields Grant Guidelines. Comments will be accepted through April 7, 2008. EPA expects to release a Request for Proposals based on these revised guidelines in late summer of 2008.

ADDRESSES: The draft guidelines can be downloaded at: *http://www.epa.gov/brownfields/*. If you do not have internet access and require hard copies of the draft guidelines please contact Megan Quinn at (202) 566–2773. Please send

any comments to Megan Quinn at *Quinn.Megan@epa.gov* no later than April 7, 2008.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization, (202) 566–2777.

SUPPLEMENTARY INFORMATION: Comments will be accepted through April 7, 2008. Please note that in accordance with 5 U.S.C. 553(a)(2) EPA is not undertaking notice and comment rulemaking and has not established a docket to receive public comments on the guidelines. Rather, the Agency as a matter of policy is soliciting the views of interested parties on proposed changes to the guidelines in an effort to make the guidelines as responsive as possible to the needs of the public. Please note that these draft guidelines are subject to change. Organizations interested in applying for Brownfields funding must follow the instructions contained in the final guidelines that EPA publishes on *grants.gov,* rather than these draft guidelines.

There are three types of grants applicants may apply for under these guidelines:

1. Brownfields Assessment Grants—provide funds to inventory, characterize, assess, and conduct cleanup and redevelopment planning and community involvement related to brownfield sites.

2. Brownfields Revolving Loan Fund Grants—provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.

3. Brownfields Cleanup Grants—provide funds to carry out cleanup activities at a specific brownfield site owned by the applicant.

The Catalogue of Federal Domestic Assistance entry for Brownfields Grants is 66.818.

Dated: March 12, 2008.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.

[FR Doc. E8–5880 Filed 3–21–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

March 18, 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(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 23, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0653.

Title: Sections 64.703(b) and (c), Consumer Information—Posting by Aggregators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,075.

Estimated Time per Response: .017 to 3 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 172,631 hours.

Total Annual Cost: $1,572,932.

Obligation to Respond: Required to obtain or retain benefits.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0653, requires aggregators (providers of telephones to the public or to transient users of their premises) under 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) of the Commission's rules, to post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. Section 64.703(c) of the Commission's rules requires the posted consumer information to be added when an aggregator has changed the pre-subscribed operator service provider (OSP) no later than 30 days following such change. Consumers will use this information to determine whether they wish to use the services of the identified OSP.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–5806 Filed 3–21–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Vaccine Safety Working Group

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Program Office (NVPO) will convene a meeting of NVAC's Vaccine Safety Working Group. The meeting is open to the public.

DATES: The meeting will be held on April 11, 2008, from 9 a.m. to 5 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 705A; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Daniel Salmon, Vaccine Safety Specialist, National Vaccine Program Office, Department of Health and Human Services, Room 443-H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 260–1587 or *daniel.salmon@hhs.gov.*

SUPPLEMENTARY INFORMATION: NVPO has responsibility for coordinating and ensuring collaboration among the many Federal agencies involved in vaccine and immunization activities. The NVPO provides leadership and coordination among Federal agencies, as they work together to carry out the goals of the National Vaccine Plan. The National Vaccine Plan provides a framework, including goals, objectives, and strategies, for pursuing the prevention of infectious diseases through immunizations. NVPO periodically convenes groups to address specific issues and topics that impact vaccine and immunization.

The Vaccine Safety Working Group has been established to (1) undertake and coordinate a scientific review of the draft Immunization Safety Office (Centers for Disease Control and Prevention) research agenda, and (2) review the current vaccine safety system.

Following the advice of the Institute of Medicine in its report ''Vaccine Safety Research, Data Access and Public Trust'' (February 17, 2005), this meeting of the Working Group is open to the public, noting that pubic attendance is limited to space available. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to meeting participants should submit materials to the NVPO staff person designated as the contact for additional information. All materials should be submitted to the designated point of contact no later than close of business April 9, 2008. Pre-registration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should contact the designated staff member, Daniel Salmon, by e-mail *daniel.salmon@hhs.gov* or call 202–690–5566.

Dated: March 18, 2008.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E8–5892 Filed 3–21–08; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–08AU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Assessing Problem Areas in Referrals for Chronic Hematologic Malignancies and Developing Interventions to Address Them—New—Division of Cancer Prevention and Control (DCPC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: One of the six aims of the Insitute of Medicine's *Crossing the Quality Chasm* report is to improve the timeliness of care for patients. Data from Europe and Canada, as well as single-site studies in the United States, allude to a problem of timely referral and diagnosis for patients with cancer. Despite the advent of new diagnostics and therapeutics for patients with chronic hematological malignancies, the size and scope of a potential problem regarding their referral from primary care providers to specialists is not well-defined in the current literature.

CDC proposes to conduct a one-time study to collect qualitative and quantitative information on optimal and sub-optimal referral patterns for patients with confirmed or suspected chronic hematologic malignancies. Information will be collected to identify specific factors related to delays in diagnosis and/or referral to appropriate medical specialists. Information will be collected through in-depth interviews with hematologic cancer patients, in-depth interviews and focus groups with primary care providers, interviews with specialists in hematology and oncology in Texas, and a one-time postal survey to a sample of primary care providers (physicians and advance practice nurses) in Massachusetts.

The ultimate goal is to develop tools that will improve the awareness, diagnosis, and referral of persons with chronic hematological cancers by primary care providers.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Community Oncologists/Hematologists.	In-depth Interview Guide for Community Hematologists and Oncologists.	27	1	1.5	41
Patients	In-depth Interview Guide for Patients.	27	1	1.5	41
Primary Care Providers	Primary Care Provider Survey	300	1	20/60	100
	Interview Guide for Primary Care Providers.	27	1	1.5	41
	Focus Group Guide for Primary Care Providers.	18	1	2	36
Total					259

Dated: March 18, 2008.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–5859 Filed 3–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–0544]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

NIOSH Customer Satisfaction Survey—Reinstatement—National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Background and brief description: The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act, Public Law 91–596 (section 20[a] [1]) authorizes the National Institute for Occupational Safety and Health (NIOSH) to conduct research to advance the health and safety of workers. NIOSH conducted a baseline survey in 2003 to assess customer satisfaction with NIOSH communication products, services, and methods of dissemination [OMB no. 0920–0544 expired 03/31/2003]. The baseline survey established an initial benchmark for gauging the effectiveness of NIOSH's communication products, outreach services, and identified areas for improvement.

NIOSH is conducting a follow-up Customer Satisfaction Survey of occupational safety and health professionals. A mail survey is planned with an option that will allow respondents to complete the survey electronically. The current survey is a 5-year follow-up designed to enable NIOSH to determine the current level of customer satisfaction and identify changes that have occurred in the intervening years. The purpose of this survey is to evaluate the effectiveness of NIOSH's communication and dissemination program as a whole in serving the broad occupational safety and health professional community by addressing five questions: (1) To what extent are NIOSH communication products viewed as credible, useful sources of information on occupational safety and health issues? (2) To what extent has NIOSH been successful in distributing its communication products to its primary and traditional audience? (3) To what extent, and in what ways, have NIOSH communication products influenced workplace safety and health program policies and practices, or resolved other related issues? (4) What improvements could be made in the nature of NIOSH communication products and/or their manner of delivery that could enhance their use and benefits? (5) What is the reach and perceived importance of NIOSH outreach initiatives?

The survey will be directed to the community of occupational safety and health professionals, as this audience represents the primary and traditional customer base for NIOSH information materials. For this purpose four major associations identified with occupational safety and health matters have indicated their willingness to partner with NIOSH on this follow-up survey, as they did on the baseline. These are the American Industrial Hygiene Association (AIHA), the American College of Occupational and Environmental Medicine (ACOEM), the American Association of Occupational Health Nurses (AAOHN), and the American Society of Safety Engineers (ASSE).

There is no cost to respondents other than their time.

Estimated Annualized Burden Hours:

Type of respondent	Form name	No. of respondents	No. responses per respondent	Average burden per response (in hours)	Total burden hours
Industrial hygienists familiar with NIOSH.	NIOSH Customer Satisfaction Survey	193	1	20/60	64
Industrial hygienists not familiar with NIOSH.	NIOSH Customer Satisfaction Survey	8	1	6/60	1
Nurses familiar with NIOSH	NIOSH Customer Satisfaction Survey	117	1	6/60	12
Nurses not familiar with NIOSH	NIOSH Customer Satisfaction Survey	57	1	6/60	6
Physicians familiar with NIOSH	NIOSH Customer Satisfaction Survey	103	1	20/60	34
Physicians not familiar with NIOSH	NIOSH Customer Satisfaction Survey	53	1	6/60	5
Safety engineers familiar with NIOSH	NIOSH Customer Satisfaction Survey	157	1	20/60	52
Safety engineers not familiar with NIOSH.	NIOSH Customer Satisfaction Survey	32	1	6/60	3
Total					177

Dated: March 18, 2008.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–5860 Filed 3–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0672]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Indicators of the Performance of Local, State, Territorial, and Tribal Education Agencies in HIV Prevention, Coordinated School Health Program, and Asthma Management Activities for Adolescent and School Health Programs—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The proposed project is an annual Web-based questionnaire to assess programmatic activities among local education agencies (LEA) and state, territorial, and tribal government education agencies (SEAs, TEAs, and TGs) funded by the Division of Adolescent and School Health (DASH), Centers for Disease Control and Prevention. The questionnaires are referred to as the Indicators for School Health Programs.

Currently, the Indicators for School Health Programs are the only standardized annual reporting process for HIV prevention activities or coordinated school health program (CSHP) activities funded by DASH. There is no other standardized annual reporting process for HIV prevention activities or coordinated school health program (CSHP) activities among LEAs and SEAs/TEAs/TGs funded by DASH. The data being gathered via the questionnaires: (1) Provides standardized information about how HIV prevention, CSHP/physical activity, nutrition, and tobacco (PANT) use, and asthma management funds are used by LEAs and SEAs/TEAs/TGs; (2) assesses the extent to which programmatic adjustments are indicated; (3) provides descriptive and process information about program activities; and (4) provides greater accountability for use of public funds. The questionnaires are completed by the DASH-funded partners on a Web site managed by DASH. The questionnaires are to be completed ninety days after the end of each fiscal year.

The Web-based questionnaires correspond to the specific funding source from the Division of Adolescent and School Health: two questionnaires pertain to HIV-prevention program activities among LEAs and SEAs/TEAs/TGs; one pertains to CSHP/PANT activities among SEAs/TGs; and one pertains to asthma management activities among LEAs.

Two HIV prevention questionnaires include questions on project planning, materials distribution, professional development activities, provision of technical assistance, collaboration with external partners, and reducing health disparities among populations at disproportionate risk. CDC plans to implement minor changes in the HIV questionnaires beginning in year 2 of this clearance period.

The CSHP/PANT questionnaire focuses on the activities above as well as on physical activity, healthy eating, and tobacco-use prevention activities. CDC plans to implement minor changes in the CSHP/PANT questionnaire beginning in year 2 of this clearance period.

The asthma management questionnaire includes questions on project planning, materials distribution, professional development activities, provision of technical assistance, collaboration with external partners, reducing health disparities among populations at disproportionate risk, and health services. Information collection on asthma management programs will begin in year 2 of this clearance period.

There are no costs to respondents other than their time to complete the survey.

The total estimated annualized burden hours are 783.

Estimated Annualized Burden Hours:

Types of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Local Education Agency Officials	Indicators for School Health Programs: HIV Prevention (LEA).	17	1	7
State and Territorial Education Agency Officials.	Indicators for School Health Programs: HIV Prevention (SEA).	55	1	7
State Education Agency Officials	Indicators for School Health Programs: Coordinated School Health Programs.	23	1	10
Local Education Agency Officials	Indicators for School Health Programs: Asthma Management (LEA).	7	1	7

Dated: March 18, 2008.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–5861 Filed 3–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0008]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Hazardous Substances Emergency Events Surveillance (HSEES)—Extension—(OMB Control #0923–0008), Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. The primary purpose of this activity, which ATSDR has supported since 1992, is to develop, implement, and maintain a state-based surveillance system for hazardous substances emergency events which can be used to (1) describe the distribution of the hazardous substances releases; (2) describe the public health consequences (morbidity, mortality, and evacuations) associated with the events; (3) develop strategies to reduce future public health consequences. The study population will consist of all hazardous substance non-permitted acute releases within the 14 states (Colorado, Florida, Iowa, Louisiana, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, Texas, Utah, Washington, and Wisconsin) participating in the surveillance system.

Until this system was developed and implemented, there was no national public health-based surveillance system to coordinate the collation, analysis, and distribution of hazardous substances emergency release data to public health practitioners. It was necessary to establish this national surveillance system which describes the public health impact of hazardous substances emergencies on the health of the population of the United States. The data collection form will be completed by the state health department Hazardous Substances Emergency Events Surveillance (HSEES) coordinator using a variety of sources including written and oral reports from environmental protection agencies, police, firefighters, emergency response personnel; or researched by the HSEES coordinator using material safety data sheets, and chemical handbooks. There is a reduction in the annual burden hours per response because of the reduction in number of states from 15 to 14 and because of a change in the case definition of an HSEES event in 2005, which excludes stack emissions of oxides of nitrogen (NO_X), oxides of sulfur (SOx), and carbon monoxide (CO) when they are not mixed with another hazardous substance.

The HSEES public use data set is available on the ATSDR HSEES Web site. Interested parties complete a brief description of who will be using the data and for what purpose in order to download the data. This allows ATSDR to widely distribute the data and track its usefulness. The estimated annual burden hours are 5,678.

There is no cost to the respondents other than their time.

Estimated Annualized Burden Hours:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Participating State Health Department HSEES Coordinators	14	536	45/60
Persons interested in HSEES data through Web site	500	1	6/60

Dated: March 18, 2008.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–5862 Filed 3–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) Announce An Open Meeting Concerning Antimicrobial Resistance

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Times and Dates: 12:30 p.m.—2 p.m., Wednesday, June 25, 2008.

Place: Hyatt Regency Bethesda, Bethesda, Maryland, One Bethesda Metro Center (7400 Wisconsin Ave), Bethesda, Maryland, USA 20814; Tel: 1–301–652–2000; Fax: 1–301–652–4525).

Status: Open to the public, limited only by the space available.

Purpose: To present the annual report of progress by Federal agencies in accomplishing activities outlined in *A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)* and solicit comments from the public regarding the annual report. The *Action Plan* serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters to be Discussed: The agenda will consist of welcome and introductory comments, an executive summary, and brief reports in four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The Task Force will also provide a brief review of progress on updating the *Action Plan*. The meeting will then be open for comments from the general public.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

The *Action Plan*, Annual Report, and meeting agenda will be available at *http://www.cdc.gov/drugresistance*. The public meeting is sponsored by the CDC, FDA, and NIH in collaboration with seven other Federal agencies and departments that were involved in developing and writing *A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)*.

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted for subsequent review by the Task Force. Written comments and suggestions from the public are encouraged and should be received by the contact person listed below prior to the opening of the meeting or no later than the end of July 2008.

Persons anticipating attending the meeting are requested to send written notification to the contact person below by June 2, 2008, including name, organization (if applicable), address, telephone, fax, and e-mail address.

Contact Person for More Information: Gregory J. Anderson, Office of Antimicrobial Resistance, CCID/CDC, Mailstop A–07, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone 404–639–3539; fax 404–639–7444. E-mail: *gca5@cdc.gov*.

Dated: March 11, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E8–5858 Filed 3–21–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Texas State Plan Amendment (SPA) 07–011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on May 7, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Room 1196, Dallas, Texas 75202, to reconsider CMS' decision to disapprove Texas SPA 07–011.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by April 8, 2008.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Texas SPA 07–011 which was submitted on September 24, 2007, and disapproved on December 20, 2007.

Under this SPA, the State proposed to revise the Medicaid reimbursement methodology for ''birthing center facility'' services by eliminating the 2.5 percent rate reduction implemented September 1, 2003.

The amendment was disapproved because ''birthing center services'' are not a recognized service within the scope of ''medical assistance'' under section 1905(a) of the Social Security Act (the Act), and ''birthing center facility services'' are not a recognized provider type under that section. Thus payment to birthing centers is not consistent with the requirements of sections 1902(a)(10)(A) and 1902(a)(32) of the Act. Section 1905(a) of the Act defines those services eligible for medical assistance under Medicaid, generally based on the type of provider or practitioner. Birthing centers are not a recognized type of provider or facility eligible for payment under that section. Nurse midwife services are a recognized service under section 1905(a)(17) of the Act. On June 29, 2006, CMS disapproved Texas SPAs 04–33(b) and 06–004 for the same reasons cited above. The State did not appeal either of these disapprovals. Through those prior disapprovals, CMS notified Texas of its concern that there is no statutory or regulatory authority for birthing center facility payments that are part of the current approved Medicaid State plan.

The hearing will involve the following issues:

- Whether there is legal authority to provide payment to birthing center facility services in the absence of any statutory authorization for coverage of birthing center facility services.
- Whether the express authorization of coverage for ''nurse midwife services'' as a recognized service under section 1905(a)(17) of the Act identifies the provider of such services as the nurse midwife practitioner rather than as the birthing center.
- Whether direct payment for nurse midwife services can be made to persons or entities other than the nurse midwife, consistent with section

1902(a)(32) of the Act, which provides that payment under the plan may only be made to the provider or practitioner, except under very limited circumstances.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Texas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Chris Traylor, State Medicaid CHIP Director, Texas Health and Human Services Commission, P.O. Box 13247, Austin, TX 78711.

Dear Mr. Traylor:

I am responding to your request for reconsideration of the decision to disapprove the Texas State plan amendment (SPA) 07–011, which was submitted on September 24, 2007, and disapproved on December 20, 2007.

Under this SPA, the State proposed to revise the reimbursement methodology for Medicaid services delivered as ''birthing center facility'' services by eliminating the 2.5 percent rate reduction implemented September 1, 2003.

The amendment was disapproved because ''birthing center services'' are not a recognized service within the scope of ''medical assistance'' under section 1905(a) of the Social Security Act (the Act), and ''birthing center facility services'' are not a recognized provider type under that section. Thus, payment to birthing centers is not consistent with the requirements of sections 1902(a)(10)(A) and 1902(a)(32) of the Act. Section 1905(a) of the Act defines those services eligible for medical assistance under Medicaid, generally based on the type of provider or practitioner. Birthing centers are not a recognized type of provider or facility eligible for payment under that section. Nurse midwife services are a recognized service under section 1905(a)(17) of the Act. On June 29, 2006, CMS disapproved Texas SPAs 04–33(b) and 06–004 for the same reasons cited above. The State did not appeal either of these disapprovals. Through those prior disapprovals, CMS notified Texas of its concern that there is no statutory or regulatory authority for birthing center facility payments that are part of the current approved Medicaid State plan.

The hearing will involve the following issues:

- Whether there is legal authority to provide payment to birthing center facility services in the absence of any statutory authorization for coverage of birthing center facility services.
- Whether the express authorization of coverage for ''nurse midwife services'' as a recognized service under section 1905(a)(17) of the Act identifies the provider of such services as the nurse midwife practitioner, rather than as the birthing center.
- Whether direct payment for nurse midwife services can be made to persons or entities other than the nurse midwife, consistent with section 1902(a)(32) of the Act, which provides that payment under the plan may only be made to the provider or practitioner, except under very limited circumstances.

I am scheduling a hearing on your request for reconsideration to be held on May 7, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Room 1196, Dallas, Texas 75202, in order to reconsider the decision to disapprove SPA 07–011. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Kerry Weems
Acting Administrator

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: March 14, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–5881 Filed 3–21–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: LIHEAP Quarterly Allocation Estimates, Form ACF535.

OMB No.: 0970–0037.

Description: The LIHEAP Quarterly Allocation Estimates, ACF Form-535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for the Low Income Home Energy Assistance Program (LIHEAP). Grantees are asked to complete and submit the form in the 4th quarter of each year. The data collected on the form are grantees estimates of obligations they expect to make each quarter for the upcoming fiscal year for the LIHEAP program. This is the only method used to request anticipated distributions of the grantees' LIHEAP funds. The information is used to develop apportionment requests to OMB and to make grant awards based on grantees' anticipated needs. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: State Governments, Tribal Governments that receive over $1 million annually, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP:				
Quarterly Allocation Estimates, Form ACF–535	55	55	.25	13.75

Estimated Total Annual Burden Hours: 13.75.

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 17, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–5761 Filed 3–21–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 24 and 25, 2008, from 8:30 a.m. to 5 p.m.

Location: Gaithersburg Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Karen F. Warburton, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4238, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512396. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 24, 2008, the committee will discuss, make recommendations, and vote on a premarket approval application, sponsored by VisionCare Technologies, Inc., for an implantable miniature telescope (IMT). The IMT, a visual prosthetic device, is indicated for monocular implant in patients with stable, moderate to profound central vision impairment due to bilateral central scotomas associated with end-stage macular degeneration with geographic atrophy or disciform scar, foveal involvement, and cataract. On April 25, 2008, the committee will discuss general issues concerning the post market experience with phakic intraocular lenses and laser-assisted in situ keratomileusis (LASIK).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 15, 2008. Oral presentations from the public will be scheduled on April 24, 2008, between approximately 9:30 a.m. and 10 a.m. and between approximately 3:30 p.m. and 4 p.m.; and on April 25, 2008, between approximately 10 a.m. and 11:15 a.m. and between approximately 3 p.m. and 4 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 7, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 8, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management staff, at 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 14, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–5810 Filed 3–21–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Inventory and Evaluation of Clinical Research Networks

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Center for Research Resource

(NCRR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Inventory and Evaluation of Clinical Research Networks. *Type of Information Collection Request:* Revision of OMB # 0925–0550. *Expiration:* 07/31/08. *Need and Use of Information Collection:* Through the original data collection, the IECRN project identified and surveyed clinical research networks to obtain data for two purposes: (1) To create a web-based inventory of clinical research networks that can be accessed by the clinical research community and the general public and (2) to prepare a detailed description of existing network practices from a sample of identified networks. The current request is to continue collecting data for the first purpose only. The instrument known as the *Core Survey* will be used to collect information to confirm that the respondent is truly a clinical research network, plus basic characteristics about each identified clinical research network to be included in the web-based inventory. The information for the inventory database includes the network's name, address, contact information, funding sources, age, geographic coverage, size, composition, and populations and diseases of focus. Permission to post the network's data in the web-based public inventory will be requested, and only those networks that agree will have their information posted. Currently the inventory includes ''network profiles'' for approximately 270 clinical research networks. While this number is believed to represent most of the existing networks, some networks have not yet been identified, are unaware of the existence of the inventory, or are newly formed since the original data collection occurred. In addition, each network in the inventory is requested annually to update the information posted in its ''network profile'' to ensure that the inventory is complete and accurate. *Frequency of Response:* Once (*Core Survey*), Annually (*Network Updates*). *Affected Public:* Individuals. *Type of Respondents:* Health Professionals (Physicians and others involved in research networks).

TABLE A 12.1—ESTIMATE OF ANNUAL HOUR BURDEN AND ANNUALIZED COST TO RESPONDENTS

Type of respondent	Number of responses	Frequency of response	Length of response	Annual hour burden	Hourly wage rate	Respondent cost
Core Survey:						
Principal Investigator	20	1	0.25 (15 minutes)	5	$70.00	$350.00
Annual Update:						
PI/network contact	280	1	.1667 (10 minutes)	46.7	70.00	3,269.00
Total				51.7		3,619.00

The annualized cost to respondents is estimated at: $3,619.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Jody Sachs, National Center for Research Resources, NIH, Room 917, 6701 Rockledge Drive, Bethesda, MD 20892–4874, or call 301–435–0802.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: March 18, 2008.

Jody Sachs,

Project Officer, NCRR, National Institutes of Health.

[FR Doc. E8–5816 Filed 3–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Notice

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

HIV Monoclonal Antibodies

Description of Technology: This technology describes several hybridomas that produce monoclonal antibodies (mAbs) useful in HIV research applications. The mAbs are specific for either gp41 or gp120. In particular, the hybridomas producing mAbs designated D19, D56, M12, T8 and T24 (all anti-gp120), and T32 and T33 (gp41 specific) were found to be of particular utility. Additional hybridomas expressing mAbs disclosed in the publications may also be available.

Applications: HIV research.

Development Status: Murine hybridomas available; T32 mAb available.

Inventors: Bernard Moss, Patricia Earl, Christopher Broder, and Robert Doms (NIAID).

Publications:

1. PL Earl, CC Broder, RW Doms, B Moss. Epitope map of human immunodeficiency virus type 1 gp41 derived from 47 monoclonal antibodies produced by immunization with oligomeric envelope protein. J Virol. 1997 Apr;71(4):2674–2684.
2. U.S. Patents 6,039,957 and 6,171,596 (gp140 mAbs).
3. PL Earl, CC Broder, D Long, SA Lee, J Peterson, S Chakrabarti, RW Doms, B Moss. J Virol. 1994 May;68(5):3015–3026 (gp140 mAbs).

Patent Status:

HHS Reference No. E–109–2008/0 (anti-gp41mAbs)—Research Tool. Patent protection is not being pursued for this technology.

HHS Reference No. E–200–1993/1 (anti-gp140 mAbs).

Licensing Status: Available for biological materials licensing only; the IP that includes descriptions of the anti-gp120 and gp41 mAbs is available for exclusive or non-exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID/DIR/LVD is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HIV Monoclonal Antibodies. Please contact either Michael Pizali or Dana Hsu at 301–496–2644 for more information.

Epoxy-guaiane Cancer Inhibitors: New Class of Natural Products Isolated from the African Plant *Phyllanthus englerii*

Description of Technology: The present invention involves the observation of renal selective inhibitory activity by the extracts of the African plant Phyllanthus englerii. Bioassay-guided fractionation of the purified extracts revealed a series of novel chemical entities which are named Englerin A–F. The englerins and their derivatives are useful in the treatment of a number of cancers, particularly renal cancer. The englerins exhibit selective and potent renal cell inhibitory activity *in vitro.*

These compounds are recoverable in reasonable yield from natural product extracts and are considered to be reasonably tractable for synthetic chemistry schemes. Sufficient supply of several analogs had been extracted from repository samples for identification and initial biological characterization. Subsequent five-dose testing in the NCI60 screening panel indicated and confirmed impressive renal-selective activity.

Applications: The new chemical entities can be potential cancer therapeutics, especially for renal cancer.

Advantages:

There is reasonable yield and recovery of the compounds from the natural product extracts.

The synthetic chemistry schemes for synthesis of these compounds are considered to be reasonably tractable.

Development Status: Proof of concept in vitro studies have been completed and further in vitro and in vivo animal model studies are ongoing.

Inventors: John A. Beutler et al. (NCI).

Relevant Publication: S. Sutthivaiyakit et al. A novel 29-nor-3,4-seco-friedelane triterpene and a new guaiane sesquiterpene from the roots of Phyllanthus oxyphyllus. Tetrahedron 2003 Dec 8;59(50):9991–9995.

Patent Status: U.S. Provisional Application No. 61/018,938 filed 04 Jan 2008 (HHS Ref. No. E–064–2008/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize epoxy-guaiane cancer inhibitors. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

VEGF-B as a Therapeutic Agent for Neurodegenerative Disease

Description of Technology: This technology identifies vascular endothelial growth factor–B (VEGF–B) as a potent inhibitor of apoptosis in neuronal and other types of cells, and highlights its ability to rescue these cells from apoptosis in the brain and retina. Members of the VEGF family of proteins are noted for their angiogenic and blood vessel permeabilizing abilities. Some members of this family, such as VEGF–A, may promote neurogenesis; however, the neuroprotective effects are accompanied by inherent angiogenic and vessel permeabilizing activities, which make VEGF–A treatment unsuitable for clinical use as neuroprotective agents. The inventor has recently discovered that unlike the other VEGF family members, the neuroprotective effects of VEGF–B are not associated with undesired angiogenesis or increased blood vessel permeability, but rather through inhibiting apoptosis via suppressing the expression of the apoptotic/cell death related genes (1). This discovery, that the use of VEGF–B can protect endangered neurons from death and avoid the undesirable effects associated with other VEGF family members, makes it a promising candidate for the treatment of neurodegenerative and other diseases that involve neuronal impairment and/or excessive apoptosis, such as muscular dystrophy, stroke, brain injury, myocardial infarction, ischemic renal damage, etc.

In-vivo trials have already demonstrated the efficacy of VEGF–B as a therapeutic agent. VEGF–B has shown efficacy in mouse models suffering from optic nerve crush injury (ONC). ONC induces the apoptotic death of retinal ganglion cells (RGCs) in the retina. However, intravitreal administration of a single dose of the VEGF–B protein significantly restored the number of RGCs by 1.7 fold, demonstrating the potential use of the protein in treating degenerative ocular diseases, such as glaucoma. Similar results were obtained when exogenous administration of VEGF–B to the brain cortex was shown to significantly reduce ischemia-induced stroke volume and to protect neurons from apoptosis in the brain. Further, intracerebroventricular injection of VEGF–B in mutant knockout mice lacking the gene for VEGF–B (VEGFB–KO) has caused a complete reversal of neuronal impairment and restored neurogenesis back to normal levels.

Applications: VEGF–B as a powerful therapeutic agent for use in a wide range of therapeutic intervention regimes where neuronal repair and inhibition of apoptosis are required.

Inventors: Xuri Li (NEI).

Relevant Publications

1. Yang Li, Fan Zhang, Nobuo Nagai, Zhongshu Tang, Shuihua Zhang, Pierre Scotney, Johan Lennartsson, Chaoyong Zhu, Yi Qu, Changge Fang, Jianyuan Hua, Osamu Matsuo, Guo-Hua Fong, Hao Ding, Yihai Cao, Kevin G. Becker, Andrew Nash, Carl-Henrik Heldin, and Xuri Li. VEGF–B inhibits apoptosis via VEGFR–1-mediated suppression of the expression of BH3-only protein genes in mice and rats. J Clin Invest. 2008 Mar 3;118(3):913–923. Published online 2008 Feb 7, doi 10.1172/JCI33673.
2. Yunjuan Sun, Kunlin Jin, Jocelyn T. Childs, Lin Xie, Xiao Ou Mao, David A. Greenberg. Vascular endothelial growth factor–B (VEGFB) stimulates

neurogenesis: Evidence from knockout mice and growth factor administration. Dev Biol. 2006 Jan 15;289(2):329–335.

Patent Status: U.S. Provisional Application No. 60/972,780 filed 15 Sep 2007 (HHS Reference No. E–154–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jasbir (Jesse) S. Kindra, J.D., M.S.; 301–435–5170; *kindraj@mail.nih.gov*.

Collaborative Research Opportunity: The National Eye Institute, NIH, Office of Scientific Director, Unit of Retinal Vascular Neurobiology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize VEGF–B as a therapeutic agent in treating various types of degenerative (neural, vascular, muscular, etc.) diseases, and to study the molecular and cellular mechanisms involved. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Rapid *Clostridium botulinum* Diagnostic for Food Safety and Biodefense Applications

Description of Technology: The urgent need for a rapid diagnostic test capable of detecting all serotypes of *C. botulinum* is well known. Botulinum neurotoxins (BoNTs) are the most potent biological toxins known and are categorized as category A biodefense agents because of lethality and ease of production. BoNTs are also one of the most deadly agents associated with food poisoning. Current diagnostic methods include clinical observation of symptoms that could be mistaken for other neurological conditions and a mouse protection bioassay that takes as long as four days and has a number of disadvantages. The subject technology utilizes unique PCR primers for the detection of the non-toxin non-hemaglutinin (NTNH) gene of *C. botulinum*; this gene is highly conserved in all *C. botulinum* toxin types and subtypes. Thus, samples that contain botulinum can be determined regardless of serotype involved, providing a universal means of diagnosis. Further, the technology describes different PCR primers and flurogenic probes for a BoNT-specific assay. The type-specific assay can be used independently or in conjunction with the universal assay described above. The universal and type-specific assays were successfully used first to identify positively botulinum DNA samples in a test of botulinum and non-botulinum clostridia species then to determine the toxin type. The diagnostic testing described by the subject technology requires less significantly less time than the current gold standard diagnostic tests.

Applications: Universal diagnostic test for *C. botulinum*; Diagnostic test for *C. botulinum* capable of detecting all seven toxin types; Combination diagnostic; Food safety applications; Biodefense applications.

Development Status: Fully developed.

Inventors: Daniel C. Douek *et al.* (VRC/NIAID).

Patent Status: U.S. Provisional Application No. 60/884,539 filed 11 Jan 2007 (HHS Reference No. E–046–2007/0–US–01); PCT Patent Application No. PCT/US2008/50872 filed 11 Jan 2008 (HHS Reference No. E–046–2007/0–PCT–02).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301/435–5515; *anos@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize ''Rapid *Clostridium botulinum* Diagnostic for Food Safety and Biodefense Applications.'' Please contact either Rosemary Walsh or Barry Buchbinder at 301–496–2644 for more information.

Prolidase Expression Construct Useful as Anti-Angiogenesis Screen

Description of Technology: The technology describes a prolidase expression construct and a method of using the construct to isolate stable transfectants with high prolidase expression. Specifically, a human colorectal cancer cell line (RKO) was transfected with a plasmid (pcDNA3.1) expressing prolidase cDNA. Using this cell line, the inventors found that extracellular matrix degradation is associated with the prolidase-dependent activation of the hypoxia/inflammation pathway. The construct and transfectants can also be used to study other regulatory functions of prolidase.

Applications

Prolidase as a target for anti-angiogenesis drugs: Angiogenesis, a prerequisite for tumor growth, requires proteolysis of the extracellular matrix (ECM). Prolidase participates in the degradation of the ECM by hydrolyzing collagen dipeptides having C-terminal proline or hydroxyproline. Current anti-angiogenic approaches target matrix metalloproteinase activity, but this can cause musculoskeletal complications. By modulating prolidase activity to inhibit the degradation of the ECM, it may be possible to provide an alternative anti-angiogenic approach with fewer side effects. The prolidase construct and transfected cell lines could be used as a screen for prolidase modulators, which could be developed as anti-angiogenesis agents.

Prolidase as a target for anti-inflammatory drugs and wound-healing agents: Inherited prolidase deficiency is also associated with defective wound healing, extensive skin alterations, and immunodeficiency. Products from the prolidase activity screen may also have potential use in patients with prolidase deficiency, chronic inflammation, or problematic wound healing.

Development Status: Pre-clinical stage.

Inventors: Yongmin Liu (NCI), Arkadiusz Surazynski (NCI), James M. Phang (NCI), Sandra K. Cooper (NCI/SAIC), Steven P. Donald (NCI).

Publication: A Surazynski, SP Donald, SK Cooper, MA Whiteside, K Salnikow, Y Liu, JM Phang. Extracellular matrix and HIF–1 signaling: The role of prolidase. Int J Cancer. 2008 Mar 15;122(6):1435–1440.

Patent Status: HHS Reference No. E–235–2006/0—Research Material. Patent protection is not being sought for this technology.

Licensing Status: This invention is available for licensing through a Biological Materials License.

Licensing Contact: David A. Lambertson, PhD; 301/435–4632; *lambertsond@mail.nih.gov*.

Dated: March 17, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–5813 Filed 3–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Supplement for Program Project in IBD.

Date: April 9, 2008.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotodextra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Acetaminophen-Induced Acute Liver Failure Ancillary Studies.

Date: April 10, 2008.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddknih.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 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5706 Filed 3–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5194–N–09]

Notice of Submission of Proposed Information Collection: Comment Request Public Housing Financial Management Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 23, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Room 4176, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–5000; telephone: 202–708–2374 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer @Hud.gov*. for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Room 4116, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: 202–708–0713 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Financial Management Template.

OMB Control Number: 2535–0107.

Description of the Need for the Information and Proposed Use: To meet the requirements of the Public Housing Assessment System (PHAS) rule, the Department has developed the financial condition template that public housing agencies (PHAs) use to annually submit electronically specific financial condition information to HUD. HUD uses the financial condition information it collects from each PHA to assist in the evaluation and assessment of the PHAs' overall condition.

To meet the requirements of 24 CFR part 990, Revision to the Public Housing Operating Fund Program; Final Rule, financial condition information is to be submitted by PHAs on the asset management project (AMP) level. The final rule states that, in accordance with the directives received from the U.S. Congress, PHAs and HUD are to convert from an agency-centric model to an asset management model. The asset management model is more consistent with the management norms in the broader multi-family management industry. In order to implement asset management, the final rule stipulates that PHAs must implement project-based management, budgeting and accounting. The final rule provides for operating subsidy to be provided at the project level with financial reporting required at the project level, replacing the current subsidy issuance and financial reporting at the PHA or entity-wide level.

Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD.

Agency form number, if applicable: N/A

Members of affected public: Public housing agencies.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection, Including Number of Respondents: The estimated number of respondents is 3,996 PHAs that submit one audited financial condition template annually and one unaudited financial condition template annually. The average number for each PHA response is 10.5 hours, for a total reporting burden of 41,885 hours.

Status of the Proposed Information Collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 18, 2008.

Bessy Kong,

Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives.

[FR Doc. E8–5899 Filed 3–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5211–N–01]

Notice of Certification and Funding of State and Local Fair Housing Enforcement Agencies Under the Fair Housing Assistance Program; Request for Comments

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: The regulations implementing the Fair Housing Assistance Program provide that the Assistant Secretary for Fair Housing and Equal Opportunity will periodically publish a list of all interim and certified agencies; and a list of agencies for which withdrawal of certification has been proposed. The purpose of identifying the agencies in the **Federal Register** is to solicit public comment on the state or local fair housing laws, as well as the performance of the agencies in enforcing these laws. This notice fulfills this regulatory requirement.

DATES: *Comment Due Date:* April 23, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding the State or local fair housing enforcement agencies that are participating in the FHAP to the Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Carroll, Director, FHAP Division, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5222, Washington, DC, 20410–0500 at (202) 402–7044 (this is not a toll-free number). Persons with speech or hearing impairments may contact the FHAP Division by calling 1–800–290–1671 (this is a toll-free number), or 1–800–877–8399 (the Federal Information Relay Service TTY) (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Through the Fair Housing Assistance Program (FHAP), HUD provides funding to state and local fair housing agencies that enforce laws HUD has deemed substantially equivalent to the federal Fair Housing Act (42 U.S.C. 3601 *et seq.*). HUD's regulations for the FHAP are codified at 24 CFR part 155 (entitled ''Certification and Funding of State and Local Fair Housing Enforcement Agencies'').

In order to participate in FHAP, HUD's Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) must first determine whether a state or local law, on its face, provides rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act. An affirmative conclusion that the state or local law is substantially equivalent on its face will result in HUD offering the agency interim certification. During the period of interim certification, HUD's Assistant Secretary for FHEO will determine whether the state or local law, in operation, provides rights, procedures, remedies and the availability of judicial review that are substantially equivalent to the Fair Housing Act. An affirmative conclusion during interim certification that the state or local law is substantially equivalent both ''on its face'' and ''in operation'' will result in HUD offering the agency certification.

Certification is for a term of five years. During the five years of certification, the agency's ability to maintain certification will be assessed. After the five years of certification, if the Assistant Secretary for FHEO determines that the agency still qualifies for certification, HUD will renew the agency's certification for another five years.

In accordance with section 817 of the Fair Housing Act and the regulation implementing the FHAP at 24 CFR 115.102(a), HUD seeks public comment on the following agencies that have been granted interim certification:

- Arkansas Fair Housing Commission (Arkansas).
- Broward County Office of Equal Opportunity (Florida).
- City of Canton Fair Housing Commission (Ohio).
- City of Duluth Human Rights Office (Minnesota).
- City of North Olmstead, Ohio (Ohio).
- Erie County Human Relations Commission (Pennsylvania).
- Fairfax County Human Rights Commission (Virginia).
- Geneva Human Rights Commission (New York).
- Illinois Department of Human Rights (Illinois).
- Lancaster County Human Relations Commission (Pennsylvania).
- Maine Human Rights Commission (Maine).
- City of St. Louis Civil Rights Enforcement Agency (Missouri).
- State of New Jersey Division on Civil Rights (New Jersey).

In accordance with section 817 of the Fair Housing Act and the regulation implementing the FHAP at 24 CFR 115.102(a), HUD seeks public comment on the following agencies granted certification:

- Arizona Attorney General's Office (Arizona).
- Asheville-Buncombe County Fair Housing Commission (North Carolina).
- Austin Human Rights Commission (Texas).
- Boston Fair Housing Commission (Massachusetts).
- California Department of Fair Employment and Housing (California).
- Cambridge Human Rights Commission (Massachusetts).
- Cedar Rapids Civil Rights Commission (Iowa).
- Charleston Human Rights Commission (West Virginia).
- City of Charlotte/Mecklenburg Community Relations Committee (North Carolina).
- City of Corpus Christi, Texas (Texas).
- City of Dallas, Texas (Texas).
- City of Durham Human Relations Commission (North Carolina).
- City of Elkhart Human Relations Commission (Indiana).
- City of Hammond Human Relations Commission (Indiana).
- City of Lawrence Human Relations Commission (Kansas).
- City of Parma Law Department (Ohio).
- City of St. Petersburg Community Affairs Department (Florida).
- City of Tampa Office of Human Rights (Florida).
- City of Topeka Human Relations Commission (Kansas).
- Colorado Civil Rights Division (Colorado).
- Commission on Human Relations for the City of Reading (Pennsylvania).
- Connecticut Commission on Human Rights and Opportunities (Connecticut).
- County of Rockland Commission on Human Rights (New York).
- Davenport Civil Rights Commission (Iowa).
- Dayton Human Relations Council (Ohio).
- Delaware Division of Human Relations (Delaware).
- Des Moines Human Rights Commission (Iowa).

- District of Columbia Office of Human Rights (District of Columbia).
- Dubuque Human Rights Commission (Iowa).
- Florida Commission on Human Relations (Florida).
- Fort Wayne Metropolitan Human Relations Commission (Indiana).
- Fort Worth Human Relations Commission (Texas).
- Garland Neighborhood Development Department (Texas).
- Gary Human Relations Commission (Indiana).
- Georgia Commission on Equal Opportunity (Georgia).
- Greensboro Human Relations Department (North Carolina).
- Hawaii Civil Rights Commission (Hawaii).
- Hillsborough County Office of the Equal Opportunity Administrator (Florida).
- Huntington Human Relations Commission (West Virginia).
- Indiana Civil Rights Commission (Iowa).
- Iowa Civil Rights Commission (Iowa).
- Jacksonville Human Rights Commission (Florida).
- Kansas City, Missouri Human Relations Department (Missouri).
- Kentucky Commission on Human Rights (Kentucky).
- King County Office of Civil Rights (Washington).
- Knoxville Department of Community Development (Tennessee).
- Lee County Office of Equal Opportunity (Florida).
- Lexington-Fayette Urban County Human Rights Commission (Kentucky).
- Lincoln Commission on Human Rights (Nebraska).
- Louisiana Department of Justice Public Protection Division/Equal Opportunity Section (Louisiana).
- Louisville Metro Human Relations Commission (Kentucky).
- Maryland Commission on Human Relations (Maryland).
- Mason City Human Rights Commission (Iowa).
- Massachusetts Commission Against Discrimination (Massachusetts).
- Michigan Department of Civil Rights (Michigan).
- Missouri Commission on Human Rights (Missouri).
- Nebraska Equal Opportunity Commission (Nebraska).
- New Hanover Human Relations Commission (North Carolina).
- New York State Division of Human Rights (New York).
- North Carolina Human Relations Commission (North Carolina).
- North Dakota Department of Labor (North Dakota).
- Ohio Civil Rights Commission (Ohio).
- Oklahoma Human Rights Commission (Oklahoma).
- Olathe Housing and Human Services Department (Kansas).
- Omaha Human Relations Department (Nebraska).
- Orange County Department of Human Rights and Relations (North Carolina).
- Orlando Human Relations Department (Florida).
- Palm Beach County Office of Equal Opportunity (Florida).
- Pennsylvania Human Relations Commission (Pennsylvania).
- Phoenix Equal Opportunity Department (Arizona).
- Pinellas County Office of Human Rights (Florida).
- Pittsburgh Commission on Human Relations (Pennsylvania).
- Rhode Island Commission for Human Rights (Rhode Island).
- Salina Human Relations Department (Kansas).
- Seattle Office for Civil Rights (Washington).
- Shaker Heights Fair Housing Review Board (Ohio).
- Sioux City Human Rights Commission (Iowa).
- South Bend Human Rights Commission (Indiana).
- South Carolina Human Affairs Commission (South Carolina).
- Springfield Department of Community Relations (Illinois).
- Tacoma Human Rights and Human Services Department (Washington).
- Tennessee Human Rights Commission (Tennessee).
- Texas Workforce Commission (Texas).
- Utah Anti-Discrimination Division (Utah).
- Vermont Human Rights Commission (Vermont).
- Virginia Department of Professional and Occupational Regulations Real Estate Board (Virginia).
- Washington State Human Rights Commission (Washington).
- Waterloo Commission on Human Rights (Iowa).
- West Virginia Human Rights Commission (West Virginia).
- Winston-Salem Human Relations Commission (North Carolina)
- York Human Relations Commission (Pennsylvania).

Withdrawal of Certification has not been proposed for any agency.

Dated: March 17, 2008.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. E8–5910 Filed 3–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 8, 2008. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 8, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

El Paso County

Drennan School, (Rural School Buildings in Colorado MPS) 20500 Drennan Rd., Colorado Springs, 08000290

Larimer County

Greeley, Salt Lake and Pacific Railroad—Stout Branch, (Railroads in Colorado, 1858–1948 MPS) Approx. 1/2 mi. S. of jct. U.S. 287 & Co. Rd. 28, Laporte, 08000291

GEORGIA

Franklin County

Ayers—Little Boarding House, 121 Athens St., Carnesville, 08000292

Pickens County

Griffeth—Pendley House, 2198 Cove Rd., Jasper, 08000293

ILLINOIS

Cook County

Andersonville Commercial Historic District, 4900–5800 N. Clark St., Chicago, 08000294

Edgar County

Moss, Henry Clay, House, 414 N. Main St., Paris, 08000295

KANSAS

Barton County

Beaver Creek Native Stone Bridge, (Masonry Arch Bridges of Kansas TR) NE. 50 Ave. S. & NE. 230 Rd., Beaver, 08000296

Bridge #218—Off System Bridge, (New Deal-Era Resources of Kansas MPS) NE. 60 Ave. S. & NE. 220 Rd., Beaver, 08000297

Hitschmann Cattle Underpass Bridge, (Masonry Arch Bridges of Kansas TR) NE.

110 Ave. S. & NE. 190 Rd., Hitschmann, 08000298
Hitschmann Double Arch Bridge, (Masonry Arch Bridges of Kansas TR) NE. 110 Ave. S. & NE 190 Rd., Hitschmann, 08000299

Crawford County

Besse Hotel, 121 E. 4th St., Pittsburg, 08000300
Colonial Fox Theatre, (Theaters and Opera Houses of Kansas MPS) 409 N. Broadway, Pittsburg, 08000301
Washington Grade School, (Public Schools of Kansas MPS) 209 S. Locust St., Pittsburg, 08000302

Gove County

Oxley Barn, 2740 Co. Rd. 74, Quinter, 08000303

Reno County

Kelly Mills, (Commercial and Industrial Resources of Hutchinson MPS) 400–414 S. Main, Hutchinson, 08000304

Sedgwick County

College Hill Park Bathhouse, (New Deal-Era Resources of Kansas MPS) 304 S. Circle Dr., Wichita, 08000305
Linwood Park Greenhouse and Maintenance Building, (New Deal-Era Resources of Kansas MPS) 1700 S. Hydraulic St., Wichita, 08000306
North Riverside Park Comfort Station, (New Deal-Era Resources of Kansas MPS) 900 N. Bitting Ave., Wichita, 08000307
Roberts House, 235 N. Roosevelt, Wichita, 08000308
Sim Park Golf Course Tee Shelters, (New Deal-Era Resources of Kansas MPS) 2020 W. Murdock St., Wichita, 08000309

Trego County

St. Michael School & Convent, 700 & 704 Ainslie Ave., Collyer, 08000310

MISSOURI

St. Louis Independent City

Arlington School, (St. Louis Public Schools of William B. Ittner MPS) 1617 Burd Ave., St. Louis (Independent City), 08000311

MONTANA

Beaverhead County

Van Camp—Tash Ranch, 1200 MT 278, Dillon, 08000312

NORTH DAKOTA

Bowman County

Schade, Emma Petznick and Otto, House, 406 W. Divide, Bowman, 08000313

RHODE ISLAND

Newport County

Southern Thames Historic District, Thames St. from Memorial Blvd. to Morton Ave., Newport, 08000314

TENNESSEE

Robertson County

Woodard, Thomas Jr., Farm, (Historic Family Farms in Middle Tennessee MPS) 5024 Ogg Rd., Cedar Hill, 08000315

TEXAS

Harris County

Washburn Tunnel, 3100 Federal Rd., Houston, 08000316

Tarrant County

American Airways Hanger and Administration Building, 201 Aviation Wy., Fort Worth, 08000317

Travis County

Miller, Fannie Moss, House, 900 Rio Grande St., Austin, 08000318
Santa Rita Courts, Roughly bounded by E. 2nd, Pedernales, Santa Rita & Corta Sts., Austin, 08000319

VIRGINIA

Isle of Wight County

Fort Huger, Talcott Terrace, Smithfield, 08000320

Pulaski County

Howe, Haven B., House, 4400 State Park Rd., Dublin, 08000321

WISCONSIN

Dane County

Dahle, Onon B. and Betsy, House, 10779 Evergreen Ave., Perry, 08000322

[FR Doc. E8–5821 Filed 3–21–08; 8:45 am]
BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–639]

In the Matter of Certain Spa Cover Lift Frames; 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 20, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Leisure Concepts, Inc. of Spokane, Washington. 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 spa cover lift frames that infringe the claims of U.S. Patent No. 5,996,137. 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 permanent exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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://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: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

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 17, 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 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 spa cover lift frames that infringe one or more of claims 1–24 of U.S. Patent No. 5,996,137, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(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—

Leisure Concepts, Inc., 5342 N. Florida Street, Spokane, Washington 99217–6702.

(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:

Kokido, Ltd., 1319 Sumbean Center, Shing Yip Street, Kwun Tong, Kowloon, Hong Kong.

SPARCO, Ltd. a/k/a SPARCO Buying Group, or SPARCO Distribution Network, 1967–73 Central Avenue, Albany, New York 12205.

ACE Swim Service of Chili, Inc., d/b/a Ace Swim & Leisure, 3313 Chili Avenue, Rochester, New York 14624–5300.

Glaser Enterprises, Inc., d/b/a East Coast Leisure Center, 2973 Virginia Beach Boulevard, Virginia Beach, Virginia 23452.

Islander Pool and Spas, Inc., 1967–73 Central Avenue, Albany, New York 12205.

Pool Mart, Inc., 6410 Transit Road, Depew, New York 14043–1033.

(c) The Commission investigative attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401T, 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 the 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.

Issued: March 18, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–5836 Filed 3–21–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on February 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Glacier Northwest, Seattle, WA and Glacier Northwest Canada Inc., Vancouver, British Columbia, Canada have changed their name to California Portland Cement Company.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on November 21, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2008 (73 FR 3755).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–5703 Filed 3–21–08; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0197]

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Revision of a Currently Approved Collection; State Criminal Alien Assistance Program.

The Department of Justice, Office of Justice Programs (Bureau of Justice Assistance) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by September 2003.

The proposed information collection is published to obtain comments from the public and affected areas. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

All comments, and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to M. Berry at (202) 353–8643, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, Room 4223, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected, and mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) Type of information collection: Extension of currently approved collection expire.

(2) The title of the form/collection: State Criminal Alien Assistance Program.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Federal, State, and local public safety agencies. States and local units of general government including the 50 state governments, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and the more than 3,000 counties and cities with correctional facilities.

Abstract: In response to the Violent Crime Control and Law Enforcement Act of 1994 Section 130002(b) as amended in 1996, BJA administers the State Criminal Alien Assistance Program (SCAAP) with the Bureau of Immigration and Customs Enforcement (ICE), and the Department of Homeland Security (DHS). SCAAP provides federal payments to States and localities that incurred correctional officer salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the designated reporting period and for the following correctional purposes;

Salaries for corrections officers
Overtime costs
Performance based bonuses
Corrections work force recruitment and retention
Construction of corrections facilities
Training/education for offenders
Training for corrections officers related to offender population management
Consultants involved with offender population
Medical and mental health services
Vehicle rental/purchase for transport of offenders
Prison Industries
Pre-release/reentry programs
Technology involving offender management/inter agency information sharing
Disaster preparedness continuity of operations for corrections facilities

Other: None.

(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 no more than 748 respondents will apply. Each application takes approximately 90 minutes to complete and is submitted once per year (annually). The total hour burden to complete the applications is 1122 hours.

If additional information is required, contact Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: March 18, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–5820 Filed 3–21–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Current Population Survey (CPS) Volunteer Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section of this notice on or before May 23, 2008.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The September 2008 CPS Volunteer Supplement will be conducted at the request of the Corporation for National and Community Service. The Volunteer Supplement will provide information on the total number of individuals in the U.S. involved in unpaid volunteer activities, measures of the frequency or intensity with which individuals volunteer, types of organizations for which they volunteer, the activities in which volunteers participate, and the prevalence of volunteering more than 120 miles from home or abroad. It will also provide information on civic engagement and charitable donations.

Because the Volunteer Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available about respondents to the supplement. Thus, comparisons of volunteer activities will be possible across respondent characteristics including sex, race, age, and educational attainment. It is intended that the supplement will be conducted annually, if resources permit, in order to gauge changes in volunteerism.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Volunteer Supplement. The September 2008 instrument includes some revisions made since the September 2007 instrument. The questions asking how many times a person had worked with others from their neighborhood to fix a problem or improve a situation and how often a person had attended public meetings were deleted. A question asking whether the respondent had made any donations to charitable organizations of money, assets, or property with a combined value of more than $25 was added.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: CPS Volunteer Supplement.
OMB Number: 1220–0176.
Affected Public: Individuals.
Total Respondents: 63,000.
Frequency: Annually.
Total Responses: 106,000.
Average Time per Response: 3 minutes.
Estimated Total Burden Hours: 5,300 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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 submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of March, 2008.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E8–5812 Filed 3–21–08; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before April 23, 2008.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic mail: Standards-Petitions@dol.gov*.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jack Powasnik, Deputy Director, Office of Standards, Regulations, and Variances at 202–693–9443 (Voice), *powasnik.jack@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2008–006–C.

Petitioner: Bear Gap Coal Company, 74 Kushwa Road, Spring Glen, Pennsylvania 17978.

Mine: N & L Slope Mine, MSHA I.D. No. 36–02203, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1714–2(c) (Self-rescue devices; use and location requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the self-rescue devices to be stored within 60 feet of the working face. The petitioner states that in steeply pitching, conventional anthracite mines, entries are advanced as far as 60 feet vertically. The petitioner further states that the miner is exposed to trip and fall hazards and the necessity of carrying supplies up these narrow entries while wearing the self-contained self-rescuers (SCSRs), may result in damage to the SCSR and in a diminution of safety to the miner.

Docket Number: M–2008–007–C.

Petitioner: Bear Gap Coal Company, 74 Kushwa Road, Spring Glen, Pennsylvania 17978.

Mine: N & L Slope Mine, MSHA I.D. No. 36–02203, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1714–4(a), (b), (c), (d), and (e) (Additional self-contained self-rescuers (SCSRs).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the requirement for providing an additional self-contained self-rescue (SCSR) device, and to eliminate the requirement for providing additional SCSRs on mantrips or mobile equipment and in alternate and primary escapeways, therefore eliminating the need for storage locations and for signs to be posted at each location. The petitioner states that: (i) An SCSR has never been used in an anthracite mine and no statistical data exists to support the need to use an SCSR; (ii) Anthracite coal is low in volatile matter and the lack of mechanization coupled with the reduced production capacity of anthracite mines has resulted in no significant liberation of explosive gases; (iii) The risk of fire at an underground anthracite mine is less than that of a city structure, therefore, the requirement for an additional SCSR cannot be justified; (iv) The potential hazard which would require wearing an SCSR and traveling the escapeway does not exist; (v) There is no hazard scenario where traveling the escapeway with an SCSR would be

likely; and (vi) The travel time on foot from the working face through the primary escapeway is less than fifteen minutes. The petitioner further states that damp and wet conditions occur in the entire mine, and historically, fires in anthracite mines have not been a significant hazard as a result of the low volatile matter of the coal, which is reflected in numerous granted petitions for modification relating to firefighting.

The petitioner asserts that the proposed alternative method will in no way provide less than the same measure of protection than that afforded the miners under the existing standard.

Dated: March 18, 2008.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E8–5908 Filed 3–21–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0086]

Respiratory Protection Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified by the Respiratory Protection Standard (29 CFR 1910.134).

DATES: Comments must be submitted (postmarked, sent, or received) by May 23, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0086, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0086). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaa Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et. seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Respiratory Protection Standard (29 CFR 1910.134; hereafter, ''the Standard'') contains information collection requirements that require employers to: develop a written respirator program; conduct employee medical evaluations and provide follow-up medical evaluations to determine the employee's ability to use a respirator; provide the physician or other licensed health care professional with information about the employee's respirator and the conditions under which the employee will use the respirator; and administer fit tests for employees who will use negative-or positive-pressure, tight-fitting facepieces. In addition, employers must ensure that employees store emergency-use respirators in compartments clearly marked as containing emergency-use respirators. For respirators maintained for emergency use, employers must label or tag the respirator with a certificate stating the date of the inspection, the name of the individual who made the inspection, the findings of the inspection, required remedial action, and the identity of the respirator.

The Standard also requires employers to ensure that cylinders used to supply breathing air to respirators have a certificate of analysis from the supplier stating that the breathing air meets the requirements for Type 1—Grade D breathing air; such certification assures employers that the purchased breathing air is safe. Compressors used to supply breathing air to respirators must have a tag containing the most recent change date and the signature of the individual authorized by the employer to perform the change. Employers must maintain this tag at the compressor. These tags provide assurance that the compressors are functioning properly.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the

information collection requirements, including the validity of the methodology and assumptions used;

- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Respiratory Protection Standard (29 CFR 1910.134). The Agency is requesting to increase its current burden hour total from 6,551,314 hours to 7,159,601 for a total increase of 608,287 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved information collection requirement.

Title: Respiratory Protection Standard.

OMB Number: 1218–0099.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 639,623.

Frequency of Response: Annually; monthly; on occasion.

Total Responses: 22,547,185.

Average Time per Response: Varies from 5 minutes (.08 hour) to mark a storage compartment or protective cover to 8 hours for large employers to gather and prepare information to develop a written plan.

Estimated Total Burden Hours: 7,159,601.

Estimated Cost (Operation and Maintenance): $164,751,553.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (Fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0086). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled "**ADDRESSES**"). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at: *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et. seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on March 17, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–5837 Filed 3–21–08; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The Title of the Information Collection:* 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants."

2. *Current OMB Approval Number:* 3150–0155.

3. *How Often the Collection Is Required:* There is a one-time application for any licensee wishing to renew its nuclear power plant's operating license. There is a one-time requirement for each licensee with a renewed operating license to submit a commitment completion letter. All holders of renewed licenses must perform yearly recordkeeping.

4. *Who Is Required or Asked to Report:* Commercial nuclear power plant licensees who wish to renew their operating licenses and holders of renewed licenses.

5. *The Number of Annual Respondents:* 50 (10 responses and 40 recordkeepers).

6. *The Number of Hours Needed Annually to Complete the Requirement or Request:* 544,940 hours (504,940 hours reporting plus 40,000 hours recordkeeping).

7. *Abstract:* Title 10, Part 54, establishes license renewal requirements for commercial nuclear power plants and describes the information that licensees must submit to the NRC when applying for a license renewal. The application must contain information on how the licensee will manage the detrimental effects of age-related degradation on certain plant systems, structures, and components so as to continue the plant's safe operation during the renewal term. The NRC needs this information to determine whether the licensee's actions will be effective in assuring the plant's continued safe operation.

Holders of renewed licenses must retain in an auditable and retrievable form, for the term of the renewed operating license, all information and documentation required to document compliance with 10 CFR Part 54. The NRC needs access to this information for continuing effective regulatory oversight.

Submit by May 23, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC web site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 17th day of March 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–5884 Filed 3–21–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Power Uprates (Hope Creek); Revised; Notice of Meeting

The **Federal Register** Notice for the ACRS Subcommittee Meeting on Power Uprates scheduled to be held on March 20–21, 2008 has been revised to correct an inadvertent error (PPL Hope Creek LLC has been changed to PSEG Nuclear LLC) as noted below.

The meeting will be open to public attendance, with the exception of portions that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)4 for presentations covering information that is proprietary to PSEG Nuclear LLC or its contractors such as General Electric and Continuum Dynamics. All other items pertaining to this meeting remain the same as published previously in the **Federal Register** on Friday, March 7, 2008 (73 FR 12474).

FOR FURTHER INFORMATION CONTACT: Ms. Zena Abdullahi, Designated Federal Official (Telephone: 301–415–8716) between 7:30 a.m. and 4:15 p.m. (ET) or by e-mail *zxa@nrc.gov.*

Dated: March 14, 2008.

Cayetano Santos,

Chief, Reactor Safety Branch, ACRS.

[FR Doc. E8–5894 Filed 3–21–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on April 18, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 18, 2008—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the draft NUREG–1855, ''Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decisionmaking.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and the Electric Power Research Institute (EPRI) regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Hossein P. Nourbakhsh (Telephone: 301–415–5622), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 13, 2008.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E8–5897 Filed 3–21–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) seeks qualified candidates for the Advisory Committee on Reactor Safeguards (ACRS). Submit résumés to Ms. Janet Riner, Executive Secretary, ACRS/ACNW&M, Mail Stop T2E–26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *JML1@NRC.GOV.*

SUPPLEMENTARY INFORMATION: The ACRS is a part-time advisory group, which is statutorily mandated by the Atomic Energy Act of 1954, as amended. ACRS provides independent expert advice on matters related to the safety of existing and proposed nuclear power plants and on the adequacy of proposed reactor safety standards. Of primary importance are the safety issues associated with the operation of 104 commercial nuclear power plants in the United States and regulatory initiatives, including risk-informed and performance-based regulations, license renewal, power uprates, and the use of mixed oxide and high burnup fuels. An increased emphasis is being given to safety issues associated with new reactor designs and technologies, including passive system reliability and thermal hydraulic phenomena, use of digital instrumentation and control, international codes and standards used in multinational design certifications, material and structural engineering, nuclear analysis and reactor core performance, and nuclear materials and radiation protection. In addition, the ACRS may be requested to provide

advice on radiation protection, radioactive waste management and earth sciences in the agency's licensing reviews for fuel fabrication and enrichment facilities, waste disposal facilities, and facilities related to the Department of Energy's Global Nuclear Energy Partnership.

The ACRS also has some involvement in security matters related to the integration of safety and security of commercial reactors. See NRC Web site at: *http://www.nrc.gov/aboutnrc/regulatory/advisory/acrs.html* for additional information about ACRS. Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear reactor safety matters, the ability to solve complex technical problems, and the ability to work collegially on a board, panel, or committee. The Commission, in selecting its Committee members, considers the need for a specific expertise to accomplish the work expected to be before the ACRS. ACRS Committee members are appointed for four-year terms and normally serve no more than three terms. The Commission looks to fill one vacancy as a result of this request. For this position, a candidate must have at least 10 years of experience in the areas of nuclear materials and radiation protection. Candidates with pertinent graduate level experience will be given additional consideration. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee is fairly balanced in terms of the points of view represented and functions to be performed by the Committee. Candidates will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACRS members. The security background check will involve the completion and submission of paperwork to NRC. Candidates for ACRS appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. However, because conflict-of-interest considerations may restrict the participation of a candidate in ACRS activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request. A résumé describing the educational and professional background of the candidate, including any special accomplishments, publications, and professional references should be provided. Candidates should provide their current address, telephone number, and e-mail address. All candidates will receive careful consideration. Appointment will be made without regard to factors such as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 100 days per year to Committee business. Résumés will be accepted until April 30, 2008.

Dated: March 18, 2008.

Andrew Bates,

Federal Advisory Committee, Management Officer.

[FR Doc. E8–5883 Filed 3–21–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS373]

WTO Dispute Settlement Proceeding Regarding China—Measures Affecting Financial Information Services and Foreign Financial Information Suppliers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on March 3, 2008, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement), the United States requested consultations with China regarding restrictions and requirements China imposes on financial information services and service suppliers. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS373/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute, comments should be submitted on or before April 18, 2008 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0806@ustr.eop.gov,* with ''China Financial Information Services (DS373)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: James P. Kelleher, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that the United States has requested consultations with China pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On March 3, 2008, the United States requested consultations with China regarding restrictions and requirements that China imposes on financial information services and service suppliers. China requires foreign financial information suppliers to supply their services through an entity designated by Xinhua News Agency (''Xinhua''). Xinhua has designated one of its commercial enterprises as the only available agent. Xinhua, through its organizational structure, including related entities and affiliates, appears to be not only the regulator but also a competitor of foreign financial information suppliers. For example, Xinhua has launched ''Xinhua 08'', a financial information supplier that supplies services on a commercial basis and in competition with foreign service suppliers. China also appears to prevent foreign financial information service suppliers from establishing any commercial operations in China other than limited representative offices. China's measures include the following, as well as any amendments and related or implementing measures:

- Notice Authorizing Xinhua News Agency To Implement Centralized Administration Over the Release of Economic Information in the People's Republic of China by Foreign News Agencies and Their Subsidiary Information Institutions (December 31, 1995);
- Decision on Establishing Administrative Permission for the

Administrative Examination and Approval of Items That Must Be Retained (June 29, 2004);

• Measures for Administering the Release of News and Information in China by Foreign News Agencies (September 10, 2006);

• Notices on the Annual Inspection of Foreign News Dissemination Entities;

• Catalogue of Industries for Guiding Foreign Investment (October 31, 2007);

• Decisions of the State Council Regarding Entrance of Non-Public Capital Into Cultural Industries (April 13, 2005);

• Several Opinions on Introducing Foreign Investment Into the Cultural Sector (July 6, 2005);

• Opinion on Foreign Investment in Cultural Industries (August 5, 2005);

• Detailed Rules on the Approval and Control of Resident Representative Offices of Foreign Enterprises (February 13, 1995);

• Procedures of the State Administration for Industry and Commerce for the Registration and Administration of Resident Representative Offices of Foreign Enterprises (March 5, 1983);

• Rules for Internet Information Services (September 2000); and

• Administrative Rules for Internet News Information Services (September 25, 2005);

These and other requirements and restrictions appear to accord less favorable treatment to foreign financial information services and service suppliers than that accorded Chinese financial information services and service suppliers which are not affected by these requirements and restrictions. China's measures also appear to impose requirements on foreign financial information suppliers that are more restrictive than those imposed on them at the time of China's accession to the WTO.

USTR believes these measures are inconsistent with China's obligations under Articles XVI, XVII, and XVIII of the *General Agreement on Trade in Services* and Part I.1.2 of the Protocol on the Accession of the People's Republic of China, including paragraph 309 of the Working Party Report.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0806@ustr.eop.gov,* with ''China Financial Information Services (DS373)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS–373, China Financial Information Services Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E8–5885 Filed 3–21–08; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of a Revised Information Collection: OPM Form 1644 Child Care Provider Information for the Child Care Subsidy Program for Federal Employees OMB No. 3206–0240

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. Approval for the OPM Form 1644, Child Care Provider Information for the Child Care Subsidy Program for Federal Employees, is used to verify that child care providers are licensed or regulated by local or State authorities, as appropriate. Section 630 of Public Law 107–67, passed by Congress on November 12, 2001, permits Federal agencies to use appropriated funds to help their lower-income employees with their costs for child care provided by a contractor licensed or regulated by local or State authorities, as appropriate. Therefore, agencies need to verify that child care providers to whom they make disbursements in the form of child care subsidies meet the statutory requirement.

Approximately 3500 OPM 1644 forms will be completed annually. We estimate it will take 10 minutes to complete the OPM Form 1644. The annual estimated burden is 333.3 hours.

Comments are particularly invited on:

• Whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

• Whether our estimates of the public burden of this collection of information

are accurate, and based on valid assumptions and methodology; and

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Marie L'Etoile, Group Manager, Work/Life Group, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E8–5863 Filed 3–21–08; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57512; File No. SR–CBOE–2008–19]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Customer-to-Customer Immediate Crosses

March 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by CBOE. On March 14, 2008, CBOE submitted Amendment No. 1 to the proposed rule change. CBOE filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Automated Improvement Mechanism (''AIM'') Rule to permit customer-to-customer orders to be entered paired and to be crossed without any AIM auction exposure period. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.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, CBOE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend Rule 6.74A to permit customer-to-customer orders to be entered paired and to be crossed without any AIM auction exposure period. Currently, CBOE Rules provide for a minimum exposure time of three seconds for crossing orders on the Hybrid Trading System (''Hybrid'') when an order entry firm (i) executes as principal against orders it represents as agent, or (ii) executes orders it represents as agent against orders solicited from members and non-member broker-dealers to transact with such orders.[5] However, the three second exposure period is not applicable when crossing two orders that are both for the accounts of non-broker-dealer customers. Thus, two non-broker-dealer customer orders may be entered separately into Hybrid by the same order entry firm to trade against each other without waiting three seconds. To enhance and automate order entry firms' ability to submit two contra-side customer orders, the Exchange is proposing to introduce and to codify a new feature in its AIM Rule [6] that the Exchange refers to as a ''customer-to-customer immediate cross.''

When using the AIM customer-to-customer immediate cross feature, the proposed rule will provide that an order entry firm (''Initiating Member'') may enter an agency order for the account of a non-broker-dealer customer in AIM, paired with a solicited order for the account of a non-broker-dealer customer. Under the rule proposal, those paired orders will be automatically executed without an exposure period so long as the execution price: (i) Is in the applicable standard increment (*i.e.*, $0.10 for series quoted at or above $3, $0.05 for series quotes below $3, $0.01 for series participating in the Penny Pilot Program, and the applicable standard or $0.01 increment for complex orders as designated pursuant to Rule 6.53C); (ii) will not trade at the same price as any resting customer order; and (iii) subject to certain exceptions, is not at a price that trades through the national best bid or offer (''NBBO''). If the Exchange determines on a class-by-class basis to (i) designate complex orders as eligible for AIM customer-to-customer immediate crosses or (ii) permit orders of 500 or more contracts and that have a premium value of at least $150,000 to be executed without considering prices that might be available on other options exchanges, the NBBO condition shall not apply to such orders and instead the execution price will not trade through CBOE's best bid or offer (''BBO'').[7] In addition, the execution price must be in the applicable standard increment and will not trade at the same price as any resting customer order. In the case of a complex order, this means that the execution price will not trade at the same price as any customer complex order resting in the CBOE's electronic complex order book. To be eligible to use the customer-to-customer immediate cross feature, the proposed rule will also provide that the agency

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* CBOE Rule 6.45A, Priority and Allocation of Equity Option Trades on the CBOE Hybrid System, Interpretations and Policies .01 and .02, and Rule 6.45B, Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System.

[6] AIM is an automated auction mechanism through which a member that represents agency orders may electronically execute an order it represents as agent (''agency order'') against principal or solicited interest. When the Exchange receives an agency order properly designated for an AIM auction, a request for responses (''RFR'') is initiated and, subject to certain exceptions delineated in Rule 6.74A, the RFR lasts for a random time determined by the system between three and five seconds. Once the AIM auction concludes, the agency order is allocated at the best prices pursuant to allocation procedures in the Rule. *See* CBOE Rule 6.74A.

[7] *See* proposed paragraph .09(b) to CBOE Rule 6.74A.

order must be in a class designated by the Exchange as eligible for the feature and within the designated order eligibility size parameters, as such parameters are determined by the Exchange.

Lastly, the proposed rule will contain a cross-reference to Interpretation and Policy .01 to CBOE Rules 6.45A and 6.45B. Specifically, the proposed rule will note that Interpretation and Policy .01 to CBOE Rules 6.45A and 6.45B prevent an order entry firm from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. However, as the proposed rule will also note, the Exchange recognizes that it may be possible for a firm to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. Therefore, the proposed rule will provide that it would be a violation of Interpretation and Policy .01 to Rule 6.45A or 6.45B, as applicable, for a firm to circumvent Interpretation and Policy .01 to Rule 6.45A or 6.45B, as applicable, by providing an opportunity for (i) a customer affiliated with the firm, or (ii) a customer with whom the firm has an arrangement that allows the firm to realize similar economic benefits from the transaction as the firm would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as AIM customer-to-customer immediate crosses. The Exchange believes that this provision should help prevent a firm from doing indirectly what it is prohibited from doing directly as principal. This provision of CBOE's proposed rule is substantially similar to a provision in ISE's Rules.[8]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[9] that an exchange have rules that are 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. In particular, the proposed rule change will provide members with a more efficient means of executing their customer option orders subject to the Exchange's existing requirements limiting principal transactions, and will allow CBOE to effectively compete with ISE.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CBOE neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow customers to benefit from the proposed rule change without delay.[14] The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2008–19 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2008–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the

[8] *See* Supplemental Material .01 to ISE Rule 717.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has complied with this requirement.

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–CBOE–2008–19 and should be submitted on or before April 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5795 Filed 3–21–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57509; File No. SR–CHX–2007–09]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change To Amend the Exchange's Institutional Broker Rules To Add Provisions Relating to the Handling of Stop and Stop-Limit Orders

March 17, 2008.

On March 21, 2007, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to add new provisions relating to the handling of stop and stop-limit orders by institutional brokers. The proposed rule change was published for comment in the **Federal Register** on October 19, 2007.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

After careful review of the proposal, 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, is consistent with Section 6(b) of the Act,[4] and the rules and regulations thereunder.[5]

The Commission finds specifically that the proposal is consistent with Section 6(b)(5) of the Act[6] because the rules it would establish regarding stop and stop-limit orders are similar to requirements set forth in the rules of other self-regulatory organizations.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2007–09), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5794 Filed 3–21–08; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56657 (October 12, 2007), 72 FR 59316.

[4] 15 U.S.C. 78f(b).

[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)(5).

[7] *See* Rules of New York Stock Exchange LLC, Rule 13; and Rules of Financial Industry Regulatory Authority, Inc. (f/k/a National Association of Securities Dealers, Inc.), Rule 5120(h).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57513; File No. SR–DTC–2007–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amended Proposed Rule Change To Implement the New Issue Information Dissemination Service for Municipal Securities

March 17, 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 August 16, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on September 12, 2007, and March 3, 2008, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks approval to implement the New Issue Information Dissemination System (''NIIDS'') for municipal securities. NIIDS is an automated system developed by DTC at the request of the Securities Industry and Financial Markets Association (''SIFMA'')[3] in order to improve the mechanism for disseminating new issue information regarding municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Municipal Securities Rulemaking Board (''MSRB'') Rule G–14 generally requires municipal securities dealers to report municipal securities transactions to the MSRB within 15 minutes of the time of the trade.[5] Inter-dealer trades eligible for comparison by a clearing agency are required to be submitted through NSCC's Real Time Trade Matching System (''RTTM'') within the time frame in Rule G–14. These trades are subsequently reported to the MSRB by NSCC. NSCC requires certain securities information in order to process and report transactions involving those securities. Therefore, it is necessary that dealers trading newly issued municipal securities have the securities information needed for trade submission by the time the trade reporting is required.

Pursuant to current practice in the municipal securities market, each information vendor works separately to obtain information from offering documents and underwriters. Each information vendor's success depends in large part upon the voluntary cooperation of the underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others. Consequently, critical new issue information may be missing or inaccurate in the automated trade processing systems used by dealers to report the initial trades in new issues.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The request originated from The Bond Market Association (''BMA''), which has since merged with the Securities Industry Association to form SIFMA.

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] MSRB Rule G–14 RTRS Procedures (a)(ii).

This can result in late trade reports or trade reports that must be canceled and resubmitted or amended because they contain inaccurate data.

NIIDS is designed to improve the process by which new issue information is provided by underwriters to information vendors by collecting information about a new issue from underwriters in an electronic format and making that data available immediately to information vendors. NIIDS is designed to ensure that information is disseminated as quickly and efficiently as possible after the information is made available by the underwriters.[6]

To address concerns that dealers often lack timely access to electronically formatted securities information necessary to process and to report municipal securities transactions in real-time, MSRB Rule G–14 includes a three-hour exemption available to a dealer transacting ''when, as, and if issued'' municipal securities if the dealer is not a syndicate manager or member for this issue, has not traded the issue in the previous year, and the CUSIP number and indicative data of the issue are not in the dealer's securities master file (''Reporting Exemption'').[7] The Reporting Exemption will expire on or about June 30, 2008. In order to prepare for the Reporting Exemption's expiration, SIFMA asked DTC to incorporate a centralized automated mechanism for the collection and dissemination on a real-time basis of the required information as part of the planned reengineering of DTC's underwriting system. DTC built NIIDS to help make the collection and dissemination of new issue information with respect to municipal securities more efficient for the industry.

An industry working group of municipal securities dealers, SIFMA members, the MSRB, and DTC have identified key data elements required for the reporting, comparison, confirmation, and settlement of trades in municipal securities (''NIIDS Data Elements''). Initially, DTC is proposing to make NIIDS available to the municipal securities industry on an optional basis to allow dealers to have some experience with NIIDS before the MSRB mandates its use. DTC proposes to make NIIDS for municipal securities available to participants on an optional basis in April 2008. DTC will mandate the use of NIIDS for municipal securities in June 2008, prior to the expiration of the MSRB Reporting Exemption. DTC periodically has been informing participants of the upcoming implementation of NIIDS and the NIIDS Data Elements through periodically issued Important Notices. Only DTC participants or those entities specifically authorized by a participant (''Correspondent'') will be able to input information into NIIDS.[8]

To commence the process, the dissemination agent (''Dissemination Agent'') for a new issue must input the NIIDS Data Elements thereby requesting that DTC make the information available to the industry through NIIDS. DTC will not confirm the NIIDS Data Elements but rather will act as a conduit to pass along such information to data vendors. DTC anticipates the data vendors will then disseminate the information to the industry thereby allowing dealers to make timely reporting of their municipal trades. DTC will record the name of the Dissemination Agent that inputs the Data Elements and the time such information is submitted. DTC will begin disseminating the data when it has received authorization from the Dissemination Agent through NIIDS. The Dissemination Agent, by triggering the dissemination decision flag in the NIIDS Data Elements, indicates the information is being sent by it and is in compliance with the terms and conditions of NIIDS. In addition, NIIDS will contain the contact information for the Dissemination Agent that populated the NIIDS Data Elements for a particular issue to enable users of the data to contact it with questions or comments.

DTC is proposing to provide NIIDS to the industry in order to facilitate the collection and dissemination of new issue information in relation to municipal securities. Because DTC does not confirm the accuracy of NIIDS Data Elements and only acts as a conduit of the information, use of NIIDS[9] by any party, including but not limited to participants, correspondents, and vendors (''NIIDS Users'')[10] will constitute a waiver of any and all claims direct or indirect against DTC and its affiliates and an agreement that DTC and its affiliates shall not be liable for any loss in relation to the dissemination or use of NIIDS Data Elements, which are provided ''as is.'' Each NIIDS User will agree to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of NIIDS.

The MSRB would like dealers to be able to use NIIDS before requiring them to so by rule.[11] The MSRB has filed with the Commission a rule change that would require underwriters to use NIIDS beginning June 30, 2008, to coincide with the expiration of the Reporting Exemption.[12] DTC will provide the municipal securities industry the opportunity to use NIIDS commencing April 2008. DTC intends to mandate the use of NIIDS for municipal securities in June 2008. DTC believes that members of the municipal securities industry will be using NIIDS during the period NIIDS is optional (''Optional Period'') to become accustomed to using it. This may result in Dissemination Agents inputting incomplete NIIDS Data Elements while getting acquainted with NIIDS. Therefore, no one should rely on the accuracy of the NIIDS Data Elements during the Optional Period but rather should continue to use existing authorized sources of such information.

DTC will not charge a service fee to underwriters that input or receive information through NIIDS. Additionally, DTC will not charge a service fee to information vendors that will receive information for further dissemination through NIIDS. DTC will charge a connectivity fee to underwriters, service providers, and information vendors that use NIIDS.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[13] and the rules and regulations thereunder because the proposed changes promote the prompt and accurate clearance and settlement of securities transactions by streamlining the collection and dissemination of new issue information for municipal securities throughout the industry.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[6] NIIDS is being incorporated into the update of DTC's underwriting system (''UW Source''). All applicable NIIDS Data Elements must be input into UW Source for a municipal issue to close at DTC.

[7] MSRB Rule G–14 RTRS Procedures (a)(ii)(C).

[8] Participants will be required to identify an authorized party at the Correspondent with whom DTC may interact.

[9] Use of NIIDS shall include but not be limited to the population, dissemination, or processing of NIIDS Data Elements.

[10] Data vendors or others that wish to receive NIIDS Data Elements must register in advance with DTC.

[11] The MSRB received comment on proposed rules that would require underwriters of municipal securities to participate in NIIDS. See MSRB Notice 2007–10 (March 5, 2007) at *http://www.msrb.org.*

[12] Securities Exchange Act Release No. 57002 (December 20, 2007), 72 FR 73939 (December 28, 2007) [File No. SR–MSRB–2007–07].

[13] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2007–10 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–DTC–2007–10. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10.pdf*, *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10-amendment.pdf*, and *http://dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10-amendment2.pdf*. 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–DTC–2007–10 and should be submitted on or before April 8, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5796 Filed 3–21–08; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57505; File No. SR–NYSEArca–2008–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt Listing Rules Relating to Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities

March 14, 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 February 14, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 14, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6), which sets forth the Exchange's listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities,[3] to permit the listing and trading of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities thereunder. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (''Equity Reference Asset''). Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201), or a basket or index of any of the foregoing (''Commodity Reference Asset''). Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing (''Currency Reference Asset''). *See* NYSE Arca Equities Rule 5.2(j)(6). As a result of the proposed rule change, ''Index-Linked Securities,'' which currently include Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, will also include, by definition, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

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 NYSE Arca Equities Rule 5.2(j)(6) to adopt new generic listing standards, pursuant to which the Exchange would be able to list and trade Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities without Commission approval under Rule 19b–4(e) under the Act,[4] and to make conforming changes to Commentary .01 of NYSE Arca Equities Rule 5.2(j)(6) to extend its application to Futures-Linked Securities and Multifactor Index-Linked Securities that are composed in part of Commodity, Currency, or Futures Reference Assets (as defined herein).

The Exchange represents that any securities it lists and/or trades pursuant to Rule 19b–4(e)(1) and NYSE Arca Equities Rule 5.2(j)(6), as amended, will satisfy the proposed standards set forth therein. The Exchange states that within five business days after commencement of trading of any such security under NYSE Arca Equities Rule 5.2(j)(6), as amended, the Exchange will file a Form 19b–4(e).[5]

Fixed Income Index-Linked Securities

Fixed Income Index-Linked Securities are securities that provide for the payment at maturity based on the performance of one or more indexes or portfolios of debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof, or a basket or index of any of the foregoing (collectively, ''Fixed Income Reference Asset''). Fixed Income Index-Linked Securities, like other Index-Linked Securities, will be subject to the general criteria in NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing.

For the initial listing of a series of Fixed Income Index-Linked Securities, the Fixed Income Reference Asset must either: (1) Have been reviewed and approved for the trading of options, Investment Company Units (as defined in NYSE Arca Equities Rule 5.2(j)(3)), or other derivatives by the Commission under Section 19(b)(2) of the Act[6] and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied, or (2) meet the following requirements:[7]

- Components of the Fixed Income Reference Asset that, in the aggregate, account for at least 75% of the dollar weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of $100 million or more;
- A component of the Fixed Income Reference Asset may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not, in the aggregate, account for more than 65% of the dollar weight of the Fixed Income Reference Asset;
- An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities)[8] must include a minimum of 13 non-affiliated issuers; and
- Component securities that, in the aggregate, account for at least 90% of the dollar weight of the Fixed Income Reference Asset must be from one of the following: (1) Issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;[9] or (2) issuers that have a worldwide market value of outstanding common equity held by non-affiliates of $700 million or more; or (3) issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; or (4) exempted securities, as defined in Section 3(a)(12) of the Act;[10] or (5) issuers that are a government of a foreign country or a political subdivision of a foreign country; and

With respect to any series of Fixed Income Index-Linked Securities, the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day. In addition, the Exchange will commence delisting or removal proceedings if:[11]

- Any of the initial listing criteria for Fixed Income Index-Linked Securities are not continuously maintained;
- The aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than $400,000;
- The value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference is substituted, unless the new Fixed Income Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or
- Such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Futures-Linked Securities

Futures-Linked Securities are securities that provide for the payment at maturity based on the performance of an index of (1) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing, or (2) interest rate futures or options or derivatives on the foregoing (collectively, ''Futures Reference Asset''). Futures-Linked Securities will also be subject to the general criteria in NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing. An issue of Futures-Linked Securities must meet one of the initial listing standards set forth below:

- The Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act[12] and rules thereunder and the

[4] Rule 19b–4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4 under the Act (17 CFR 240.19b–4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e).

[5] *See* 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[6] 15 U.S.C. 78s(b)(2).

[7] The Exchange notes that the quantitative standards for Fixed Income Reference Assets are substantially similar to those set forth under Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) relating to fixed income securities underlying Investment Company Units. *See* Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

[8] The Exchange notes that, for purposes of this standard, exempted securities refers to Treasury Securities and GSE Securities, as defined in proposed NYSE Arca Equities Rule 5.2(j)(6)(iv).

[9] 15 U.S.C. 78m; 15 U.S.C. 78o(d).

[10] 15 U.S.C. 78c(a)(12).

[11] The Exchange notes that the continued listing standards for each of Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantially similar to those standards currently applicable to other Index-Linked Securities.

[12] 15 U.S.C. 78s(b)(2).

conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

• The pricing information for components of a Futures Reference Asset must be derived from a market which is an Intermarket Surveillance Group (''ISG'') member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the specified foregoing requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, an issue of Futures-Linked Securities must meet both of the following initial listing criteria:

• The value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); [13] and

• In the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Core Trading Session. The Exchange will commence delisting or removal proceedings if:

• Any of the initial listing criteria for Futures-Linked Securities are not continuously maintained;

• The aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than $400,000;

• The value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or

• Such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

[13] *See* NYSE Arca Equities Rule 7.34 (describing the three trading sessions of the Exchange to include the Opening Session, from 4 a.m. to 9:30 a.m. Eastern Time or ''ET,'' Core Trading Session, from 9:30 a.m. to 4 p.m. ET, and Late Trading Session, from 4 p.m. to 8 p.m. ET).

Multifactor Index-Linked Securities

Multifactor Index-Linked Securities are securities that provide for payment at maturity based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (collectively, the ''Multifactor Reference Asset,'' and together with Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, and Futures Reference Assets, collectively, the ''Reference Assets''). In addition, a Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, London Interbank Offered Rate (''LIBOR''), Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. The Exchange states that, for purposes of a notional investment as a component of a Multifactor Reference Asset, a long LIBOR weighting would represent a leverage charge offsetting long positions in the underlying Reference Assets.

Multifactor Index-Linked Securities will be subject to the general criteria under NYSE Arca Equities Rule 5.2(j)(6)(A) for initial listing. In addition, for a series of Multifactor Index-Linked Securities to be appropriate for listing, each component of the Multifactor Reference Asset must either: (1) Have been reviewed and approved for the trading of options, Investment Company Units, or other derivatives under Section 19(b)(2) of the Act [14] and rules thereunder and the conditions set forth in the Commission's approval order continued to be satisfied; or (2) meet the applicable requirements for initial and continued listing set forth in the relevant section of NYSE Arca Equities Rule 5.2(j)(6). In addition, an issue of Multifactor Index-Linked Securities must meet both of the following initial listing criteria:

• The value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on the Exchange; and

• In the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on the Exchange. The Exchange will commence delisting or removal proceedings if:

• Any of the initial listing criteria for Multifactor Index-Linked Securities are not continuously maintained;

• The aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than $400,000;

• The value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Assets meets the requirements of NYSE Arca Equities Rule 5.2(j)(6); or

• Such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

[14] 15 U.S.C. 78s(b)(2).

Information Circular

Upon evaluating the nature and complexity of each Fixed Income Index-Linked Security, Futures-Linked Security, or Multifactor Index-Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to ETP Holders [15] describing the product. Accordingly, the Information Circular will disclose the particular structure and corresponding risks of a Fixed Income Index-Linked Security, Futures-Linked Security, or Multifactor Index-Linked Security traded on the Exchange. In particular, the Information Circular will set forth the Exchange's suitability rule that requires ETP Holders recommending a transaction in Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities: (1) To determine that such transaction is suitable for the customer (NYSE Arca Equities Rule 9.2(a)); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that ETP Holders must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction. The Information Circular will also note that all of the Exchange's equity trading rules will be applicable to trading in Fixed Income Index-Linked

[15] ETP Holder refers to a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or ''ETP.'' An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. *See* NYSE Arca Equities Rule 1.1(n).

Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. Finally, the Information Circular will discuss the risks involved in trading such securities during the Opening and Late Trading Sessions [16] when an updated indicative value or Reference Asset value, as applicable, will not be calculated or publicly disseminated.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Index-Linked Securities) to monitor trading in Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of such securities in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange may also obtain information via ISG from other exchanges who are members or affiliate members of ISG.[17] In addition, the Exchange also has a generally policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

If the indicative value or Reference Asset value applicable to a series of Index-Linked Securities is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption 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.

Firewall Procedures

Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, like other Index-Linked Securities, will be subject to the firewall requirements under NYSE Arca Equities Rule 5.2(j)(6)(C). The firewall requirements provide that, if the value of an Index-Linked Security is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

Furthermore, as provided in NYSE Arca Equities Rule 5.2(j)(6)(C), any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

Commentary .01

The Exchange has also proposed conforming changes to Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) relating to the obligations of an Exchange ETP Holder acting as a registered Market Maker in order to extend its application to Futures-Linked Securities and Multifactor Index-Linked Securities to the extent that such securities are composed, in part, of Commodity, Currency, or Futures Reference Assets.[18]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange states that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that it has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–20 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–NYSEArca–2008–20. 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

[16] *See supra* note 13.

[17] The Exchange notes that not all of the instruments underlying Index-Linked Securities may trade on exchanges that are members or affiliate members of ISG.

[18] The Exchange states that Equity Index-Linked Securities and Fixed Income Index-Linked Securities are excluded from Commentary .01 to NYSE Arca Rule 5.2(j)(6) because such securities are subject to the requirements of NYSE Arca Equities Rule 7.26 (Limitations on Dealings).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

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–NYSEArca–2008–20 and should be submitted on or before April 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5793 Filed 3–21–08; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57515; File No. SR–Phlx–2008–21]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add the SIG Energy MLP Index™ to Rules 1101A and 1104A

March 18, 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 11, 2008, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add the new SIG Energy MLP Index™ (trading as SVO℠) to Phlx Rule 1101A (Terms of Options Contracts), regarding listing options at strike price intervals of no less than $2.50 for strike prices less than $200, and to Phlx Rule 1104A (SIG Indices, LLLP), which sets forth SIG Indices's disclaimer of express or implied warranties. The text of the proposed rule change is available on the Exchange's Web site (*http://www.phlx.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rules 1101A and 1104A to include the SIG Energy MLP Index™, which was recently licensed by SIG Indices, LLLP (''Susquehanna'') to the Exchange, and thereby allow (i) the Exchange to list the index at strike price intervals of no less than $2.50 for strike prices less than $200, and (ii) Susquehanna's disclaimer of liability for use of the index. The proposal to permit $2.50 strike price intervals should encourage the listing of options on the index at appropriate strike price intervals, to the benefit of investors. The proposed disclaimer should encourage maintenance of the SIG Energy MLP Index™ by Susquehanna, enabling the Exchange to continue to list options overlying the index.[5]

Phlx Rule 1101A currently indicates that the Exchange shall determine fixed point strike price intervals for index options at no less than $5.00, provided that for indexes that are listed in Rule 1101A the Exchange may determine to list strike prices at no less than $2.50 intervals if the strike price is less than $200.[6] The rule provides also that such options may be traded at $2.50 strike price intervals in response to customer interest or specialist request. The proposed rule change adds the SIG Energy MLP Index™ to the list of indexes in Rule 1101A upon which the Exchange may list options at $2.50 strike price intervals.

Phlx Rule 1104A currently provides that Susquehanna makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Susquehanna proprietary indexes,[7] and that Susquehanna makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to any of the named indexes or any data included therein.[8] The proposed rule change expands the coverage of Rule 1104A to include the newly-listed SIG Energy MLP Index™, as required by the License Agreement.

The Exchange believes that the proposal should benefit investors by

[5] The Exchange currently lists and trades options on the SIG Steel Producers Index™, the SIG Coal Producers Index™, the SIG Oil Exploration & Production Index™, and the newly-licensed SIG Energy MLP Index™ pursuant to a license agreement with Susquehanna Indices, LLLP (''License Agreement'') and Exchange Rule 1009A(b). All of the SIG Indexes noted herein are trademarks of SIG Indices, LLLP.

[6] *See* Securities Exchange Act Release No. 54973 (December 20, 2006), 71 FR 78252 (December 28, 2006) (SR–Phlx–2006–82).

[7] The indexes noted in Rule 1101A include the SIG Investment Managers Index™, the SIG Cable, Media & Entertainment Index™, the SIG Casino Gaming Index™, the SIG Semiconductor Equipment Index™, the SIG Semiconductor Device Index™, the SIG Specialty Retail Index™, the SIG Steel Producers Index™, the SIG Footwear & Athletic Index™, the SIG Education Index™, the SIG Restaurant Index™, and the SIG Coal Producers Index™.

[8] The Exchange noted in its filing to adopt Rule 1104A that the proposed disclaimer was appropriate given that it was similar to disclaimer provisions of American Stock Exchange (''Amex'') Rule 902C relating to indexes underlying options listed on Amex. *See* Securities Exchange Act Release No. 47937 (May 28, 2003), 68 FR 33555 (June 4, 2003) (SR–Phlx–2003–21). The Exchange subsequently amended Rule 1104A to add new indexes, similar to the current proposal. *See, e.g.*, Securities Exchange Act Release No. 51664 (May 6, 2005), 70 FR 25641 (May 13, 2005) (SR–Phlx–2005–24).

effectively encouraging the listing and trading of options on an additional Susquehanna index at more precise strike price intervals, thereby expanding the availability of appropriate investment choices for investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. The Exchange believes that the proposed rule change will encourage Susquehanna to continue to maintain the SIG Energy MLP Index™, enabling the Exchange to list options on the index and thereby provide investors with a wider range of investment opportunities. The proposed rule change should also give the Exchange the capability to price options on the SIG Energy MLP Index™ at $2.50 strike price intervals, thereby encouraging more efficient pricing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange currently trades options on the SIG Energy MLP Index, and would like to add the index to Rule 1104A without delay to grant Susquehanna comfort that its liability has been properly disclaimed for the index, as it has been for Susquehanna's other index products currently listed in Rule 1104A. This will encourage Susquehanna to continue to provide the index, allowing the Exchange to continue to list options on the index without interruption.[13]

The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.[14] Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2008–21 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2008–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–21 and should be submitted on or before April 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5797 Filed 3–21–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] Telephone conversation between Jurij Trypupenko, Director and Counsel, Phlx, and Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, on March 13, 2008.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Certain Companies Quoted on the Pink Sheets: NeoTactix Corporation Graystone Park Enterprises, Inc. Younger America, Inc.; Order of Suspension of Trading

March 20, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of the issuers listed below. As set forth below for each issuer, questions have arisen regarding the adequacy and accuracy of publicly disseminated information concerning, among other things: (1) The companies' current financial condition, (2) the companies' management, (3) the companies' business operations, and/or (4) stock promoting activity.

1. NeoTactix Corporation is a Nevada company with offices in Irvine, California. Questions have arisen regarding the adequacy and accuracy of statements in the company's press releases and promotional videos concerning the company's management, operations, current financial condition, transactions involving the issuance of the company's shares, and concerning stock promoting activity.

2. Graystone Park Enterprises, Inc. is a Colorado company with offices in Orlando, Florida. Questions have arisen regarding the adequacy and accuracy of press releases, promotional videos, and statements on the company's Web site concerning the company's current financial condition, operations, management, and concerning stock promoting activity.

3. Younger America, Inc. is a Nevada company with offices in Ft. Lauderdale, Florida. Questions have arisen regarding the adequacy and accuracy of press releases and promotional videos concerning the company's current financial condition, operations, management, transactions involving the issuance of the company's shares, and concerning stock promoting activity.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the companies listed above.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the companies listed above is suspended for the period from 9:30 a.m. EDT on March 20, 2008, through 11:59 p.m. EDT, on April 3, 2008.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 08–1070 Filed 3–21–08; 11:46 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11195]

Missouri Disaster #MO–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1748–DR), dated 03/12/2008.

Incident: Severe Winter Storms and Flooding.

Incident Period: 02/10/2008 through 02/14/2008.

Effective Date: 03/12/2008.

Physical Loan Application Deadline Date: 05/12/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/12/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bollinger, Butler, Cape Girardeau, Carter, Christian, Douglas, Greene, Madison, Mississippi, Ozark, Reynolds, Scott, Shannon, Stoddard, Texas, Wayne, Webster, Wright.

The Interest Rates are:

	Percent
Other (including non-profit organizations) with credit available elsewhere	5.250
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 11195.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–5814 Filed 3–21–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11167 and # 11168]

Tennessee Disaster Number TN–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1745–DR), dated 02/07/2008.

Incident: Severe Storms, Tornadoes, Straight-Line Winds, and Flooding.

Incident Period: 02/05/2008 through 02/06/2008.

Effective Date: 03/14/2008.

Physical Loan Application Deadline Date: 04/07/2008.

Eidl Loan Application Deadline Date: 11/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Tennessee, dated 02/07/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Haywood.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–5815 Filed 3–21–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6144]

Culturally Significant Objects Imported for Exhibition Determinations: ''Glass of the Alchemists: Lead Crystal-Gold Ruby''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Glass of the Alchemists: Lead Crystal-Gold Ruby'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Corning Museum of Glass, Corning, New York, from on or about June 27, 2008, until on or about January 4, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 17, 2008.

C. Miller Crouch,

Principal Deputy Assistant, Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–5891 Filed 3–21–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28055]

Demonstration Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice; request for public comment.

SUMMARY: The FMCSA announces and requests public comment on data and information concerning the Pre-Authority Safety Audits (PASAs) for motor carriers that have applied to participate in the Agency's project to demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the commercial zones on the U.S.-Mexico border. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.''

DATES: Comments must be received on or before April 8, 2008.

ADDRESSES: You may submit comments identified by FDMS Docket ID Number FMCSA–2007–28055 by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt, Division Chief, North American Borders Division, Telephone (202) 366–4049; e-mail *milt.schmidt@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond United States municipalities and commercial zones on the United States-Mexico border (border commercial zones).

Section 6901(b)(2)(B)(i) of the Act requires FMCSA to publish comprehensive data and information on the pre-authority safety audits (PASAs) conducted before and after the date of enactment of the Act of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. As of February 7, 2008, twelve carriers have been granted authority to operate beyond the border commercial zones as part of this cross-border demonstration project. However, FMCSA has chosen to publish for public comment data and information relating to all PASAs conducted as of February 7, 2008.

On October 17, 2007, FMCSA published PASA data for all motor carriers that had applied to participate in the demonstration project, based on information available as of October 9, 2007. The FMCSA announces that the following Mexico-domiciled motor carriers in Table 1 have successfully completed their PASAs and notice of this fact was published in the FMCSA Register after the publication of the October 17 notice:

TABLE 1

Row number in Tables 2 through 4 of the Appendix to today's notice	Name of carrier	USDOT No.
18	MANUEL ENCINAS TERAN	654499
21	ABELARDO TRAHIN	682402
23	TRANSPORTADORA TERRESTRE SA DE CV	711276
24	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282
27	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089
33	TRANSPORTES SOTO E HIJOS SA DE C V	824454
35	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744
38	MARTIN KLASSEN KLASSEN	883602
42	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841
44	WORLD TRAFFIC DE MEXICO SA DE CV	1041549
55	MARIA DE LOS ANGELES RAMIREZ	1162107
58	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357
59	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185
60	MARIA ISABEL MENDIVIL VELARDE	1548345
62	TRANSLOGISTICA SA DE CV	1677817
63	OSCAR ARTURO GRAGEDA DUARTE	1693389

The FMCSA includes as an appendix to this **Federal Register** notice, data and information on the PASAs for which the motor carrier successfully completed the process before the enactment of the Act, and any completed since then. See Tables 2, 3, and 4 in the appendix. The appendix also includes information about carriers that failed the PASA in Table 5. Although failure to successfully complete the PASA precludes their participation in the project and the Act only requires publication of data for carriers receiving operating authority, FMCSA is publishing this information to show that two motor carriers, in addition to the 26 motor carriers published on October 17, have failed to meet U.S. safety standards. A narrative description of each column heading contained within the appendix's Tables 2, 3, and 4, ''Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008'' as well as in Table 5 ''Failed Pre-Authority Safety Audit (PASA) Information as of February 7, 2008,'' is provided below:

A. *Row Number in the Appendix:* The line in the table on which all the PASA information concerning the motor carrier is presented.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the cross-border demonstration project.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the power unit. If granted provisional operating authority, the Mexico domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number.

D. *PASA Scheduled:* The date the PASA was scheduled to be initiated.

E. *PASA Completed:* The date the PASA was completed.

F. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office Supervisor of the Auditor assigned to conduct the PASA and the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. The dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

G. *FMCSA Register:* The date the FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

H. *U.S. Drivers:* The total number of drivers the motor carrier intends to use in the United States.

I. *U.S. Vehicles:* The total number of power units the motor carrier intends to operate in the United States.

J. *Passed Verification 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40;

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify proof of financial responsibility;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor.

K. *If No, Which Element Failed:* If FMCSA could not verify one or more of the five mandatory elements outlined in 49 CFR part 365, appendix A, section III, this column will specify which mandatory element(s) could not be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item J above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so

severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, appendix B, section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

Factor 5 relates to the transportation of hazardous materials and was omitted below, as Mexico-domiciled motor carriers that transport hazardous materials are not permitted to participate in the cross-border demonstration project.

L. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in Part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in Parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

M. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in Parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

N. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in Parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

O. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in Parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

P. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: A fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Q. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units and trailers) the motor carrier intends to operate in the United States that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all vehicles that did not display a current Commercial Vehicle Safety Alliance (CVSA) inspection decal. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection decal as a result of a passed inspection.

R. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units and trailers) the motor carrier intends to operate in the United States that received a CVSA inspection decal as a result of an inspection during the PASA.

S. *Number U.S. Vehicles with Current CVSA Decal:* The total number of vehicles (power units and trailers) the motor carrier intends to operate in the United States that displayed a current CVSA inspection decal at the time of the PASA.

T. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier who has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

U. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the U.S. controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

Request for Comments

In accordance with the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, FMCSA requests public comment from all interested persons on the PASA information presented in the appendix to this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: March 17, 2008.

John H. Hill,

Administrator.

BILLING CODE 4910–EX–P

Table 2 - Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008 (see also Tables 3 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Scheduled	Column E - PASA Completed	Column F - PASA Result	Column G - FMCSA Register	Column H - Drivers Identified Who Motor Carrier Intends to Operate in the United States	Column I - Vehicles Identified That Motor Carrier Intends to Operate in the United States
1	JUAN MARTIN RAMIREZ AMEZ	264875	3/19/2007	3/29/2007	Passed	4/20/2007	15	16
2	FERNANDO PAEZ TREVINO	555188	2/22/2007	2/22/2007	Passed	3/2/2007	2	2
3	ARTEMIO GUERRERO ZAVALA	555995	9/5/2007	9/5/2007	Passed	10/16/2007	3	1
4	DAVID KLASSEN PETERS	556741	3/14/2007	3/14/2007	Passed	5/7/2007	1	2
5	LUIS EUSEBIO SALGADO ESQUER	557042	3/6/2007	3/6/2007	Passed	4/5/2007	6	5
6	GUADALUPE OCON & RUFUGIO ROMO SAUCEDO	557217	7/17/2007	7/17/2007	Passed	10/17/2007	1	1
7	JORGE EDUARDO VALENZUELA MORENO	557969	3/28/2007	3/28/2007	Passed	4/18/2007	1	1
8	LUCIANO PADILLA MARTINEZ	557972	4/3/2007	4/4/2007	Passed	4/20/2007	3	3
9	FRANCISCA BURGOS VIZCARRA	558189	3/12/2007	3/15/2007	Passed	4/19/2007	12	10
10	RICARDO CESAR MARTINEZ MONTEMAYOR	559560	2/22/2007	2/22/2007	Passed	3/10/2007	4	1
11	ORLANDO NEVID LOPEZ HERNANDEZ	559947	3/16/2007	3/16/2007	Passed	4/20/2007	1	1
12	JOSE DAVID RUVALCABA ADAME	563815	6/13/2007	6/13/2007	Passed	10/4/2007	1	1
13**	TRINITY INDUSTRIES DE MÉXICO, S. DE R.L. DE C.V.	610385	9/10/2007	9/13/2007	Passed	9/28/2007	14	16
14	ALFREDO SOLORIO TOLENTINO	635221	3/13/2007	3/13/2007	Passed	4/18/2007	6	6
15	GCC TRANSPORTE, S.A. DE C.V.	650155	7/19/2007	7/20/2007	Passed	8/10/2007	13	13
16	TRANSPORTES RAFA DE BAJA CALIFORNIA, S.A. DE C.V.	650383	3/26/2007	3/29/2007	Passed	9/5/2007	3	2
17	RAUL SOLORIO ORTIZ	650954	5/22/2007	5/30/2007	Passed	7/5/2007	4	2
18*	MANUEL ENCINAS TERAN	654499	10/22/2007	10/22/2007	Passed	1/25/2008	1	1
19	MOISES ALVAREZ PEREZ	677516	8/21/2007	8/21/2007	Passed	10/16/2007	1	1
20	FLETES GARIBAY S.A. DE C.V.	677669	3/14/2007	3/16/2007	Passed	4/18/2007	3	4
21*	ABELARDO TRAHIN	682402	8/20/2007	8/22/2007	Passed	11/23/2007	3	3
22	HIGIENICOS Y DESECHABLES DEL BAJIO, S.A. DE C.V.	710491	4/17/2007	4/19/2007	Passed	5/7/2007	3	3
23*	TRANSPORTADORA TERRESTRE SA DE CV	711276	10/24/2007	10/25/2007	Passed	11/21/2007	6	10
24*	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282	10/22/2007	10/25/2007	Passed	11/21/2007	4	4
25	SERVICIOS DE TRANSPORTACION JAGUAR S.A.	721671	3/15/2007	3/15/2007	Passed	5/7/2007	18	42
26	VERONICA GONZALEZ & GILBERTO GONZALEZ NUNO	736405	8/30/2007	8/30/2007	Passed	10/16/2007	4	2
27*	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089	9/18/2007	9/27/2007	Passed	12/3/2007	12	13
28	HOMERO BELTRAN AND ALFONSO DEL REAL MONTOYA	777182	3/12/2007	3/14/2007	Passed	4/17/2007	3	4
29	NOE BASILIO MONTIEL	786826	9/13/2007	9/14/2007	Passed	10/16/2007	5	2
30	QNW DE BAJA SA DE CV	791091	8/28/2007	8/28/2007	Passed	10/4/2007	1	1

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice.
** - Trinity Industries do Mexico, S. de R.L. de C.V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

Table 2 - Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008 (see also Tables 3 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Scheduled	Column E - PASA Completed	Column F - PASA Result	Column G - FMCSA Register	Column H - Drivers Identified Who Motor Carrier Intends to Operate in the United States	Column I - Vehicles Identified Who Motor Carrier Intends to Operate in the United States
31	MATEO CARDENAS ARROYO AND GUSTAVO VEGA	812869	4/17/2007	4/17/2007	Passed	5/7/2007	13	12
32	FRANCISCO ULLOA MONTANO	817872	4/2/2007	4/10/2007	Passed	4/25/2007	7	7
33*	TRANSPORTES SOTO E HIJOS S A DE C V	824454	10/22/2007	10/25/2007	Passed	11/8/2007	10	27
34	HECTOR OBETH PIMENTEL GUERRERO	845669	5/1/2007	5/4/2007	Passed	6/20/2007	5	1
35*	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744	11/6/2007	11/7/2007	Passed	12/20/2007	2	4
36	JUAN MANUEL MALDONADO TOPETE	879793	4/3/2007	4/4/2007	Passed	5/29/2007	3	3
37	RICARDO BRAVO MAR AND JACK CLAYTON CASNER	880852	4/17/2007	4/18/2007	Passed	5/4/2007	5	5
38*	MARTIN KLASSEN KLASSEN	883602	8/21/2007	8/21/2007	Passed	12/12/2007	2	2
39	EDS INTERNACIONAL SA DE CV	924559	8/20/2007	9/4/2007	Passed	9/25/2007	2	1
40	OSCAR HILARIO MARTINEZ	947058	7/17/2007	7/19/2007	Passed	8/15/2007	2	2
41	ROBERTO MONTEMAYOR CRUZ	951134	3/27/2007	3/28/2007	Passed	6/4/2007	2	2
42*	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841	10/22/2007	10/24/2007	Passed	11/21/2007	1	1
43	FIDEPAL S DE RL DE IP Y CV	975522	8/28/2007	8/29/2007	Passed	10/16/2007	1	1
44*	WORLD TRAFFIC DE MEXICO SA DE CV	1041549	1/10/2008	1/10/2008	Passed	2/7/2008	4	1
45	SERVICIOS REFRIGERADOS INTERNACIONALES SA DE CV	1052546	3/22/2007	3/22/2007	Passed	5/7/2007	5	5
46	MEXICANA DE TRASLADOS CALDERON SA DE CV	1054803	3/20/2007	3/21/2007	Passed	5/7/2007	1	2
47	MARIA DEL CARMEN LOPEZ ARMENTA	1055053	4/3/2007	4/4/2007	Passed	4/20/2007	1	1
48	TRANSPORTES MONTEBLANCO SA DE CV	1059694	3/13/2007	3/13/2007	Passed	5/7/2007	2	1
49	EDMUNDO JESUS GUAJARDO BURSIAN	1068315	3/28/2007	3/28/2007	Passed	5/7/2007	1	1
50	RICARDO JAIDREL RODRIGUEZ BOGARIN & DANIEL CARRILLO RODRIGUEZ	1068792	4/4/2007	4/5/2007	Passed	5/1/2007	4	4
51	JOSE ANAYA ROMERO	1080131	4/25/2007	4/25/2007	Passed	5/29/2007	1	1
52	MARIA DEL SOCORRO VALERIO LIZCANO	1082863	3/6/2007	3/6/2007	Passed	5/7/2007	1	1
53	TRANSPORTES DE CARGA SANTOYO SA DE CV	1106825	4/18/2007	4/20/2007	Passed	5/8/2007	3	3
54	AVOMEX INTERNACIONAL SA DE CV	1142107	8/28/2007	8/30/2007	Passed	11/9/2007	6	6
55*	MARIA DE LOS ANGELES RAMIREZ	1162107	9/10/2007	9/10/2007	Passed	12/11/2007	2	9
56	AGUIRRE RAMOS JORGE LUIS	1286830	7/10/2007	7/10/2007	Passed	5/8/2007	1	1
57	MARCO VINICIO PINEDA VILLEGAS	1292413	4/24/2007	4/24/2007	Passed	5/29/2007	1	1
58*	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357	9/11/2007	9/13/2007	Passed	10/16/2007	2	2
59*	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185	10/2/2007	10/2/2007	Passed	10/25/2007	1	1
60*	MARIA ISABEL MENDIVIL VELARDE	1548345	10/24/2007	10/24/2007	Passed	11/8/2007	2	9
61	TRANSPORTES SELG SA DE CV	1658656	9/25/2007	9/27/2007	Passed	10/16/2007	5	8
62*	TRANSLOGISTICA SA DE CV	1677817	10/24/2007	10/25/2007	Passed	11/21/2007	1	2
63*	OSCAR ARTURO GRAGEDA DUARTE	1693389	12/5/2007	12/6/2007	Passed	12/20/2007	4	4
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	Number of Drivers and Vehicles Which Mexico-Domiciled Motor Carriers Intend to Operate in the United States That Have Passed a Pre-Authority Safety Audit						257	304

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice.

Table 3 - Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008 (see also Tables 2 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied	Column L - Passed Phase 2 Factor 1	Column M - Passed Phase I Factor 2	Column N - Passed Phase I Factor 3	Column O - Passed Phase I Factor 4	Column P - Passed Phase I Factor 6
1	JUAN MARTIN RAMIREZ AMEZ	264875	YES		YES	YES	YES	YES	YES
2	FERNANDO PAEZ TREVINO	555188	YES		YES	YES	YES	YES	YES
3	ARTEMIO GUERRERO ZAVALA	555995	YES		YES	YES	YES	YES	YES
4	DAVID KLASSEN PETERS	556741	YES		YES	YES	YES	YES	YES
5	LUIS EUSEBIO SALGADO ESQUER	557042	YES		YES	YES	YES	YES	YES
6	GUADALUPE OCON & RUFUGIO ROMO SAUCEDO	557217	YES		YES	YES	YES	YES	YES
7	JORGE EDUARDO VALENZUELA MORENO	557969	YES		YES	YES	YES	YES	YES
8	LUCIANO PADILLA MARTINEZ	557972	YES		YES	YES	YES	YES	YES
9	FRANCISCA BURGOS VIZCARRA	558189	YES		YES	YES	YES	YES	YES
10	RICARDO CESAR MARTINEZ MONTEMAYOR	559560	YES		YES	YES	YES	YES	YES
11	ORLANDO NEVID LOPEZ HERNANDEZ	559947	YES		YES	YES	YES	YES	YES
12	JOSE DAVID RUVALCABA ADAME	563815	YES		YES	YES	YES	YES	YES
13**	TRINITY INDUSTRIES DE MÉXICO, S. DE R.L. DE C.V.	610385	YES		YES	YES	YES	YES	YES
14	ALFREDO SOLORIO TOLENTINO	635221	YES		YES	YES	YES	YES	YES
15	GCC TRANSPORTE, S.A. DE C.V.	650155	YES		YES	YES	YES	YES	YES
16	TRANSPORTES RAFA DE BAJA CALIFORNIA, S.A. DE C.V.	650383	YES		YES	YES	YES	YES	YES
17	RAUL SOLORIO ORTIZ	650954	YES		YES	YES	YES	YES	YES
18*	MANUEL ENCINAS TERAN	654499	YES		YES	YES	YES	YES	YES
19	MOISES ALVAREZ PEREZ	677516	YES		YES	YES	YES	YES	YES
20	FLETES GARIBAY S.A. DE C.V.	677669	YES		YES	YES	YES	YES	YES
21*	ABELARDO TRAHIN	682402	YES		YES	YES	YES	YES	YES
22	HIGIENICOS Y DESECHABLES DEL BAJIO, S.A. DE C.V.	710491	YES		YES	YES	YES	YES	YES
23*	TRANSPORTADORA TERRESTRE SA DE CV	711276	YES		YES	YES	YES	YES	YES
24*	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282	YES		YES	YES	YES	YES	YES
25	SERVICIOS DE TRANSPORTACION JAGUAR S.A.	721671	YES		YES	YES	YES	YES	YES
26	VERONICA GONZALEZ & GILBERTO GONZALEZ NUNO	736405	YES		YES	YES	YES	YES	YES
27*	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089	YES		YES	YES	YES	YES	YES
28	HOMERO BELTRAN AND ALFONSO DEL REAL MONTOYA	777182	YES		YES	YES	YES	YES	YES
29	NOE BASILIO MONTIEL	786826	YES		YES	YES	YES	YES	YES
30	QNW DE BAJA SA DE CV	791091	YES		YES	YES	YES	YES	YES

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice.

** - Trinity Industries do Mexico, S. de R.L. de C.V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

Table 3 - Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008 (see also Tables 2 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied	Column L - Passed Phase 2 Factor 1	Column M - Passed Phase I Factor 2	Column N - Passed Phase I Factor 3	Column O - Passed Phase I Factor 4	Column P - Passed Phase I Factor 6
31	MATEO CARDENAS ARROYO AND GUSTAVO VEGA	812869	YES		YES	YES	YES	YES	YES
32	FRANCISCO ULLOA MONTANO	817872	YES		YES	NO	YES	YES	YES
33*	TRANSPORTES SOTO E HIJOS S A DE C V	824454	YES		YES	YES	YES	YES	YES
34	HECTOR OBETH PIMENTEL GUERRERO	845669	YES		YES	YES	YES	YES	YES
35*	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744	YES		YES	YES	YES	YES	YES
36	JUAN MANUEL MALDONADO TOPETE	879793	YES		YES	YES	YES	YES	YES
37	RICARDO BRAVO MAR AND JACK CLAYTON CASNER	880852	YES		YES	YES	YES	YES	YES
38*	MARTIN KLASSEN KLASSEN	883602	YES		YES	YES	YES	YES	YES
39	EDS INTERNACIONAL SA DE CV	924559	YES		YES	YES	YES	YES	YES
40	OSCAR HILARIO MARTINEZ	947058	YES		YES	YES	YES	YES	YES
41	ROBERTO MONTEMAYOR CRUZ	951134	YES		YES	YES	YES	YES	YES
42*	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841	YES		YES	YES	YES	YES	YES
43	FIDEPAL S DE RL DE IP Y CV	975522	YES		YES	YES	YES	YES	YES
44*	WORLD TRAFFIC DE MEXICO SA DE CV	1041549	YES		YES	YES	YES	YES	YES
45	SERVICIOS REFRIGERADOS INTERNACIONALES SA DE CV	1052546	YES		YES	YES	YES	YES	YES
46	MEXICANA DE TRASLADOS CALDERON SA DE CV	1054803	YES		YES	YES	YES	YES	YES
47	MARIA DEL CARMEN LOPEZ ARMENTA	1055053	YES		YES	YES	YES	YES	YES
48	TRANSPORTES MONTEBLANCO SA DE CV	1059694	YES		YES	YES	YES	YES	YES
49	EDMUNDO JESUS GUAJARDO BURSIAN	1068315	YES		YES	YES	YES	YES	YES
50	RICARDO JAIDREL RODRIGUEZ BOGARIN & DANIEL CARRILLO RODRIGUEZ	1068792	YES		YES	YES	YES	YES	YES
51	JOSE ANAYA ROMERO	1080131	YES		YES	YES	YES	YES	YES
52	MARIA DEL SOCORRO VALERIO LIZCANO	1082863	YES		YES	YES	YES	YES	YES
53	TRANSPORTES DE CARGA SANTOYO SA DE CV	1106825	YES		YES	YES	YES	YES	YES
54	AVOMEX INTERNACIONAL SA DE CV	1142107	YES		YES	YES	YES	YES	YES
55*	MARIA DE LOS ANGELES RAMIREZ	1162107	YES		YES	YES	YES	YES	YES
56	AGUIRRE RAMOS JORGE LUIS	1286830	YES		YES	YES	YES	YES	YES
57	MARCO VINICIO PINEDA VILLEGAS	1292413	YES		YES	YES	YES	YES	YES
58*	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357	YES		YES	YES	YES	YES	YES
59*	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185	YES		YES	YES	YES	YES	YES
60*	MARIA ISABEL MENDIVIL VELARDE	1548345	YES		YES	YES	YES	YES	YES
61	TRANSPORTES SELG SA DE CV	1658656	YES		YES	YES	YES	YES	YES
62*	TRANSLOGISTICA SA DE CV	1677817	YES		YES	YES	YES	YES	YES
63*	OSCAR ARTURO GRAGEDA DUARTE	1693389	YES		YES	YES	YES	YES	YES

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice.

Table 4 - Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008 (see also Tables 2 and 3)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column Q - Number US Vehicles Inspected That Carrier Intends to Operate in the US	Column R - Number US Vehicles issued CVSA Decal That Carrier Intends to Operate in the US	Column S - Number US Vehicles with current CVSA Decal That Carrier Intends to Operate in the US	Column T - Controlled Substances Collection	Column U - Name of Controlled Substances and Alcohol Collection Facility
1	JUAN MARTIN RAMIREZ AMEZ	264875	2	13	0	US	Behavior Research, San Diego, CA
2	FERNANDO PAEZ TREVINO	555188	4	4	0	US	In-House Random Selections-LabCorp, Houston, TX
3	ARTEMIO GUERRERO ZAVALA	555995	1	1	0	NON CDL ***	Not Applicable
4	DAVID KLASSEN PETERS	556741	2	2	0	US	Access Drug Testing Inc, El Paso, TX
5	LUIS EUSEBIO SALGADO ESQUER	557042	1	1	4	US	Behavior Research, San Diego, CA
6	GUADALUPE OCON & RUFUGIO ROMO SAUCEDO	557217	0	0	1	US	Ruiz & Associates, Imperial, CA
7	JORGE EDUARDO VALENZUELA MORENO	557969	2	2	0	US	Ruiz & Associates, Imperial, CA
8	LUCIANO PADILLA MARTINEZ	557972	0	0	6	US	Ruiz & Associates, Imperial, CA
9	FRANCISCA BURGOS VIZCARRA	558189	2	0	8	US	USIS/UIS, Calexico, CA
10	RICARDO CESAR MARTINEZ MONTEMAYOR	559560	2	1	0	US	The Center of Industrial Rehabilitation Services, Mission TX
11	ORLANDO NEVID LOPEZ HERNANDEZ	559947	2	1	0	US	Ruiz & Associates, Imperial, CA
12	JOSE DAVID RUVALCABA ADAME	563815	0	0	0	US	Ruiz & Associates, San Diego, CA
13**	TRINITY INDUSTRIES DE MÉXICO, S DE R L DE C V	610385	25	25	0	US	CAD Services, Eagle Pass, TX
14	ALFREDO SOLORIO TOLENTINO	635221	0	0	6	US	Valley Testing, El Centro, CA
15	GCC TRANSPORTE, S A DE C V	650155	17	11	20	US	Ritech- El Paso, TX
16	TRANSPORTES RAFA DE BAJA CALIFORNIA, S A DE C V	650383	9	7	3	US	Ruiz & Associates, Imperial, CA
17	RAUL SOLORIO ORTIZ	650954	2	1	3	US	Ruiz & Associates, San Diego, CA
18*	MANUEL ENCINAS TERAN	654499				NON CDL ***	Not Applicable
19	MOISES ALVAREZ PEREZ	677516	0	0	1	US	Ruiz & Associates, El Centro, CA
20	FLETES GARIBAY S A DE C V.	677669	1	1	8	US	Ruiz & Associates, Imperial, CA
21*	ABELARDO TRAHIN	682402	7	7	3	US	Behavior Research, San Diego, CA
22	HIGIENICOS Y DESECHABLES DEL BAJIO, S A DE C V	710491	3	0	0	US	Ruiz & Associates, Imperial, CA
23*	TRANSPORTADORA TERRESTRE SA DE CV	711276	10	10	0	MX	Quest De Mexico, Mexico DF
24*	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282	9	9	0	MX	Quest De Mexico, Mexico DF
25	SERVICIOS DE TRANSPORTACION JAGUAR S A	721671	36	36	0	US	Laredo Urgent Care, Laredo, TX
26	VERONICA GONZALEZ & GILBERTO GONZALEZ NUNO	736405	0	0	2	NON CDL ***	Not Applicable
27*	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089	24	4	4	US	Behavior Research, San Diego, CA
28	HOMERO BELTRAN AND ALFONSO DEL REAL MONTOYA	777182	4	3	1	US	Ruiz & Associates, Imperial, CA
29	NOE BASILIO MONTIEL	786826	1	1	1	NON CDL ***	Not Applicable
30	QNW DE BAJA SA DE CV	791091	0	0	1	NON CDL ***	Not Applicable

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice.

** - Trinity Industries do Mexico, S de R L de C V withdrew from the Cross-Border Demonstration Project effective February 1, 2008

*** - NON CDL - This acronym means the Mexico-domicled drivers are not subject to controlled substances and alcohol testing requirements as required by 49 U S C 31306 Such drivers are not subject to testing because the vehicles the Mexico-domiciled motor carrier intends to operate in the United States are not of a size or operating in such a manner requiring the operator to hold a commercial driver's license (CDL) as required by 49 U S C 31301 et seq. The statute, 49 U S C 31306, treats U S -, Canada-, and Mexico-domiciled motor carriers and drivers exactly the same way with respect to controlled substances and alchol testing requirements for light-and medium-duty truck and truck-tractor vehicles, if the drivers only operate vehicles not requiring a CDL to operate the vehicles

Table 4 - Successful Pre-Authority Safety Audit (PASA) Information as of February 7, 2008 (see also Tables 2 and 3)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column Q - Number US Vehicles Inspected Which Carrier Intends to Operate in the US	Column R - Number US Vehicles issued CVSA Decal Which Carrier Intends to Operate in the US	Column S - Number US Vehicles with current CVSA Decal Which Carrier Intends to Operate in the US	Column T - Controlled Substances Collection	Column U - Name of Controlled Substances and Alcohol Collection Facility
31	MATEO CARDENAS ARROYO AND GUSTAVO VEGA	812869	0	0	9	US	Ruiz & Associates, Imperial, CA
32	FRANCISCO ULLOA MONTANO	817872	3	2	0	US	Ruiz & Associates, Imperial, CA
33*	TRANSPORTES SOTO E HIJOS S A DE C V	824454	27	27	0	MX	Quest Diagnostics Mexico SA DE CV, Blvd Gomez Morin # 7765, Juarez, CL (656)668-0630
34	HECTOR OBETH PIMENTEL GUERRERO	845669	0	0	0	US	Valley Testing, El Centro, CA
35*	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744	0	0	5	US	Ruiz & Associates, San Diego, CA
36	JUAN MANUEL MALDONADO TOPETE	879793	0	0	5	US	Ruiz & Associates, Imperial, CA
37	RICARDO BRAVO MAR AND JACK CLAYTON CASNER	880852	4	4	6	US	Ruiz & Associates, Imperial, CA
38*	MARTIN KLASSEN KLASSEN	883602	5	5	0	US	Ritech- El Paso, TX
39	EDS INTERNACIONAL SA DE CV	924559	1	1	0	NON CDL ***	Not Applicable
40	OSCAR HILARIO MARTINEZ	947058	1	1	1	US	CAD Services, Eagle Pass, TX
41	ROBERTO MONTEMAYOR CRUZ	951134	4	4	0	US	A&C Drug & Alcohol Screening, Pharr, TX
42*	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841	3	3	0	US	Concentra Medical Center, El Paso TX
43	FIDEPAL S DE RL DE IP Y CV	975522	1	1	0	US	Safetynet Motor Carrier Services, Brownsville, TX
44*	WORLD TRAFFIC DE MEXICO SA DE CV	1041549	1	1	0	US	Ruiz & Associates, El Centro, CA
45	SERVICIOS REFRIGERADOS INTERNACIONALES SA DE CV	1052546	5	5	3	US	Ruiz & Associates, Imperial, CA
46	MEXICANA DE TRASLADOS CALDERON SA DE CV	1054803	2	1	0	US	Analytical Group, Inc , Brownsville, TX
47	MARIA DEL CARMEN LOPEZ ARMENTA	1055053	1	0	0	US	Ruiz & Associates, Imperial, CA
48	TRANSPORTES MONTEBLANCO SA DE CV	1059694	2	2	0	US	Laredo Examiners Inc , Laredo, TX
49	EDMUNDO JESUS GUAJARDO BURSIAN	1068315	1	1	0	US	CAD Services, Eagle Pass, TX
50	RICARDO JAIDREL RODRIGUEZ BOGARIN & DANIEL CARRILLO RODRIGUEZ	1068792	7	4	0	US	Behavior Research, San Diego, CA
51	JOSE ANAYA ROMERO	1080131	0	0	0	NON CDL ***	Not Applicable
52	MARIA DEL SOCORRO VALERIO LIZCANO	1082863	1	1	0	NON CDL ***	Not Applicable
53	TRANSPORTES DE CARGA SANTOYO SA DE CV	1106825	0	0	5	US	Ruiz & Associates, Imperial, CA
54	AVOMEX INTERNACIONAL SA DE CV	1142107	12	9	3	US	CAD Services, Eagle Pass, TX
55*	MARIA DE LOS ANGELES RAMIREZ	1162107	12	12	0	US	Confidential Drug Testing, El Paso, TX
56	AGUIRRE RAMOS JORGE LUIS	1286830	2	2	0	US	Ruiz & Associates, San Diego, CA
57	MARCO VINICIO PINEDA VILLEGAS	1292413	0	0	2	US	Ruiz & Associates, Imperial, CA
58*	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357	4	4	0	US	Confidential Drug Testing, El Paso, TX
59*	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185	1	1	1	US	Ruiz & Associates, San Diego, CA
60*	MARIA ISABEL MENDIVIL VELARDE	1548345	8	8	1	US	J2 Labs, Tucson, AZ
61	TRANSPORTES SELG SA DE CV	1658656	14	7	0	US	CMI, Pharr TX
62*	TRANSLOGISTICA SA DE CV	1677817	4	4	0	MX	Quest De Mexico, Mexico DF
63*	OSCAR ARTURO GRAGEDA DUARTE	1693389	8	8	0	US	Frank Chavez Health Center, El Paso, TX

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice

** - Trinity Industries do Mexico, S de R.L de C V withdrew from the Cross-Border Demonstration Project effective February 1, 2008

*** - NON CDL - This acronym means the Mexico-domiciled drivers are not subject to controlled substances and alcohol testing requirements as required by 49 U S C. 31306 Such drivers are not subject to testing because the vehicles the Mexico-domiciled motor carrier intends to operate in the United States are not of a size or operating in such a manner requiring the operator to hold a commercial driver's license (CDL) as required by 49 U S C 31301 et seq The statute, 49 U S C 31306, treats U.S -, Canada-, and Mexico-domiciled motor carriers and drivers exactly the same way with respect to controlled substances and alchol testing requirements for light-and medium-duty truck and truck-tractor vehicles, if the drivers only operate vehicles not requiring a CDL to operate the vehicles

Table 5 - Failed Pre-Authority Safety Audit (PASA) Information as of February 7, 2008

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Scheduled	Column F - PASA Result	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied
1	TRANSPORTES SALO SA DE CV	556406	9/10/2007	Failed	NO	Footnote 3
2	ISAIAS VENEGAS CABRAL	556751	3/27/2007	Failed	NO	Footnote 3
3*	JAVIER TORRES & JUAN GOMEZ ALVAREZ	626469	10/3/2007	Failed	NO	Footnote 1
4	ANGEL GUERRERO FLORES	665858	8/13/2007	Failed	NO	Footnotes 2 and 5
5	JESUS PIMENTEL JIMENEZ	667250	4/23/2007	Failed	NO	Footnotes 1, 2, 4 and 5
6	ARMANDO ULLOA VENEGAS	677291	8/27/2007	Failed	NO	Footnote 5
7	MADERAS NAVACHISTE SA DE CV	683397	6/13/2007	Failed	NO	Footnote 5
8	CESAR HIGUERA VILLAVICENCIO	802447	9/11/2007	Failed	NO	Footnote 3
9	SISTEMAS DE RIEGO DEL NORTE SA DE CV	822291	3/27/2007	Failed	NO	Footnote 3
10	ATAUDES DE LA FRONTERA SA DE CV	845972	9/11/2007	Failed	NO	Footnote 5
11	RODOLFO GONZALEZ MARTINEZ	905680	7/11/2007	Failed	NO	Footnote 5
12	ALMA AURORA VILLARREAL HUERTA	924237	7/18/2007	Failed	NO	Footnotes 1, 2, 3, 4 and 5
13	SEMILLAS COSECHA DE ORO SA DE CV	1039175	8/28/2007	Failed	NO	Footnotes 3, 4 and 5
14	JACOB DYCK FRIESSEN	1040520	8/28/2007	Failed	NO	Footnote 3
15	MADERAS Y MATERIALES, JR S. A. DE C.V.	1054019	7/26/2007	Failed	NO	Footnote 3
16	JUAN GARZA REYNA	1060682	8/7/2007	Failed	NO	Footnote 5
17	CARLOS FERNANDEZ VILLARREAL	1065224	7/18/2007	Failed	NO	Footnotes 1, 2, 3, 4 and 5
18	CARPINTERIA HERMANOS CORRAL S DE RL MI	1067592	8/23/2007	Failed	NO	Footnotes 1, 2, 3, 4 and 5
19	BENJAMIN DE LA TORRE QUIRARTE	1069031	3/28/2007	Failed	NO	Footnotes 1 and 3
20	COMERCIALIZACION Y SERVICIO DE NOGALES SA DE CV	1083756	6/14/2007	Failed	NO	Footnote 5
21	JOSE EDUARDO VELASCO ROBLES	1094184	8/9/2007	Failed	NO	Footnote 3
22	DANIEL ACOSTA	1101328	7/11/2007	Failed	NO	Footnotes 4 and 5
23*	JESUS ERNESTO FIGUEROA CARRANZA	1114825	8/13/2007	Failed	NO	Footnote 2
24	FAB DE CHOCOLATES LA POPULAR SA DE CV	1147667	8/7/2007	Failed	NO	Footnotes 1, 2 and 4
25	LA OTRA DEL OJINAGA SA DE CV	1159371	3/11/2007	Failed	NO	Footnote 3
26	MORALES GONZALEZ JOSE JESUS	1227541	4/16/2007	Failed	NO	Footnotes 2 and 4
27	JUVENTINO SANTILLAN DE LEON	1289339	6/25/2007	Failed	NO	Footnotes 1, 2, 3 and 4
28	TEKPOL SA DE CV	1368600	9/12/2007	Failed	NO	Footnote 5

Legend for Column K	If Motor Carrier Failed Pre-Authority Safety Audit, Which Element Failed:
Footnote 1	Maintenance files and Annual Inspection of Motor Vehicles
Footnote 2	Driver Qualification
Footnote 3	Controlled Substances and Alcohol Testing
Footnote 4	Hours-of-Service of Drivers
Footnote 5	Financial Responsibility (Insurance or Surety Bond)

* - This motor carrier is an additional applicant which failed the Pre-Authority Safety Audit after the October 17, 2007, Federal Register Notice.

[FR Doc. E8–5722 Filed 3–21–08; 8:45 am]

BILLING CODE 4910–EX–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID: FMCSA–2008–0021]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 28 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before April 23, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2008–0021 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 28 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Gerald L. Anderson

Mr. Anderson, age 60, has had loss of vision in his left eye due to a macular scar since 1993. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/300. Following an examination in 2007, his optometrist noted, ''Reviewing the results of the exam, I believe he has sufficient vision to operate a commercial vehicle.'' Mr. Anderson reported that he has driven buses for 10 years, accumulating 341,500 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leo G. Becker

Mr. Becker, 30, has retinal scaring in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/150. Following an examination in 2008, his optometrist noted, ''In my opinion, Mr. Becker should have no visual reason why he can not operate a commercial vehicle.'' Mr. Becker reported that he has driven straight trucks 6 years, accumulating 156,000 miles. He holds a Class C operator's license from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Delmas C. Bergdoll

Mr. Bergdoll, 60, has had loss of vision in his right eye due to a traumatic injury sustained in 2004. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2007, his optometrist noted, '' I certify, in my opinion that Delmas Bergdoll has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bergdoll reported that he has driven straight trucks for 37 years, accumulating 2.4 million miles, and tractor-trailer combinations for 37 years, accumulating 2.4 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stanley W. Davis

Mr. Davis, 52, has a macular scar in his right eye due to a traumatic injury since childhood. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/15. Following an examination in 2007, his optometrist noted, ''It is my expert opinion that Mr. Davis' vision is sufficient enough to safely operate a commercial vehicle.'' Mr. Davis reported that he has driven straight trucks for 18 years, accumulating 225,000 miles, and tractor-trailer combinations for 31 years, accumulating 3.3 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Marvin T. Fowler

Mr. Fowler, 57, has had ambylopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/25. Following an examination in 2007, his

optometrist noted, ''In my opinion, Mr. Fowler currently has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Fowler reported that he has driven tractor-trailer combinations for 20 years, accumulating 3.2 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Sean O. Feeny

Mr. Feeny, 44, has a retinal scar in his left eye due to an infection since 1980. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/60. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Feeny has sufficient vision to operate a commercial vehicle.'' Mr. Feeny reported that he has driven straight trucks for 3 years, accumulating 75,000 miles, and tractor-trailer combinations for 4 months, accumulating 25,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael J. Frein

Mr. Frein, 47, has glaucoma, histoplasmasis, and retinal detachment since 1999. The best corrected visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Frein does have sufficient enough vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Frein reported that he has driven straight trucks for 31 years, accumulating 1.1 million miles. He holds a Class D operator's license from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jimmy G. Hall

Mr. Hall, 65, has had a macular scar in his left eye due to toxocariasis since 1999. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''In our medical opinion, Mr. Hall has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hall reported that he has driven tractor-trailer combinations for 20 years, accumulating 2.4 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis R. Irvin

Mr. Irvin, 55, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Irvin has sufficient vision to operate a commercial motor vehicle.'' Mr. Irvin reported that he has driven straight trucks for 35 years, accumulating 616,875 miles. He holds a Class B CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark L. LeBlanc

Mr. LeBlanc, 39, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''I believe Mark has sufficient vision to safely perform the driving tasks required to operate a commercial motor vehicle.'' Mr. LeBlanc reported that he has driven straight trucks for 21 years, accumulating 630,000 miles, and tractor-trailer combinations for 17 years, accumulating 340,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith A. Lighthall

Mr. Lighthall, 44, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2007, his ophthalmologist noted, ''From my evaluation, with both eyes, this patient has sufficient vision and a full visual field to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lighthall reported that he has driven straight trucks for 9½ years, accumulating 32,300 miles. He holds a Class C operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael G. Martin

Mr. Martin, 38, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2007, his optometrist noted, ''Has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Martin reported that he has driven straight trucks for 19 years, accumulating 1.5 million miles. He holds a Class B CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul M. Matherne

Mr. Matherne, 44, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Matherne has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Matherne reported that he has driven straight trucks for 25 years, accumulating 1.3 million miles. He holds a Class D chauffeur license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David A. Miller

Mr. Miller, 45, has complete loss of vision in his right eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Miller has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Miller reported that he has driven straight trucks for 8 years, accumulating 100,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Justin T. Richman

Mr. Richman, 34, has had optic atrophy in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2007, his ophthalmologist noted, ''In my opinion, Mr. Richman has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Richman reported that he has driven straight trucks for 4 years, accumulating 200,000 miles, and tractor-trailer combinations for 12 years, accumulating 492,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steve J. Sherar

Mr. Sherar, 49, has complete loss of vision in his left eye due to optic nerve damage since 2002. The visual acuity in his right eye is 20/30. Following an examination in 2007, his ophthalmologist noted, ''He appears to have sufficient vision to perform the

driving task required to operate a commercial vehicle.'' Mr. Sherar reported that he has driven straight trucks for 10 years, accumulating 125,000 miles, and tractor-trailer combinations for 5 years, accumulating 150,000 miles. He holds a Class D operator's license from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert F. Skinner, Jr.

Mr. Skinner, 51, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/150 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Has sufficient vision to operate a commercial vehicle in my opinion.'' Mr. Skinner reported that he has driven straight trucks for 3 years, accumulating 114,999 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic device.

William T. Smiley

Mr. Smiley, 36, has a retinal detachment in his left eye due to traumatic injury sustained in 2003. The visual acuity in his right eye is 20/20 and in the left, hand-motion vision. Following an examination in 2008, his ophthalmologist noted, ''Based on my opinion and your formal testing, you do have sufficient vision to drive a commercial vehicle.'' Mr. Smiley reported that he has driven straight trucks for 7 years, accumulating 126,000 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard M. Smith

Mr. Smith, 42, has complete loss of vision in his right eye due to a traumatic injury sustained at age 10. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2007, his optometrist noted, ''It is my professional opinion that Mr. Smith has sufficient vision to drive a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 4 years, accumulating 10,000 miles, and tractor-trailer combinations for 5 years, accumulating 200,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert A. Stoeckle

Mr. Stoeckle, 58, has amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/40. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion his vision has allowed him to drive a commercial vehicle in the past and since his examination is unchanged, he should be able to continue driving a commercial vehicle.'' Mr. Stoeckle reported that he has driven straight trucks for 10 years, accumulating 200,000 miles. He holds a Class D operator's license from Kentucky. His driving record for the last 3 years shows one crash and one conviction for a moving violation in a CMV. He exceeded the speed limit by 10 mph.

Aaron S. Taylor

Mr. Taylor, 37, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, Mr. Taylor has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Taylor reported that he has driven straight trucks for 2½ years, accumulating 82,500 miles, and tractor-trailer combinations for 8 years, accumulating 290,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Martin L. Taylor, Jr.

Mr. Taylor, 31, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Martin exhibits sufficient vision to operate a commercial vehicle based upon his testing today.'' Mr. Taylor reported that he has driven straight trucks for 8 years, accumulating 192,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Marion E. Terry

Mr. Terry, 72, has had central scotoma in his left eye since 1960. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his ophthalmologist noted, ''His color vision is normal and in my opinion, he should have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Terry reported that he has driven straight trucks for 7½ years, accumulating 228,750 miles, and tractor-trailer combinations for 36 years, accumulating 4.7 million miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael J. Tisher

Mr. Tisher, 62, has a prosthetic left eye due to a traumatic injury sustained in 1993. The visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''I do feel that Mr. Tisher has sufficient vision to qualify for driving tasks of a commercial vehicle.'' Mr. Tisher reported that he has driven straight trucks for 39 years, accumulating 1.1 million miles, and tractor-trailer combinations for 39 years, accumulating 390,000 miles. He holds a Class A CDL from Alaska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary R. Thomas

Mr. Thomas, 59, has had macular retinal detachment in his right eye since 2004. The best corrected visual acuity in his right eye is hand-motion vision and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''It is my opinion that Mr. Thomas has sufficient vision O.S. (left eye) to operate a commercial vehicle and perform required tasks to operate said vehicle.'' Mr. Thomas reported that he has driven straight trucks for 44 years, accumulating 1.2 million miles, and tractor-trailer combinations for 28 years, accumulating 1.4 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William B. Thomas

Mr. Thomas, 50, has central serous choroidopathy in his right eye. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, Mr. Thomas has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Thomas reported that he has driven straight trucks for 10 years, accumulating 175,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dean A. Weaver

Mr. Weaver, 41, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, there is no change in his medical/visual condition and he has sufficient vision to perform the driving tasks required to drive a commercial vehicle.'' Mr. Weaver reported that he has driven straight trucks for 6 years, accumulating 138,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin R. White

Mr. White, 30, has had exotropia in his right eye since childhood. The best corrected visual acuity in his right eye is hand-motion vision and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. White has sufficient vision to perform the driving tasks associated with driving a commercial vehicle.'' Mr. White reported that he has driven straight trucks for 2 years, accumulating 110,000 miles, and tractor-trailer combinations for 8 years, accumulating 480,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 9 mph.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 23, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 18, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–5857 Filed 3–21–08; 8:45 am]

BILLING CODE 4910–EX–P

Corrections

Federal Register

Vol. 73, No. 57

Monday, March 24, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57481; File No. S7-966]

Program for Allocation of Regulatory Responsibilites Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, Finanacial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

Correction

In notice document E8–5321 beginning on page 14507, in the issue of Tuesday, March 18, 2008, make the following correction:

On page 14511, in the last column, in the last two lines, ''April 7, 2008'' should read ''April 8, 2008''.

[FR Doc. Z8–5321 Filed 3–21–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 24, 2008

Part II

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1855–AA05

[Docket ID ED–2008–OPEPD–0002]

Family Educational Rights and Privacy

AGENCY: Office of Planning, Evaluation, and Policy Development, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing education records maintained by educational agencies and institutions under section 444 of the General Education Provisions Act, which is also known as the Family Educational Rights and Privacy Act of 1974, as amended (FERPA). These proposed regulations are needed to implement amendments to FERPA contained in the USA Patriot Act and the Campus Sex Crimes Prevention Act, to implement two U.S. Supreme Court decisions interpreting FERPA, and to make necessary changes identified as a result of the Department's experience administering FERPA and current regulations. These changes would clarify permissible disclosures to parents of eligible students and conditions that apply to disclosures in health and safety emergencies; clarify permissible disclosures of student identifiers as *directory information;* allow disclosures to contractors and other outside parties in connection with the outsourcing of institutional services and functions; revise the definitions of *attendance, disclosure, education records, personally identifiable information,* and other key terms; clarify permissible redisclosures by State and Federal officials; and update investigation and enforcement provisions.

DATES: We must receive your comments on or before May 8, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Under ''Search Documents'' go to ''Optional Step 2'' and select ''Department of Education'' from the agency drop-down menu; then click ''Submit.'' In the Docket ID column, select ED–2008–OPEPD–0002 to add or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed regulations, address them to LeRoy S. Rooker, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W243, Washington, DC 20202–5920.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Frances Moran, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W243, Washington, DC 20202–8250. Telephone: (202) 260–3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Invitation To Comment

We invite you to submit comments and recommendations regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 6W243, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Eastern time, Monday through Friday of each week except Federal holidays. Public comments may also be inspected at *www.regulations.gov.*

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

These proposed regulations would implement section 507 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) of 2001 (Pub. L. 107–56), enacted Oct. 26, 2001, and the Campus Sex Crimes Prevention Act, section 1601(d) of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386), enacted Oct. 28, 2000, both of which amended FERPA. The proposed regulations also would implement the U.S. Supreme Court's decisions in *Owasso Independent School Dist. No. I–011* v. *Falvo,* 534 U.S. 426 (2002) (*Owasso*) and *Gonzaga University* v. *Doe,* 536 U.S. 273 (2002) (*Gonzaga*). Finally, the proposed regulations respond to changes in information technology and address other issues identified through the Department's experience administering FERPA, including the need to clarify how postsecondary institutions may share information with parents and other parties in light of the tragic events at Virginia Tech in April 2007. The Department has developed these proposed regulations in accordance with its ''Principles for Regulating,'' which are intended to ensure that the Department regulates in the most flexible, equitable, and least burdensome way possible. These proposed regulations seek to provide the greatest flexibility to State and local governments and schools while ensuring that personally identifiable information about students remains protected from unauthorized disclosure.

Technical Corrections

The proposed regulations correct § 99.33(e) by adding the statutory

language ''outside the educational agency or institution'' after the words ''third party'' in the first sentence. They also correct an error in the section number cited in § 99.34(a)(1)(ii).

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

1. Definitions (§ 99.3)

Attendance

Statute: 20 U.S.C. 1232g(a)(6) defines the term *student* as any person with respect to whom an educational agency or institution maintains education records or personally identifiable information but does not include a person who has not been in attendance at such agency or institution. The statute does not define *attendance.*

Current Regulations: As defined in the current regulations, the term *attendance* includes attendance in person or by correspondence, and the period during which a person is working under a work-study program. The current definition does not address the status of distance learners who are taught through the use of electronic information and telecommunications technologies.

Proposed Regulations: The proposed regulations in § 99.3 would add attendance by videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom.

Reasons: The proposed regulations are needed to clarify that students who are not physically present in the classroom may attend an educational agency or institution not only through traditional correspondence courses but through advanced electronic information and telecommunications technologies used for distance education, such as videoconferencing, satellite, and Internet-based communications.

Directory Information

Statute: 20 U.S.C. 1232g(a)(5), (b)(1), and (b)(2) allows disclosure without consent of information such as a student's name and address, telephone listing, date and place of birth, major field of study, etc., defined as *directory information,* provided that specified notice and opt out conditions have been met.

Current Regulations: Directory information is defined in § 99.3 as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed, and includes information listed in FERPA (e.g., a student's name and address, telephone listing) as well as other information, such as a student's electronic mail (e-mail) address, enrollment status, and photograph. Current regulations do not specify whether a student's Social Security Number (SSN), official student identification (ID) number, or personal identifier for use in electronic systems may be designated and disclosed as directory information.

Proposed Regulations: The proposed regulations would provide that an educational agency or institution may not designate as directory information a student's SSN or other student ID number. However, directory information may include a student's user ID or other unique identifier used by the student to access or communicate in electronic systems, but only if the electronic identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the student's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the student.

Reasons: SSNs and other student ID numbers are personal identifiers that are typically used for identification purposes in order to establish an account, gain access to or confirm private information, obtain services, etc. The proposed regulations are needed to ensure that educational agencies and institutions do not disclose these identifiers as directory information, or include them with other personally identifiable information that may be disclosed as directory information, because SSNs and other student ID numbers can be used to impersonate the owner of the number and obtain information or services by fraud. The proposed regulations are also needed to clarify that unique personal identifiers used for electronic communications may be disclosed as directory information under certain conditions.

Names and addresses are personal identifiers (and *personally identifiable information* under § 99.3) that have always been available for disclosure as directory information under FERPA because they are generally known to others and often appear in public directories outside the school context. (It is precisely because names and addresses are widely available that they may not be used to authenticate identity, as discussed below in connection with proposed § 99.31(c).) SSNs and other student ID numbers are also personal identifiers and *personally identifiable information under* § 99.3. Unlike names and addresses, SSNs and other student ID numbers are typically used to obtain a variety of non-public information about an individual, such as employment, credit, financial, health, motor vehicle, and educational information, that would be harmful or an invasion of privacy if disclosed. An SSN or other student ID number can also be used in conjunction with commonly available information, such as name, address, and date of birth, to establish fraudulent accounts and otherwise impersonate an individual. As a result, under the proposed regulations, SSNs and other student ID numbers may not be designated and disclosed as directory information.

Educational agencies and institutions have reported to us that in addition to needing a traditional student ID number (or SSN used as a student ID number), they need to identify or assign to students a unique electronic identifier that can be made available publicly. (Names are generally not appropriate for these purposes because they may not be unique to the population.) Unique electronic identifiers are needed, for example, for students to be able to use portals or single sign-on approaches to student information systems that provide access to class registration, academic records, library resources, and other student services. Much of the directory-based software used for these systems, as well as protocols for electronic collaboration by students and teachers within and among institutions, essentially cannot function without making an individual's user ID or other electronic identifier publicly available in these kinds of systems.

Some systems, for example, require users to log on with their e-mail address or other published user name or account ID. (Note that a student's e-mail address was added to the regulatory definition of *directory information* in the final regulations published on July 6, 2000 (65 FR 41852, 41855). Public key infrastructure (PKI) technology for encryption and digital signatures also requires wide dissemination of the sender's public key. These are the types of circumstances in which educational agencies and institutions may need to publish or disclose a student's unique electronic identifier.

The proposed regulations would permit disclosure of a student's user ID or other electronic identifier as directory information, but only if the identifier functions essentially as a name; that is, the identifier is not used by itself to authenticate identity and cannot be

used by itself to gain access to education records. A unique electronic identifier disclosed as directory information may be used to provide access to the student's education records, but only when combined with other factors known only to the authorized user (student, parent, or school official), such as a secret password or PIN, or some other method to authenticate the user's identity and ensure that the user is, in fact, a person authorized to access the records.

Note that eligible students and parents have a right under FERPA to opt out of directory information disclosures and refuse to allow the student's e-mail address, user ID or other electronic identifier disclosed as directory information (except as provided in proposed § 99.37(c), discussed elsewhere in this document). This is similar to a decision not to participate in an institution's paper-based student directory, yearbook, commencement program, etc. In these cases, the student or parent will not be able to take advantage of the services, such as portals for class registration, academic records, etc., provided solely through the electronic communications or software that require public disclosure of the student's unique electronic identifier.

Disclosure

Statute: 20 U.S.C. 1232g(b)(1) and (b)(2) provides that an educational agency or institution subject to FERPA may not have a policy or practice of releasing, permitting the release of, or providing access to personally identifiable information from education records without prior written consent.

Current Regulations: The regulations in § 99.3 define the term *disclosure* to mean permitting access to or the release, transfer, or other communication of personally identifiable information from education records to any party by any means. The regulations do not address issues relating to the return of records to the party that provided or created them.

Proposed Regulations: The proposed regulations would exclude from the definition of *disclosure* the release or return of an education record, or personally identifiable information from an education record, to the party identified as the party that provided or created the record. This would allow an educational agency or institution (School B) to send a transcript, letter of recommendation, or other record that appears to have been falsified back to the institution or school official identified as the creator or sender of the record (School A) for confirmation of its status as an authentic record. School A may confirm or deny that the record is accurate and send the correct version back to School B under § 99.31(a)(2), which allows an institution to disclose education records without prior written consent to an institution in which the student seeks or intends to enroll, or is already enrolled.

The proposed regulations would also permit a State or local educational authority or other entity to redisclose education records or personally identifiable information from education records, without consent, to the school district, institution, or other party that provided the records or information.

Reasons: School officials have reported to the Department that they are receiving with more frequency what appear to be falsified transcripts, letters of recommendation, and other information about students from educational agencies and institutions. The proposed amendment is needed to verify the accuracy of this type of information and to ensure that the privacy protections in FERPA are not used to shield or prevent detection of fraud.

Several State educational agencies (SEAs) that maintain consolidated student records systems have also expressed uncertainty whether they may allow a local school district to obtain access to personally identifiable information from education records provided to the SEA by that district. The amendment is needed to clarify that SEAs and other parties that maintain education records provided by school districts and other educational agencies and institutions may allow a party to obtain access to the specific records and information that the party provided to the consolidated student records system.

Education Records

Statute: 20 U.S.C. 1232g(a)(4) provides a broad, general definition of *education records* that includes all records that are directly related to a student and maintained by an educational agency or institution. *Student*, in turn, is defined in 20 U.S.C. 1232g(a)(6) to exclude individuals who have not been in attendance at the agency or institution.

Current Regulations: The definition of *education records* in § 99.3 excludes records that only contain information about an individual after he or she is no longer a student.

Proposed Regulations: The proposed regulations would clarify that, with respect to former students, the term *education records* excludes records that are created or received by the educational agency or institution after an individual is no longer a student in attendance and are not directly related to the individual's attendance as a student.

Reasons: Institutions have told us that there is some confusion about the provision in the definition of *education records* that excludes certain alumni records from the definition. Some schools have mistakenly interpreted this provision to mean that any record created or received after a student is no longer enrolled is not an education record under FERPA. The proposed regulations are needed to clarify that the exclusion is intended to cover records that concern an individual or events that occur after the individual is no longer a student in attendance, such as alumni activities. The exclusion is not intended to cover records that are created and matters that occur after an individual is no longer in attendance but that are directly related to his or her previous attendance as a student, such as a settlement agreement that concerns matters that arose while the individual was in attendance as a student.

Statute: The statute does not address peer-grading practices in relation to FERPA requirements.

Current Regulations: The definition of *education records* includes records that are maintained by an educational agency or institution, or a party acting for the educational agency or institution, but does not provide any guidance on the status of student-graded tests and assignments before they have been collected and recorded by a teacher.

Proposed Regulations: Proposed regulations in § 99.3 would clarify that peer-graded papers that have not been collected and recorded by a teacher are not considered maintained by an educational agency or institution and, therefore, are not education records under FERPA.

Reasons: The proposed regulations are needed to implement the U.S. Supreme Court's decision on peer-graded papers in *Owasso*. ''Peer-grading'' refers to a common educational practice in which students exchange and grade one another's papers and then either call out the grade or turn in the work to the teacher for recordation. In *Owasso*, the Court held that this practice does not violate FERPA because ''the grades on students' papers would not be covered under FERPA at least until the teacher has collected them and recorded them in his or her grade book.'' *Owasso*, 534 U.S. at 436.

Personally Identifiable Information

Statute: 20 U.S.C. 1232g(b)(1) and (b)(2) provide that an educational agency or institution may not have a policy or practice of permitting the release of or providing access to education records or any personally identifiable information other than directory information in education records without prior written consent except in accordance with statutory exceptions.

Current Regulations: The term *personally identifiable information* is defined in § 99.3 to include the student's name and other personal identifiers, such as the student's social security number or student number. Current regulations also include indirect identifiers, such as the name of the student's parent or other family members; the address of the student or the student's family; and personal characteristics or other information that would make the student's identity easily traceable.

Proposed Regulations: The proposed regulations would add biometric record to the list of personal identifiers and add other indirect identifiers, such as date and place of birth and mother's maiden name, to the list of personally identifiable information. The regulations would remove language about personal characteristics and other information that would make the student's identity easily traceable and provide instead that personally identifiable information includes other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. *Personally identifiable information* would also include information requested by a person who the educational agency or institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates.

Reasons: See the discussion of proposed regulations adding a new § 99.31(b) for de-identified education records elsewhere in this document.

State Auditor

Statute: 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5) allows an educational agency or institution to disclose personally identifiable information from education records, without prior written consent, to State and local educational authorities and officials for the audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs.

Current Regulations: The current regulations do not address the disclosure of education records to State auditors.

Proposed Regulations: The proposed regulations in § 99.3 would define *State auditor* as a party under any branch of government with authority and responsibility under State law for conducting audits. We propose to add a new paragraph (a)(2) to § 99.35 to clarify that State auditors that are not State or local educational authorities may have access to education records in connection with an audit of Federal or State supported education programs.

Reasons: 20 U.S.C. 1232g(b)(3) (section (b)(3) of the statute) allows disclosure of education records without consent to ''State educational authorities'' for audit and evaluation purposes. According to the legislative history of FERPA, section (b)(5) of the statute, which allows disclosure of education records without consent to ''State and local educational officials'' for audit and evaluation purposes, was added in 1979 to ''correct an anomaly'' in which the existing exception in section (b)(3) was interpreted to preclude State auditors from obtaining records in order to conduct State audits of local and State-supported programs.

See H.R. Rep. No. 338, 96th Cong., 1st Sess. at 10 (1979), *reprinted in* 1979 U.S. Code Cong. & Admin. News 819, 824. The amended statutory language in section (b)(5) is ambiguous, however, because it does not actually mention State auditors and, like section (b)(3), refers only to educational officials. Over the years several States have questioned whether this exception includes audits conducted by legislative branch officials and other parties that may not be considered educational authorities or officials.

The regulations are needed to clarify that State auditors may receive personally identifiable information from education records, without prior written consent, even if they are not considered State or local educational authorities or officials, provided that they are auditing a Federal or State supported education program. We are interested in receiving comments about whether the definition needs to cover local auditors as well. The exception for disclosure of education records to State auditors is narrowly limited to *audits* (defined in proposed § 99.35 as testing compliance with applicable laws, regulations, and standards) and does not include the broader concept of evaluations, for which disclosure of education records remains limited to educational authorities or officials.

2. Disclosures to Parents of Eligible Students (§§ 99.5, 99.36)

Section 99.5(a) (Rights of Students)

Statute: 20 U.S.C. 1232g(d) provides that once a student reaches 18 years of age or attends a postsecondary institution, all rights accorded to parents under FERPA, and the consent required to disclose education records, transfer from the parents to the student. Under 20 U.S.C. 1232g(b)(1)(H), an educational agency or institution may disclose personally identifiable information from an education record without meeting FERPA's written consent requirement to parents of a dependent student as defined in 26 U.S.C. 152. Under 20 U.S.C. 1232g(i), an institution of higher education may disclose personally identifiable information from an education record, without meeting FERPA's written consent requirement, to a parent or legal guardian of a student information regarding the student's violation of any Federal, State or local law, or any rule or policy of the institution governing the use or possession of alcohol or a controlled substance if the student is under the age of 21 and the institution determines that the student has committed a disciplinary violation with respect to such use or possession. Under 20 U.S.C. 1232g(b)(1)(I), an educational agency or institution may disclose personally identifiable information from an education record, without meeting FERPA's written consent requirement, to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Current Regulations: Section 99.3 defines an *eligible student* as a student who has reached 18 years of age or attends a postsecondary institution. Section 99.5(a) states that rights accorded to parents, and consent required of parents, to disclose education records under FERPA transfer from parents to a student when the student meets the definition of an *eligible student*.

Section 99.31(a)(8) provides that an educational agency or institution may disclose personally identifiable information from education records without consent to parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1986. Under § 99.31(a)(15) written consent is not required, regardless of dependency status, to disclose to a

parent of a student at an institution of postsecondary education information regarding the student's violation of any Federal, State or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if the institution determines that the student has committed a disciplinary violation with respect to that use or possession and the student is under the age of 21 at the time of the disclosure to the parent.

Section 99.31(a)(10) provides that an educational agency or institution may disclose personally identifiable information from education records without consent if the disclosure is in connection with a health or safety emergency under the conditions described in § 99.36. Section 99.36 provides that an educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Proposed Regulations: The proposed regulations in § 99.5 clarify that even after a student has become an eligible student, an educational agency or institution may disclose education records to the student's parents, without the consent of the eligible student, if the student is a dependent for Federal income tax purposes (§ 99.31(a)(8)); in connection with a health or safety emergency (§ 99.31(a)(10)); if the student is under the age of 21 and has violated an institutional rule or policy governing the use or possession of alcohol or a controlled substance (§ 99.31(a)(15)); and if the disclosure falls within any other exception to the consent requirement in § 99.31(a) of the regulations, such as the disclosure of directory information or in compliance with a court order or lawfully issued subpoena. The proposed regulations in § 99.36(a) would clarify that an eligible student's parents are appropriate parties to whom an educational agency or institution may disclose personally identifiable information from education records without consent in a health or safety emergency.

Reasons: The Secretary is concerned that some institutions are under the mistaken impression that FERPA prevents them from providing parents with any information about a college student. The proposed regulations are needed to clarify that FERPA contains exceptions to the written consent requirement that permit colleges and other educational agencies and institutions to disclose personally identifiable information from education records to parents of certain eligible students whether or not the student consents.

Section 99.31(a)(8) permits an educational agency or institution to disclose education records, without consent, to either parent if at least one of the parents has claimed the student as a dependent on the parent's most recent tax return. Because many college students (and 18-year-old high school students) are tax dependents of their parents, this provision allows these institutions to disclose information from education records to the students' parents without meeting the written consent requirements in § 99.30. (Institutions must first determine that a parent has claimed the student as a dependent on the parent's Federal income tax return. Institutions can determine that a parent claimed a student as a dependent by asking the parent to submit a copy of the parent's most recent Federal tax return. Institutions can also rely on a student's assertion that he or she is not a dependent unless the parent provides contrary evidence.)

The proposed regulations are also needed to clarify that colleges and other institutions may disclose information from education records to an eligible student's parents, without consent, under § 99.31(a)(15) if the institution has determined that the student has violated Federal, State, or local law or an institution's rules or policies governing alcohol or substance abuse (provided the student is under 21 years of age), and in connection with a health or safety emergency under §§ 99.31(a)(10) and 99.36 (regardless of the student's age) if the information is needed to protect the health or safety of the student or other individuals. These exceptions apply whether or not the student is a dependent of a parent for tax purposes. These proposed regulations would clarify the Department's policy with respect to an agency's or institution's disclosure of information from education records to parents under the health and safety emergency exception and do not represent a change in the Department's interpretation of who may qualify as an appropriate party under the health or safety emergency exception to the consent requirement. While institutions may choose to follow a policy of not disclosing education records to parents of eligible students in these circumstances, FERPA does not mandate such a policy.

3. Authorized Disclosure of Education Records Without Prior Written Consent (§ 99.31)

Section 99.31(a)(1) (School Officials) Outsourcing

Statute: 20 U.S.C. 1232g(a)(4)(A) defines *education records* to include records maintained by an educational agency or institution or by ''a person acting for'' the agency or institution. Under 20 U.S.C. 1232g(b)(1)(A), an educational agency or institution may allow teachers and other school officials within the institution or agency, without prior written consent, to obtain access to education records if the institution or agency has determined that they have legitimate educational interests in the information.

Current Regulations: Section 99.31(a)(1) allows disclosure of personally identifiable information from education records without consent to school officials, including teachers, within the agency or institution if the educational agency or institution has determined that they have legitimate educational interests in the information. An educational agency or institution that discloses information under this exception must specify in its annual notification of FERPA rights under § 99.7(a)(3)(iii) the criteria it uses to determine who constitutes a school official and what constitutes legitimate educational interests. The recordkeeping requirements in § 99.32(d) do not apply to disclosures to school officials with legitimate educational interests. Current regulations do not address disclosure of education records without consent to contractors, consultants, volunteers, and other outside parties providing institutional services and functions or otherwise acting for an agency or institution.

Proposed Regulations: The proposed regulations in § 99.31(a)(1)(i)(B) would expand the school official exception to include contractors, consultants, volunteers, and other outside parties to whom an educational agency or institution has outsourced institutional services or functions that it would otherwise use employees to perform. The outside party who obtains access to education records without consent must be under the direct control of the agency or institution and subject to the same conditions governing the use and redisclosure of education records that apply to other school officials under § 99.33(a) of the regulations. These proposed regulations supersede previous technical assistance guidance issued by the Family Policy Compliance Office (Office) regarding disclosure of

education records without consent to parties acting for an educational agency or institution.

Educational agencies and institutions that outsource institutional services and functions must comply with the annual FERPA notification requirements under the current regulations in § 99.7(a)(3)(iii) by specifying their contractors, consultants, and volunteers as school officials retained to provide various institutional services and functions. Failure to comply with the notice requirements for school officials in § 99.7(a)(3)(iii) is not excused by recording the disclosure under § 99.32. (We note that under current regulations disclosures to school officials under § 99.31(a)(1) are specifically excluded from the recordation requirements under § 99.32(d).) As a result, an educational agency or institution that has not included contractors and other outside service providers as school officials with legitimate educational interests in its annual FERPA notification may not disclose any personally identifiable information from education records to these parties until it has complied with the notice requirements in § 99.7(a)(3)(iii).

Educational agencies and institutions are responsible for their outside service providers' failures to comply with applicable FERPA requirements. The agency or institution must ensure that the outside party does not use or allow anyone to obtain access to personally identifiable information from education records except in strict accordance with the requirements established by the educational agency or institution that discloses the information.

All outside parties serving as school officials are subject to FERPA's restrictions on the use and redisclosure of personally identifiable information from education records. These restrictions include current provisions in § 99.33(a), which requires an educational agency or institution that discloses personally identifiable information from education records to do so only on the condition that the recipient, including a teacher or other school official, will use the information only for the purpose for which the disclosure was made and will not redisclose the information to any other party without the prior consent of the parent or eligible student unless the educational agency or institution has authorized the redisclosure under a FERPA exception and the agency or institution records the subsequent disclosure in accordance with the requirements in § 99.32(b).

For example, under the proposed regulations, a party that contracts with an educational agency or institution to provide enrollment and degree verification services must ensure that only individuals with legitimate educational interests obtain access to personally identifiable information from education records maintained on behalf of the agency or institution. In accordance with current regulations at § 99.33(b), a contractor may not redisclose personally identifiable information without prior written consent unless the educational agency or institution has authorized the redisclosure under a FERPA exception and the agency or institution records the subsequent disclosure in accordance with the requirements in § 99.32(b). Like other school officials, contractors and other outside parties who provide institutional services may not decide unilaterally to redisclose personally identifiable information from education records, even in circumstances that would comply with an exception in § 99.31(a).

Additionally, records directly related to a student that are maintained by a party acting for an educational agency or institution are education records subject to all FERPA requirements. This includes any new student records created under an outsourcing agreement that are maintained by the outside service provider.

Reasons: The proposed regulations are needed to resolve uncertainty about the specific conditions under which educational agencies and institutions may disclose personally identifiable information from education records, without prior written consent, to contractors, consultants, volunteers, and other outside parties performing institutional services or functions. While there is no explicit statutory exception to the prior written consent requirement for disclosures to contractors and other non-employees to whom an educational agency or institution has outsourced services, we note that the statutory definition of *education records* protects records that are maintained by a party acting for the agency or institution. See 20 U.S.C. 1232g(a)(4)(A)(ii). Indeed, the Joint Statement in Explanation of Buckley/Pell Amendment (120 *Cong. Rec.* S39862, Dec. 13, 1974) refers specifically to materials that are maintained by a school ''or by one of its agents'' when describing the meaning of the new term *education records* in the December 1974 amendments to the statute.

The Department has long recognized in guidance that FERPA does not prevent educational agencies and institutions from outsourcing institutional services and functions and disclosing education records to contractors and other outside parties performing those services and functions in appropriate circumstances, such as for legal advice; debt collection; transcript distribution; fundraising and alumni communications; development and management of information systems; and degree and enrollment verification. The Secretary wishes to clarify and define the scope of this practice to avoid further confusion and prevent weakening of FERPA's privacy protections because of uncertainty about the requirements for making these kinds of disclosures.

One of the most frequently used exceptions to the prior written consent requirement allows teachers and other school officials to obtain access to education records provided the educational agency or institution has determined that the school official has legitimate educational interests in the information. This exception covers not only teachers and principals, but also school counselors, registrars, admissions personnel, attorneys, accountants, human resource staff, information systems specialists, and designated support and clerical personnel when they need access to personally identifiable information from education records in order to perform their official functions and duties for their employer. As noted above, an educational agency or institution that allows school officials to obtain access to education records under this exception must, under § 99.7(a)(3), include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a school official and what constitutes legitimate educational interests under § 99.31(a)(1). Disclosures to school officials under current regulations are subject to the restrictions on the use and redisclosure of information in § 99.33 but are exempt from the FERPA recordkeeping requirements in § 99.32.

The proposed regulations are included with the exception for school officials in § 99.31(a)(1) because we believe that disclosures made for contract, volunteer, and other outsourced services and functions should be subject to the same conditions that would apply if the outside party were, in fact, providing institutional services or functions as an employee or officer of the educational agency or institution. In particular, the outside party must be under the direct control of the agency or institution with respect to the maintenance and use of personally identifiable information from education records. The outside party

must also perform the type of institutional services or functions for which the agency or institution would otherwise use its own employees. For example, an institution may disclose education records without consent under this provision to an outside party retained to provide enrollment verification services to student loan holders because the institution would otherwise have to use its own employees to conduct the required verifications. In contrast, an institution may not use this provision to disclose education records, without consent, to a financial institution or insurance company that provides a good student discount on its services and needs students' ID numbers and grades to verify an individual's eligibility, even if the institution enters into a contract with these companies to provide the student discount.

Access to Education Records by School Officials

Statute: 20 U.S.C. 1232g(b)(1)(A) provides that an educational agency or institution may allow teachers and other school officials within the agency or institution to obtain access to education records, without prior written consent, if the agency or institution has determined that the school official has legitimate educational interests in the information.

Current Regulations: Section 99.31(a)(1) allows an educational agency or institution to disclose personally identifiable information from education records without consent to school officials, including teachers, within the agency or institution if the educational agency or institution has determined that they have legitimate educational interests in the information. An educational agency or institution that discloses information under this exception must specify in its annual notification of FERPA rights under § 99.7(a)(3)(iii) the criteria it uses to determine who constitutes a school official and what constitutes legitimate educational interests. Current regulations do not specify whether the agency or institution must ensure that school officials obtain access to only those education records in which they have legitimate educational interests.

Proposed Regulations: The proposed regulations in § 99.31(a)(1)(ii) would require an educational agency or institution to use reasonable methods to ensure that teachers and other school officials obtain access to only those education records in which they have legitimate educational interests. This requirement would apply to education records maintained in either paper or electronic format. Agencies and institutions that choose not to use physical or technological controls to restrict a school official's access to education records must ensure that their administrative policy for controlling access to and maintenance of education records is effective and that the agency or institution remains in compliance with the legitimate educational interests requirement in § 99.31(a)(1)(i)(A). (These proposed regulations do not address what constitutes a legitimate educational interest under the regulations.)

Reasons: The proposed regulations are needed to ensure that teachers and other school officials only gain access to education records in which they have a legitimate educational interest. While the proposed regulations apply to records in any format (as defined in § 99.3), the need to ensure compliance with the legitimate educational interest requirement has been driven largely by the increased use of computerized or electronic recordkeeping systems in which a user may have access to all records.

Many of the smaller educational agencies and institutions typically use a combination of physical and administrative methods to restrict access by school officials to paper copy records. For example, paper copy records may be maintained in lockable cabinets, desks, or rooms with distribution of records to school officials controlled by the teacher, registrar, or other authorized custodian as appropriate. With the advent of computerized or electronic records, particularly by the mid-size and larger agencies and institutions, parents and students have complained that school officials may have unrestricted access to the records of all students in an institution's or local educational agency's (LEA) system. Agencies and institutions establishing or upgrading electronic student information systems have also expressed uncertainty about what methods they should use to comply with the legitimate educational interest requirement in this new environment.

Under the proposed regulations, an educational agency or institution should implement controls to protect student records. These controls should consist of a combination of appropriate physical, technical, administrative, and operational controls which will allow access to be limited when required. (Some examples of possible information security controls can be found in ''The National Institute of Standards and Technology (NIST) 800–53, Recommended Security Controls for Federal Information Systems'' (December 2007). Educational institutions and agencies are not required to implement the NIST 800–53 guidance, but may find it useful when determining possible controls.) For example, software used to access electronic records may contain role-based security features that allow teachers to view only information about students currently enrolled in their classes. Similarly, a school principal or registrar may maintain paper records in locked cabinets and distribute records to authorized officials on an as needed basis.

An educational agency or institution that does not use some kind of physical or technological controls to restrict access and leaves education records open to all school officials may rely instead on administrative controls, such as an institutional policy that prohibits teachers and other school officials from accessing records except when they have a legitimate educational interest. However, an agency or institution that forgoes physical or technological access controls must ensure that its administrative policy for controlling access is effective and that it remains in compliance with the legitimate educational interest requirement in § 99.31(a)(1). In that regard, if a parent or eligible student alleges that a school official obtained access to a student's education records without a legitimate educational interest, an agency or institution must show that the school official possessed a legitimate educational interest in obtaining the personally identifiable information from education records maintained by the agency or institution. An agency or institution may wish to restrict or track school officials who obtain access to education records to ensure that it is in compliance with § 99.31(a)(1)(i)(A).

The risk of unauthorized access to education records by school officials means the likelihood that records may be targeted for compromise and the harm that could result. Methods used by an educational agency or institution to ensure compliance with the legitimate educational interests requirement are considered reasonable under the proposed regulations if they reduce the risk of unauthorized access by school officials to a level commensurate with the likely threat and potential harm. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will occur, the more protections an agency or institution must use to ensure that its methods are reasonable. For example, high risk records, such as those that

contain credit card information, SSNs and other elements used for identity theft, immunization and other health records, certain records on special education students, and official transcripts and grades should generally receive greater and more immediate protection than medium or low risk records, such as those containing only publicly releasable directory information. Methods that an educational agency or institution should use to reduce risk to an acceptable level will depend on a variety of factors, including the organization's size and resources. In all cases, reasonableness depends ultimately on what are the usual and customary good business practices of educational agencies and institutions, which requires ongoing review and modification of methods and procedures, where appropriate, as standards and technologies continue to change.

Section 99.31(a)(2) (Disclosure to a School Where Student Seeks or Intends To Enroll)

Statute: 20 U.S.C. 1232g(b)(1)(B) allows an educational agency or institution to disclose, under certain conditions, education records to another school or school system in which the student seeks or intends to enroll without obtaining the prior written consent of a parent or eligible student.

Current Regulations: Under § 99.31(a)(2), an educational agency or institution may disclose education records, without prior written consent, to officials of another school, school system, or postsecondary institution where the student seeks or intends to enroll, provided that the agency or institution complies with the requirements in § 99.34(a) regarding notification to the parent or eligible student of the disclosure and, upon request, provide a copy of the records and an opportunity for a hearing under subpart C of the regulations.

Proposed Regulations: The proposed regulations in § 99.31(a)(2) would allow an educational agency or institution to disclose education records, without consent, to another institution even after a student has already enrolled or transferred, and not just if the student seeks or intends to enroll, if the disclosure is for purposes related to the student's enrollment or transfer.

Reasons: The proposed amendments are needed to resolve uncertainty about whether consent is required to send a student's records to the student's new school after the student has already transferred and enrolled. This proposed exception to the consent requirement is intended to ease administrative burdens on educational agencies and institutions by allowing them to send transcripts and other information from education records to schools where a student seeks or intends to enroll without meeting the formal consent requirements in § 99.30. We have concluded that authority to disclose or transfer information to a student's new school under this exception does not cease automatically the moment a student has actually enrolled. Rather, an educational agency or institution may transfer education records to a student's new school, including a postsecondary institution, at any point in time if the disclosure is in connection with the student's enrollment in the new school.

Based on these considerations, we have also determined that an educational agency or institution may update, correct, or explain information it has disclosed to another educational agency or institution as part of the original disclosure under § 99.31(a)(2) without complying with the written consent requirements in § 99.30. That is, a student's previous institution is not required to obtain prior written consent under § 99.30 to respond to the new institution's request to explain the meaning of education records sent to it in connection with a student's new enrollment.

Finally, in the aftermath of the shooting at Virginia Tech, some questions have arisen about whether FERPA prohibits the disclosure of certain types of information from students' education records to new schools or postsecondary institutions to which they have applied. (Further discussion of the tragic events that occurred at Virginia Tech in April 2007 is included in the discussion of the proposed amendments to § 99.36, which appears later in this document.) Under § 99.31(a)(2) and § 99.34(a), FERPA permits school officials to disclose any and all education records, including health and disciplinary records, to another institution where the student seeks or intends to enroll.

Section 99.31(a)(6) (Organizations Conducting Studies for or on Behalf of an Educational Agency or Institution)

Statute: 20 U.S.C. 1232g(b)(1)(F) allows an educational agency or institution to disclose personally identifiable information from education records, without consent, to organizations conducting studies for or on behalf of the agency or institution for purposes of testing, student aid, and improvement of instruction. The information must be protected so that students and their parents cannot be identified by anyone other than representatives of the organization that conducts the study and must be destroyed when no longer needed for the study. As explained in § 99.31(a)(6)(iii), failure to destroy information in accordance with this requirement could lead to a five-year ban on disclosure of information to that organization.

Current Regulations: The regulations restate the statutory language that the study is conducted ''for, or on behalf of'' the educational agency or institution, but do not explain what this language means.

Proposed Regulations: The proposed regulations require an educational agency or institution that discloses education records without consent under § 99.31(a)(6) to enter into a written agreement with the recipient organization that specifies the purposes of the study. The agency or institution that discloses education records under this exception does not have to agree with or endorse the conclusions or results of the study. The written agreement must specify that information from education records may only be used to meet the purposes of the study stated in the written agreement and must contain the current restrictions on redisclosure and destruction of information requirements applicable to information disclosed under this exception.

Reasons: Research organizations have asked for clarification about the circumstances in which an educational agency or institution may disclose to them personally identifiable information from education records under § 99.31(a)(6)(iii), and educational agencies and institutions have asked whether they may provide personally identifiable information to organizations for research purposes without parental consent even if the educational agency or institution has no particular interest in the study.

This exception to the consent requirement is intended to allow educational agencies and institutions to retain the services of outside organizations (or individuals) to conduct studies for or on their behalf to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. An educational agency or institution need not initiate research requests or agree with or endorse a study's results and conclusions under this exception. However, the statutory language ''for, or on behalf of'' indicates that the disclosing agency or institution agrees with the purposes of the study and retains control over the information from education records that is disclosed.

The written agreement required under the proposed regulations will help ensure that information from education records is used only to meet the purposes of the study stated in the written agreement and that all applicable requirements are met. (See discussion of § 99.31(b) below regarding disclosure of de-identified information to independent educational researchers.)

Section 99.31(a)(9) (USA Patriot Act)

Statute: The USA Patriot Act, Public Law 107–56, amended FERPA by providing a new subsection 1232g(j), 20 U.S.C. 1232g(j), that authorizes the United States Attorney General (or designee not lower than an Assistant Attorney General) to apply for an *ex parte* court order (an order issued by a court without notice to an adverse party) allowing the Attorney General (or designee) to collect education records from an educational agency or institution, without the consent or knowledge of the student or parent, that are relevant to an investigation or prosecution of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism specified in 18 U.S.C. 2331. The statute requires the Attorney General (or designee not lower than an Assistant Attorney General) to certify facts in support of the order and to retain, disseminate, and use the records in a manner that is consistent with confidentiality guidelines established by the Attorney General in consultation with the Secretary of Education. Agencies and institutions are not required to record the disclosure and cannot be held liable to anyone for producing education records in good faith in accordance with a court order issued under this provision.

Current Regulations: The current regulations do not address the amendments made by the USA Patriot Act.

Proposed Regulations: The proposed regulations add new exceptions to the written consent requirement in § 99.31(a)(9)(ii) and the recordkeeping requirement in § 99.32(a) allowing disclosure of education records without notice in compliance with an *ex parte* court order obtained by the Attorney General (or designee) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism defined in 18 U.S.C. 2331.

Reasons: The proposed regulations are necessary to implement the statutory amendment. An educational agency or institution that is served with an *ex parte* court order from the Attorney General (or designee) under this provision should ensure that the order is facially valid, just as it does when determining whether to comply with other judicial orders and subpoenas under § 99.31(a)(9). An educational agency or institution is not, however, required or authorized to examine the underlying certification of facts presented to the court in the Attorney General's application for the *ex parte* court order.

The proposed regulations provide that an educational agency or institution may comply with the court order without notice to the parent or eligible student. (Note that § 99.31(a)(9)(ii)(B) also allows an educational agency or institution to disclose education records without notice to representatives of the Attorney General or other law enforcement authorities who produce a subpoena that has been issued for law enforcement purposes and the court or other issuing agency has ordered that the existence or contents of the subpoena or information furnished in response to the subpoena not be disclosed.)

Section 99.31(a)(16) (Registered Sex Offenders)

Statute: The Campus Sex Crimes Prevention Act (CSCPA), section 1601(d) of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, amended FERPA by adding 20 U.S.C. 1232g(b)(7), which provides that educational agencies and institutions may disclose information concerning registered sex offenders provided under State sex offender registration and community notification programs required by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 42 U.S.C. 14071. Section 170101 contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act).

Current Regulations: The current regulations do not address the disclosure of information concerning registered sex offenders.

Proposed Regulations: The proposed regulations add a new exception to the consent requirement in § 99.31(a)(16) that permits an educational agency or institution to disclose information that the agency or institution received under a State community notification program about a student who is required to register as a sex offender in the State. Note that nothing in FERPA or these proposed regulations requires or encourages an educational agency or institution to collect or maintain information about registered sex offenders.

Reasons: The regulations implement the CSCPA amendment to FERPA, which allows educational agencies and institutions to disclose information about registered sex offenders without consent if the information was received through and complies with guidelines regarding a State community notification program issued by the U.S. Attorney General under the Wetterling Act. Wetterling Act guidelines issued by the Attorney General were published in the **Federal Register** on October 25, 2002 (67 FR 65598), and January 5, 1999 (64 FR 572).

The Wetterling Act sets forth minimum national standards for sex offender registration and community notification programs. Under the Wetterling Act, States must establish programs that require sexually violent predators (and anyone convicted of specified criminal offenses against minors) to register their name and address with the appropriate State authority where the offender lives, works, or is enrolled as a student. States are also required to release relevant information necessary to protect the public concerning persons required to register, excluding the identity of any victim. (This community notification provision is commonly known as the ''Megan's Law'' amendment to the Wetterling Act.)

CSCPA supplemented the general standards for sex offender registration and community notification programs in the Wetterling Act with provisions specifically designed for higher education campus communities. These include a requirement that States collect information about a registered offender's enrollment or employment at an institution of higher education, including any change in enrollment or employment status at the institution, and make this information available promptly to a campus police department or other appropriate law enforcement agency having jurisdiction where the institution is located. CSCPA also amended the Higher Education Act of 1965, as amended (HEA), by requiring institutions of higher education to advise the campus community where it can obtain information about registered sex offenders provided by the State pursuant to the Wetterling Act, such as the campus law enforcement office, a local law enforcement agency, or a computer network address. *See* 20 U.S.C. 1092(f)(1)(I) and 34 CFR 668.46(b)(12).

While the FERPA amendment was made in the context of CSCPA's enhancements to registration and

notification requirements applicable to the higher education community, the Department has determined that all educational institutions, including elementary and secondary schools, are covered by this amendment. The registration and community notification requirements apply in the State where an offender lives, works, or is a *student*, which is defined as ''a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.'' See 42 U.S.C. 14071(a)(3)(G). Because the sex offender registration and community notification requirements apply broadly to students enrolled in ''any public or private educational institution,'' the Department likewise interprets the FERPA amendment to apply to all educational agencies and institutions subject to FERPA.

4. De-Identification of Information (§ 99.31(b))

Statute: 20 U.S.C. 1232g(b)(1) and (b)(2) provide that an educational agency or institution may not have a policy or practice of permitting the release of or providing access to education records, or personally identifiable information from education records, without prior written consent except in accordance with statutory exceptions.

Current Regulations: Personally identifiable information under § 99.3 includes personal identifiers such as a student's name, address, and identification numbers, as well as personal characteristics or other information that would make the student's identity easily traceable.

Proposed Regulations: The proposed regulations would amend § 99.31(b) to provide objective standards under which educational agencies and institutions may release, without consent, education records, or information from education records, that has been de-identified through the removal of all personally identifiable information. *Personally identifiable information* is defined in § 99.3 to mean information that can be used to identify a student, including direct identifiers, such as the student's name, SSN, and biometric records, alone or combined with other personal or identifying information that is linked or linkable to a specific individual, including indirect identifiers such as the name of the student's parent or other family member, the student's or family's address, and the student's date and place of birth and mother's maiden name, that would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstance, to identify the student with reasonable certainty. The Department does not hold educational agencies and institutions responsible for knowing the status of all non-educational records about students (e.g., law enforcement or hospital records). However, the Department encourages educational agencies and institutions to be sensitive to publicly available data on students and to the cumulative effect of disclosures of student data. Additionally, personally identifiable information includes information that is requested by a person who an agency or institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates. This is known as a targeted request.

Reasons: Disclosure is defined in the regulations as permitting access to or releasing, transferring, or otherwise communicating personally identifiable information contained in education records. Accordingly, there is no ''disclosure'' under FERPA when education records are released if all identifiers have been removed, along with other personally identifiable information. The proposed regulations are needed to establish this guidance in a definitive and legally binding interpretation, and to provide standards for ensuring that a student's personally identifiable information is not disclosed.

The Department's November 18, 2004, letter to the Tennessee Department of Education (TNDOE) explains that an educational agency or institution may release for educational research purposes (without parental consent) anonymous data files, i.e., records from which all *personally identifiable information* has been removed but that have coded each student's record with a non-personal identifier as described in the letter. (Records or data that have been stripped of identifiers and coded may be re-identified and, therefore, are properly characterized as de-identified.) Under the guidance in the TNDOE letter, a party must ensure that the identity of any student cannot be determined in coded records, including assurances of sufficient cell and subgroup size, and the linking key that connects the code to student information must not be shared with the requesting entity.

The Department recognizes that avoiding the risk of disclosure of identity or individual attributes in statistical information cannot be completely eliminated, at least not without negating the utility of the information, and is always a matter of analyzing and balancing risk so that the risk of disclosure is very low. The reasonable certainty standard in the proposed definition of personally identifiable information requires such a balancing test. (Similarly, we are proposing here to use the term ''de-identified'' instead of ''anonymous''—which appears in previous guidance—because it is more consistent with terminology used by experts in the field and reflects more accurately the level of disclosure risk that should be achieved.)

Many educational institutions have asked for guidance about how they may disclose ''redacted'' education records that concern students or incidents that are well-known in the school or its community. For example, a school has suspended a student from school and given the student a failing grade for cheating on a test. The parent believes the discipline is too harsh and inconsistent with discipline given to other students and asks to see the redacted records of other students who have been disciplined for cheating on tests that year. Only one student has been disciplined for this infraction during the year, and the name of that student is widely known because her parents went to the media about the accusation. The school may not release the record in redacted form because the publicity has made the record personally identifiable.

Additionally, personally identifiable information includes information that is requested by a person who an agency or institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates. This is known as a targeted request. In the simplest case, if an individual asks for the disciplinary report for a named student, the institution may not release a redacted copy of the report because the requester knows the identity of the student who is the subject of the report. An individual can also make a targeted request without mentioning the student's name. For example, a person running for local office is known to have graduated from a particular university in 1978. Rumors circulate that the candidate plagiarized other students' work while in school. A local reporter asks the university for redacted disciplinary records for all students who graduated in 1978 who were disciplined for plagiarism. The university may not release the records in redacted form because the circumstances indicate that the requester has made a targeted request, i.e. has direct, personal

knowledge of the subject of the case. In another case, a local reporter reviewed law enforcement unit records in October 2007 and learned that a prominent high school athlete was under investigation for use of illegal drugs. The newspaper published front-page articles about the matter that same month. Thereafter, the reporter asked the student's school for a redacted copy of all disciplinary records related to illegal drug use by student athletes since October 2007. The school may not release the records in redacted form because the reporter has made a targeted request.

Clearly, extenuating circumstances sometimes cause identity to be revealed even after all identifiers have been removed, whether in aggregated or student-level data. In these situations, the key consideration in determining whether the information is personally identifiable is whether a reasonable person in the school or its community, without personal knowledge of the relevant circumstances, would be able to identify a student with reasonable certainty. The Department is interested in receiving comments on the scope of the ''school or its community'' limitation in the reasonable person standard, and how it would apply to the release of redacted records as well as statistical information, including information released by State educational authorities and entities other than local districts and institutions.

In regard to numerical or statistical information, several educational agencies and institutions have expressed concern about the public release of information that contains small data sets that may be personally identifiable. We have advised States and schools generally that they may not report publicly on the number of students of a specified race, gender, disability, English language proficiency, migrant status, or other condition who failed to graduate, received financial aid, achieved certain test scores, etc., unless there is a sufficient number of students in the defined category so that personally identifiable information is not released. Some schools have indicated, for example, that they would not disclose that two Hispanic, female students failed to graduate, even if there are several Hispanic females at the institution, because of the likelihood that the students who failed to graduate could easily be identified in such a small data set.

A review of data confidentiality issues, especially as concerns the Federal statistical agencies, indicates that it is not possible to prescribe a single method to apply in every circumstance to minimize risk of disclosing personally identifiable information. This is true for several reasons, including the wide variety of data compilations and systems maintained by different agencies and institutions and the different types of search requests they receive and data sets they wish to disclose. More generally, and as indicated in the Federal Committee on Statistical Methodology's Statistical Policy Working Paper 22 (available at *http://www.fcsm.gov/working-papers/wp22.html*), educational agencies and institutions may wish to consider current statistical, scientific and technological concepts, and standards when making decisions about analyzing and minimizing the risk of disclosure in statistical information. Consistent with that view, the Department has consistently declined to take a categorical approach and advised instead that the parties themselves are in the best position to analyze and identify the best methods to use to protect the confidentiality of their own data. See, for example, the September 25, 2003, letter to Board of Regents of the University System of Georgia at *http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/georgialtr.html*; October 19, 2004, letter to Miami University at *http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/unofmiami.html*.

However, the Department recognizes that there are some practices from the existing professional literature on disclosure limitation that can assist covered entities in developing a sound approach to de-identifying data for release, particularly when consultation with professional statisticians with experience in disclosure limitation methods is not feasible. Each of the items discussed in the following subsection is elaborated on in Statistical Working Paper 22 for further reference.

There are several steps that can assist with de-identifying any data release. The choice of methods depends on the nature of the data release that must be de-identified. First, covered entities should recognize that the re-identification risk of any given release is cumulative, i.e., directly related to what has previously been released. Previous releases include both publicly-available directory information and de-identified data releases. For example, if a publicly available directory provides date and place of birth, then a de-identified data release that also contains the same information for a group of students could pose a re-identification risk if one of those students has an unusual date and place of birth relevant to others in the data release.

Second, covered entities should minimize information released in directories to the extent possible. The Department is not attempting to limit the statutory authority available to covered entities in releasing directory information, but recognizes that since the statute's enactment, the risk of re-identification from such information has grown as a result of new technologies and methods.

Third, covered entities should apply a consistent de-identification strategy for all of its data releases of a similar type. The two major types of data release are aggregated data (such as tables showing numbers of enrolled students by race, age and sex) and microdata (such as individual level student assessment results by grade and school). There are several acceptable de-identification strategies for each type of data. Major methods used by the Department for tabular data include defining a minimum cell size (meaning no results will be released for any cell of a table with a number smaller than ''X'' or else cells are aggregated until no cells based on one or two cases remain) or controlled rounding (meaning that cells with a number smaller than ''X'' require that numbers in the affected rows and columns be rounded so that the totals remain unchanged. For microdata releases, the primary consideration is whether the proposed release contains any ''unique'' individuals whose identity can be deduced by the combination of variables in the file. If such a condition exists, there are a number of methods that can be employed. These include ''top coding'' a variable (e.g., test scores above a certain level are recoded to a defined maximum), converting continuous data elements into categorical data elements (e.g., creating categories that subsume unique cases) or data swapping to introduce uncertainty so that the data user does not know whether the real data values correspond to certain records.

The Department seeks public comment on whether it needs to develop further guidance on this topic to assist educational agencies and institutions.

Although FERPA does not contain a general ''research'' exception to the consent requirement, the Department recognizes that useful and valid educational research may be conducted using de-identified data where disclosure of personally identifiable information from education records would not be permissible under the limited standards of § 99.31(a)(6) or

§ 99.31(a)(3), discussed above. This regulation should not be interpreted to discourage de-identified data releases, but rather to clarify how to do so in a manner that minimizes the risk of re-identification. Accordingly, the proposed regulations are also needed to provide a method that may be used by a school, school district, state department of education, postsecondary institution or commission, or another party that maintains education records to release student-level or microdata for purposes of education research. We believe that these standards establish an appropriate balance that facilitates educational research and accountability while preserving the privacy protections in FERPA.

In order to permit ongoing educational research with the same data, the party that releases the information may attach a unique descriptor to each de-identified record that will allow the recipient to match other de-identified information received from the same source. However, the recipient may not be allowed to have access to any information about how the descriptor is generated and assigned, or that would allow it to match the information from education records with data from any other source, unless that data is de-identified and coded by the party that discloses education records. Furthermore, a record descriptor assigned for educational research purposes under this rule may not be based on a student's social security number.

De-identified, student-level data released for educational research purposes must still conform to the requirements discussed above regarding small data sets that may lead to personal identification of students. However, unlike information released in personally identifiable form under §§ 99.31(a)(3) and 99.31(a)(6), de-identified information from education records is not subject to any destruction requirements because, by definition, it is not ''personally identifiable information'' under FERPA.

The Department cannot specify in general which statistical disclosure limitation (SDL) methods should be used in any particular case. However, educational agencies and institutions should monitor releases of coded, de-identified microdata and take reasonable measures to ensure that overlapping or successive releases do not result in data sets in which a student's personally identifiable information is disclosed.

5. Identification and Authentication of Identity (§ 99.31(c))

Statute: 20 U.S.C. 1232g(b)(1) and (b)(2) provides that an educational agency or institution may not have a policy or practice of releasing, permitting the release of, or providing access to any personally identifiable information from education records without written consent, except in accordance with specified statutory exceptions.

Current Regulations: Current regulations do not address whether an educational agency or institution must ensure that it has properly identified a party to whom it discloses personally identifiable information from education records.

Proposed Regulations: The proposed regulations in § 99.31(c) would require an educational agency or institution to use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the agency or institution discloses personally identifiable information from education records.

Reasons: The proposed regulations are needed to ensure that educational agencies and institutions disclose personally identifiable information from education records only to authorized recipients. Identification in this context means determining who is the intended or authorized recipient of the information in question; authentication of identity means ensuring that the recipient is, in fact, who he or she purports to be.

Identification of a party requesting disclosure of hard copy education records is relatively simple—the responsible school official can confirm the name and correct address for records sent by mail and obtain photo identification for personal delivery of records to students, parents, school officials, and other authorized recipients who are not recognized personally by the custodian of the records. Identification presents unique challenges in an electronic or telephonic environment, where personal recognition and photo identification cards are irrelevant.

Occasionally educational agencies and institutions disclose education records to the wrong party because someone misaddresses an envelope, or puts the wrong material in a properly addressed envelope. This is a failure to properly identify the authorized recipient. More commonly, parents and students complain that unauthorized parties obtain access to the student's education records because agencies and institutions use widely available information, such as name and date of birth, or name and SSN or other student ID number, when providing access to electronic records or disclosing information about a student by telephone. This is a failure to properly authenticate identity. These proposed regulations would address both of these problems.

Authentication of identity is a complex subject that continues to advance as new methods and technologies are developed to meet evolving standards for safeguarding financial, health, and other types of electronic records. The proposed regulations allow an educational agency or institution to use any reasonable method. As discussed above in connection with controlling access to education records by school officials, methods are considered reasonable if they reduce the risk of unauthorized disclosure to a level that is commensurate with the likely threat and potential harm and depend on variety of factors, including the organization's size and resources. The greater the harm that would result from unauthorized access or disclosure, and consequently the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution must use to ensure that its methods are reasonable. Again, reasonableness depends ultimately on what are the usual and customary good business practices of educational agencies and institutions, which requires ongoing review and modification of procedures, where appropriate, as standards and technologies change.

Authentication of identity generally involves requiring a user to provide something that only the user knows, such as a PIN, password, or answer to a personal question; something that only the user has, such as a smart card or token; or a biometric factor associated with no one other than the user, such as a finger, iris, or voice print. Under the proposed regulations an educational agency or institution may determine that single-factor authentication, such as a standard form user name combined with a secret PIN or password, is reasonable for protecting access to electronic grades and transcripts. Single-factor authentication may not be reasonable, however, for protecting access to SSNs, credit card numbers, and similar information that could be used for identity theft and financial fraud.

Likewise, an educational agency or institution must ensure that it does not deliver a password, PIN, smart card, or

other factor used to authenticate identity in a manner that would allow access to unauthorized recipients. For example, an agency or institution may not make education records available electronically by using a common form user name (e.g., last name and first name initial) with date of birth or SSN, or a portion of the SSN, as an initial password to be changed upon first use of the system.

6. Redisclosure of Education Records by Officials Listed in § 99.31(a)(3) (§ 99.32, § 99.35)

Statute: 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5) permits an educational agency or institution to disclose education records, without prior written consent, to authorized representatives of the United States Comptroller General, the Secretary of Education, State and local educational authorities, and the U.S. Attorney General as necessary in connection with the audit or evaluation of Federal and State supported education programs, or in connection with the enforcement of Federal legal requirements that relate to those programs. Except when the collection of personally identifiable information is specifically authorized by Federal law, personally identifiable information of parents and students may not be redisclosed to any other parties and must be destroyed when no longer needed for such audit, evaluation or enforcement purposes.

In contrast, section 1232g(b)(4)(B) contains a general prohibition on the redisclosure of information from education records. In particular, by statute an educational agency or institution may disclose personal information from education records only on the condition that the recipient will not redisclose the information to any other party without meeting the prior written consent requirement. If a recipient redisclosures personally identifiable information from education records in violation of the prior written consent requirement, the agency or institution that disclosed the records may not permit that recipient to have access to information from education records for at least five years. There is no general destruction requirement similar to the specific requirement for destruction of personally identifiable information described above for records disclosed for audit, evaluation, and enforcement purposes under section 1232g(b)(3).

Current Regulations: Section 99.31(a)(3) lists the four officials or authorities that may receive education records, without consent, for the specified audit, evaluation, or compliance and enforcement purposes. The Department has interpreted the term ''evaluation'' broadly to include all manner of studies, assessments, measurements, appraisals, research, and other efforts, including analyses of statistical or numerical data derived from education records. Section 99.35 provides that information disclosed under this exception to the consent requirement must be protected in a manner that does not permit personal identification of individuals by anyone except the officials listed in § 99.31(a)(3) and must be destroyed when no longer needed for the audit, evaluation, or compliance and enforcement purposes, unless a parent or eligible student consents to the disclosure or Federal law specifically authorizes the collection of personally identifiable information. Current regulations do not specify any further conditions under which these officials or authorities may redisclose personally identifiable information from education records without prior written consent.

Section 99.33(c) establishes specific exceptions to the general statutory prohibition on redisclosure of information from education records under 20 U.S.C. 1232g(b)(4)(B). Section 99.33(b) also allows an educational agency or institution to disclose education records with the understanding that the recipient may make further disclosures of the information on its behalf if the disclosures could be made under § 99.31 and the educational agency or institution complies with the recordkeeping requirements specified in § 99.32(b). Section 99.32(a) requires an educational agency or institution to maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. If a recipient is authorized to make further disclosures of personally identifiable information from education records under § 99.33(b), the educational agency or institution must record the names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution and their legitimate interests under § 99.31 in requesting or obtaining the information. Each student's record of disclosures is an education record that must be made available to a parent or eligible student under § 99.32(c). The Department has not applied the regulatory exception in § 99.33(b) to officials or authorities that receive information under §§ 99.31(a)(3) and 99.35 because of the more specific statutory limitations, including the destruction requirement, that generally apply to these disclosures.

Proposed Regulations: The proposed regulations in § 99.35(b)(1) would permit officials and authorities listed in § 99.31(a)(3)(i) to redisclose personally identifiable information from education records under the same conditions, set forth in § 99.33(b), that apply to parties that receive personally identifiable information from education records under other exceptions in § 99.31. For example, this proposed change would allow a State educational agency (SEA) to use the exception in § 99.31(a)(2) to transfer a student's education records to a student's new school district on behalf of the former district. Similarly, an SEA or other official listed in § 99.31(a)(3) would be able to redisclose personally identifiable information from education records received under § 99.35 to an accrediting agency under § 99.31(a)(7); in response to a subpoena or court order under § 99.31(a)(9); or in connection with a health or safety emergency under §§ 99.31(a)(10) and 99.36. The proposed regulations would also apply to the redisclosure of education records by an SEA (or other official listed in § 99.31(a)(3)) to another listed official, such as the Secretary, for audit, evaluation, or compliance and enforcement purposes under § 99.35. The regulations would also clarify that authority to conduct an audit, evaluation, or compliance or enforcement activity is not conferred by FERPA and must be established under other Federal, State, or local law, including valid administrative regulations. Like redisclosures permitted currently under § 99.33(b), redisclosures made by officials listed in § 99.31(a)(3)(i) under the proposed amendment would be subject to the recordation requirements in § 99.32(b).

Reasons: School districts and postsecondary institutions typically disclose education records, or personally identifiable information from education records, to their SEA or State higher education authority, without prior written consent, for audit, evaluation, or compliance and enforcement purposes subject to the requirements of § 99.35. Several SEAs that maintain Statewide, consolidated systems for school district records subject to § 99.35 have questioned whether they may allow a student's new school district to obtain access to personally identifiable information from education records submitted to the system by the student's former district. (Historically, when a student transfers to a new school, the former school district sends the student's education records to the student's new district,

without consent, under § 99.31(a)(2).) Others have asked whether records subject to § 99.35 may be redisclosed in compliance with a subpoena or court order and, if so, what conditions apply. States have also asked about the operation of longitudinal data systems that consolidate K–12 and postsecondary education records.

As noted elsewhere in this notice, there are no specific statutory exceptions to either the prohibition on redisclosure of education records disclosed under § 99.31 or the more specific limitations for records disclosed under § 99.35. Accordingly, final regulations published on June 17, 1976 (41 FR 24662) provided in § 99.33(a) that educational agencies and institutions must inform a third party to whom personally identifiable information from education records is disclosed that it may not redisclose any personally identifiable information without the written consent of a parent or eligible student. However, these regulations also added a provision in § 99.33(b) that permits the agency or institution to disclose

> personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided*, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

41 FR 24662, 24679.

The Secretary recognizes that officials and authorities that receive education records for audit, evaluation, compliance, or enforcement purposes under §§ 99.31(a)(3) and 99.35 are no less capable of protecting the information against unauthorized access and disclosure than parties that receive education records under other exceptions in § 99.31. The proposed amendment is needed so that SEAs and other officials and authorities listed in § 99.31(a)(3)(i) may take advantage of the regulatory exception in § 99.33(b) and redisclose personally identifiable information from education records directly to a qualified recipient under an exception in § 99.31 instead of requiring that party to go to each school district or institution that submitted the records for audit, evaluation, compliance, or enforcement purposes. Similarly, the proposed regulations are needed to clarify that an official or authority that maintains personally identifiable information from education records subject to § 99.35 may redisclose that information to another authority listed in § 99.31(a)(3)(i) for another qualifying audit, evaluation, compliance, or enforcement activity, notwithstanding the limitations in § 99.35.

The proposed regulations clarify that while FERPA permits the disclosure and redisclosure of education records without consent to officials and authorities listed in § 99.31(a)(3)(i) for the purposes specified, it does not confer or establish the underlying authority for those officials and authorities to conduct an audit, evaluation, or compliance or enforcement activity. If Federal, State, or local law authorizes a particular entity to audit or evaluate the education records, then FERPA permits the disclosure of personally identifiable information for that purpose without consent. For example, this exception allows a school district to disclose education records to its own State department of education or other SEA because that agency is legally authorized to audit or evaluate the school district's education programs, or enforce Federal legal requirements related to those programs. This exception does not allow a school district to disclose education records to the State higher education authority without parental consent unless that agency is empowered under Federal, State or local law to conduct an audit, evaluation, or compliance or enforcement activity with respect to that school district's education programs. The legal authority to audit, evaluate, or enforce education programs does not derive from FERPA itself.

These proposed regulations would also ensure that State and local educational authorities may redisclose personally identifiable information from education records in order to consolidate K–16 education records for audit, evaluation, compliance, or enforcement purposes under § 99.35(a). For example, under the proposed regulations, a State's postsecondary or higher education authority may redisclose personally identifiable information from the education records it maintains to a consolidated data system operated by the SEA if the SEA is legally authorized to conduct an audit, evaluation, compliance, or enforcement activity of postsecondary education programs. Likewise, an SEA may redisclose personally identifiable information from K–12 education records to a consolidated database operated by a State's higher education authority if the higher education authority is legally authorized to conduct the audit, evaluation, compliance, or enforcement activity of K–12 educational programs.

As noted above, disclosures under § 99.33(b) are based on an understanding on the part of the educational agency or institution that the recipient will redisclose information to specified recipients on its behalf subject to the recordation requirements in § 99.32(b). The Department is interested in relieving any administrative burdens associated with recording disclosures of education records and, therefore, invites public comment on whether an SEA, the Department, or other official or agency listed in § 99.31(a)(3) should be allowed to maintain the record of the redisclosures it makes on behalf of an educational agency or institution under § 99.32(b).

7. Limitations on the Redisclosure of Information From Education Records (§ 99.33)

Section 99.31(a)(9) (Subpoenas and Court Orders)

Statute: 20 U.S.C. 1232g(b)(4)(B) provides that an educational agency or institution may disclose personally identifiable information from education records to a third party only on the condition that the recipient will not redisclose the information to anyone else without written consent of the parent or eligible student. If a third party outside the educational agency or institution permits access to information without written consent of a parent or eligible student as required under 20 U.S.C. 1232g(b)(2)(A), the educational agency or institution may not permit access to information from education records by that third party for a period of not less than five years. There is no specific statutory exception to the prohibition on redisclosure of personally identifiable information from education records.

20 U.S.C. 1232g(b)(2)(B) provides that an educational agency or institution may disclose personally identifiable information without consent if the information is furnished in compliance with a judicial order or any lawfully issued subpoena, upon the condition that parents and students are notified in advance of compliance. Advance notice is not required for certain Federal grand jury subpoenas and subpoenas issued for law enforcement purposes. 20 U.S.C. 1232g(b)(1)(J).

Current Regulations: Section 99.33(a)(1) permits an educational agency or institution to disclose personally identifiable information from education records only on the condition that the recipient will not redisclose the information to any other party without the prior consent of the parent or eligible student. Section 99.33(b) provides for an exception to this general rule. Specifically, under § 99.33(b), an educational agency or institution may

disclose personally identifiable information from education records with the understanding that the party receiving the information may make further disclosures on behalf of the educational agency or institution if the disclosures meet the requirements of § 99.31(a) and the educational agency or institution complies with the recordkeeping requirements in § 99.32(b). Under § 99.33(e), if the Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of the prohibition on redisclosure in § 99.33(a), subject to the provisions of § 99.33(b), the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

Section 99.31(a)(9) permits an educational agency or institution to disclose personally identifiable information from education records without consent in compliance with a judicial order or lawfully issued subpoena, provided that the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance so that the parent or eligible student may seek protective action. Notification is not required for certain grand jury and law enforcement subpoenas.

Proposed Regulations: The proposed regulations in § 99.33(b)(2) would require a party that has received personally identifiable information from education records from an educational agency or institution, including an SEA or other official listed in § 99.31(a)(3)(i), to provide the notice to parents and eligible students, if any, required under § 99.31(a)(9) before it rediscloses personally identifiable information from the records on behalf of an educational agency or institution in compliance with a judicial order or lawfully issued subpoena, as authorized under § 99.33(b).

Reasons: Section 99.33(b) allows a party to redisclose personally identifiable information under § 99.31(a) on behalf of an educational agency or institution, including redisclosure in compliance with a judicial order or lawfully issued subpoena under § 99.31(a)(9). (As noted above, the proposed amendments to § 99.35 would extend this authority to SEAs and other officials and agencies listed in § 99.31(a)(3)(i).) The proposed regulations are needed to clarify which party is responsible for notifying parents and eligible students before an SEA or other third party outside of the educational agency or institution complies with a judicial order or subpoena to redisclose personally identifiable information from education records. The Secretary believes that the party that has been ordered to produce the information should be responsible for ensuring that the parent or eligible student has been notified because the educational agency or institution has no control over whether and when that party will comply. The penalty in § 99.33(e) would prohibit an educational agency or institution from providing access to any third party that fails to provide reasonable notice to parents and eligible students before complying with a judicial or lawfully issued subpoena.

Disclosures Required Under the Clery Act

Statute: 20 U.S.C. 1232g(b)(4)(B) provides that an educational agency or institution may disclose personally identifiable information from education records to a third party only on the condition that the recipient will not redisclose the information to anyone else without written consent of the parent or eligible student. 20 U.S.C. 1232g(b)(6)(B) allows a postsecondary institution to disclose to any party, without consent, the final results of a disciplinary proceeding against a student for crimes of violence or non-forcible sex offenses if the institution determines as a result of the disciplinary proceeding that the student committed the violation in question. 20 U.S.C. 1232g(b)(6)(A) allows a postsecondary institution to disclose to the alleged victim the final results of disciplinary proceedings against a student for crimes of violence or non-forcible sex offenses regardless of the outcome. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), which amended the HEA, requires postsecondary institutions to inform both the accuser and the accused of the outcome of a campus disciplinary proceeding brought alleging a sexual assault regardless of the outcome. 20 U.S.C. 1092(f)(8)(B)(iv)(II); 34 CFR 668.46(b)(11)(vi)(B).

Current Regulations: Regulations implementing the Clery Act, 34 CFR § 668.46(b)(11)(iv)(B), require postsecondary institutions to inform both the accuser and the accused of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Under this provision the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused. Section 99.33(a) permits an educational agency or institution to disclose personally identifiable information from education records only on the condition that the recipient will not redisclose the information to any other party without the prior consent of the parent or eligible student. Section 99.33(c) excludes from the statutory prohibition on redisclosure information that an educational agency or institution may disclose without consent to any member of the public, such as directory information under § 99.31(a)(11) and the final results of a disciplinary proceeding for acts constituting crimes of violence or non-forcible sex offenses under § 99.31(a)(14) when a postsecondary institution has determined that the student committed the violation in question. Current regulations in § 99.33(c) do not exclude from the redisclosure prohibition disclosures made by postsecondary institutions to an alleged victim of a crime of violence or non-forcible sex offense under § 99.31(a)(13) or disclosures they are required to make under the Clery Act.

Proposed Regulations: The proposed regulations would amend § 99.33(c) to exclude from the statutory prohibition on redisclosure of education records information that postsecondary institutions are required to disclose under the Clery Act to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.

Reasons: Some postsecondary institutions have required the accuser to execute a non-disclosure agreement before they disclose the outcome of a disciplinary proceeding for an alleged sexual offense as required under the Clery Act. In analyzing and ruling on these practices, the Department determined that the statutory prohibition on redisclosure of information from education records in FERPA does not apply to information that a postsecondary institution is required to release to students under the Clery Act. The proposed regulations would clarify that postsecondary institutions may not require the accuser to execute a non-disclosure agreement or otherwise interfere with the redisclosure or other use of information disclosed as required under the Clery Act.

8. Health and Safety Emergencies (§ 99.36)

Section 99.36(c) (Conditions That Apply to Disclosure of Information in Health and Safety Emergencies)

Statute: Under 20 U.S.C. 1232g(b)(1)(I), an educational agency or institution may disclose personally

identifiable information from education records without prior written consent, subject to regulations by the Secretary, in connection with an emergency to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Current regulations: Under § 99.36(a), an educational agency or institution may disclose personally identifiable information from education records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Under § 99.36(b), educational agencies and institutions may include in a student's education records appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. Educational agencies and institutions may also disclose appropriate information about these kinds of disciplinary actions to teachers and school officials within the agency or institution or in other schools who have legitimate educational interests in the behavior of the student. Under § 99.36(c), all of these regulatory provisions must be strictly construed.

Proposed regulations: The Department proposes to revise § 99.36(c) to remove the language requiring strict construction of this exception and add a provision that in making a determination under § 99.36(a), an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the safety or health of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health and safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

Reasons: In the wake of the tragic shootings at Virginia Tech, the President directed the Secretary, together with the Secretary of Health and Human Services and the Attorney General, to travel to communities across the nation and to meet with educators, mental health experts, law enforcement and State and local officials to discuss the broader issues raised by the tragedy. On June 13, 2007, those officials transmitted a ''Report to the President on Issues Raised by the Virginia Tech Tragedy.'' See *http://www.hhs.gov/vtreport.html.* In relevant part, the report provided:

> A consistent theme and broad perception in our meetings was that this confusion and differing interpretations about state and federal privacy laws and regulations impede appropriate information sharing. In some sessions, there were concerns and confusion about the potential liability of teachers, administrators, or institutions that could arise from sharing information, or from not sharing information, under privacy laws, as well as laws designed to protect individuals from discrimination on the basis of mental illness. It was almost universally observed that these fears and misunderstandings likely limit the transfer of information in more significant ways than is required by law. Particularly, although participants in each state meeting were aware of both [the Health Insurance Portability and Accountability Act of 1996 (HIPAA)] and FERPA, there was significant misunderstanding about the scope and application of these laws and their interrelation with state laws. In a number of discussions, participants reported circumstances in which they incorrectly believed that they were subject to liability or foreclosed from sharing information under federal law. Other participants were unsure whether and how HIPAA and FERPA actually limit or allow information to be shared and unaware of exceptions that could allow relevant information to be shared.

Report at page 7. The report went on to charge the Department with certain specific recommended actions:

> *The U.S. Departments of Health and Human Services and Education should develop additional guidance that clarifies how information can be shared legally under HIPAA and FERPA and disseminate it widely to the mental health, education, and law enforcement communities. The U.S. Department of Education should ensure that parents and school officials understand how and when post-secondary institutions can share information on college students with parents. In addition, the U.S. Departments of Education and Health and Human Services should consider whether further actions are needed to balance more appropriately the interests of safety, privacy, and treatment implicated by FERPA and HIPAA.*

Report at page 8 (italics in original). The Department of Education and the Department of Health and Human Services are currently working together on guidance for our respective communities on these issues. This guidance is in addition to compliance training and guidance that the two agencies have provided since issuance of the HIPAA Privacy Rule in December 2000 and, more recently, since the events in April 2007 at Virginia Tech.

Further, the Secretary has carefully considered the appropriate relationship between conditions associated with Federal funding and the exigencies of administering an agency or institution of education on a daily basis. In examining the application of FERPA to the recipients of Departmental funds, the Secretary is mindful that the ''health and safety'' exception does not allow disclosures on a routine, non-emergency basis. For example, the ''health and safety'' exception does not permit a school district to routinely share its student information database with the local police department. The present regulation, however, which merely admonishes that the regulation should be ''strictly construed,'' does not provide a standard to determine whether a particular disclosure complies with the statute. Consequently, the Secretary has decided to provide a new standard for the administration of this exception to the written consent requirement in FERPA. To assure that there are adequate safeguards on this exception, the Secretary requires that, considering the totality of the circumstances, there must be an articulable and significant threat to the health or safety of a student or other individuals, and that the disclosure be to any person whose knowledge of the information is necessary to protect against the threat.

On the other hand, the Secretary has determined that greater flexibility and deference should be afforded to administrators so they can bring appropriate resources to bear on a circumstance that threatens the health or safety of individuals. To provide for appropriate flexibility and deference, the Secretary has determined that if, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

In short, in balancing the interests of safety, privacy, and treatment, the Secretary proposes to revise the regulation to specify legal standards, but to couple those standards with greater flexibility and deference to administrators so they can bring appropriate resources to bear on a circumstance that threatens the health or safety of individuals.

9. Directory Information (§ 99.37)

Section 99.37(b) (Disclosure of Directory Information About Former Students)

Statute: Under 20 U.S.C. 1232g(a)(5), (b)(1), and (b)(2), an educational agency or institution may disclose directory information without meeting FERPA's written consent requirements provided that it first notifies the parents or eligible student of the types of information that may be disclosed and allows them to opt out of the disclosure. The statute lists a number of items in the definition of *directory information,* including a student's name, address and telephone listing. The statute does not address procedures for disclosing directory information about former students.

Current Regulations: Section 99.37(a) requires an educational agency or institution to provide public notice to parents of students in attendance and eligible students in attendance of the types of directory information that may be disclosed and the parent's or eligible student's right to opt out. Section 99.37(b) allows the agency or institution to disclose directory information about former students without providing the notice required under § 99.37(a).

Proposed Regulations: Proposed § 99.37(b) clarifies that an agency or institution must continue to honor any valid request to opt out of directory information disclosures made while the individual was a student unless the parent or eligible student rescinds the decision to opt out of directory information disclosures.

Reasons: Some institutions have indicated that § 99.37(b) creates uncertainty about whether they must continue to honor a parent's or eligible student's decision to opt out of directory information disclosures once the student no longer attends the institution. The regulations are needed to clarify that while an agency or institution does not have to notify former students about its policy on directory information disclosures and their right to opt out, directory information may not be disclosed once an individual is no longer a student if the individual made a valid request to opt out while a student in attendance and has not rescinded that request.

Section 99.37(c) (Identification of Students and Communications in Class)

Statute: The statute does not address whether parents and students may use their right to opt out of directory information disclosures to prevent school officials from identifying the student by name or disclosing the student's electronic identifier or institutional e-mail address in class.

Current Regulations: Current regulations do not address whether parents and students may use their right to opt out of directory information disclosures to prevent school officials from identifying the student by name or disclosing the student's electronic identifier or institutional e-mail address in class.

Proposed Regulations: The proposed regulations would provide in § 99.37(c) that a parent or eligible student may not use their right to opt out of directory information disclosures to prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, electronic identifier, or institutional e-mail address in a class in which the student is enrolled.

Reasons: Several institutions have asked whether a teacher can include in a classroom roll call or sign-in sheet the names of students who have opted out of directory information disclosures. They have also asked whether a student's e-mail address may be disclosed to other students in an on-line class if the student has opted out of directory information disclosures. The proposed regulations are needed to clarify that the right to opt out of directory information disclosures is not a tool for students to remain anonymous in class.

The directory information exception is intended to facilitate communication among school officials, parents, students, alumni, and others, and permit schools to publicize and promote institutional activities to the general public. Many institutions do so by publishing paper or electronic directories that contain student names, addresses, telephone listings, e-mail addresses, and other information the institution has designated as directory information. Some institutions do not publish a directory but do release directory information on a more selective basis. FERPA clearly allows a parent or eligible student to opt out of these disclosures (under the conditions specified in paragraph (a)), whether the information is made available to the general public, limited to members of the school community, or released only to specified individuals.

The Secretary believes, however, that the right to opt out of directory information disclosures does not include a right to remain anonymous in class and, therefore, may not be used to impede routine classroom communications and interactions by preventing a teacher from identifying a student by name in class, whether class is held in a specified physical location or on-line through electronic communications. This means, for example, that regardless of a student's block on directory information disclosures, a teacher may call students by first and last name in class and require students to place their names on a sign-in sheet circulated in class, whether the class is conducted in person or on-line. Because students generally do not have face-to-face communications in on-line classes (or in an on-line component of traditional classes), schools may also disclose or require students to disclose a unique electronic identifier or e-mail address used for students to communicate with one another for on-line class work. This could be either an e-mail address assigned by the institution or one selected by the student for this purpose. Note that this provision is strictly limited to information needed to identify and enable students to communicate in class, i.e., the student's name, unique electronic identifier, and institutional e-mail address. It provides no authority to disclose any directory information outside of the student's class. Further, no other kinds of directory information, including a student's home or campus address, telephone listing, or personal e-mail address not used for class communications, may be disclosed, even within the student's own class, if the parent or eligible student has exercised the right to opt out of directory information disclosures.

Section 99.37(d) (Prohibition on Use of SSNs To Identify Students When Disclosing or Confirming Directory Information)

Statute: The statute does not address the permissibility of using SSNs to identify students when disclosing or confirming directory information.

Current Regulations: Current regulations do not explicitly prohibit the use of SSNs to identify students when disclosing or confirming directory information.

Proposed Regulations: Section 99.37(d) would prohibit an educational agency or institution from using an SSN, either alone or when combined with other data elements, to identify or help identify a student or the student's records when disclosing or confirming directory information unless the student has provided written consent in accordance with FERPA.

Reasons: Some institutions, along with vendors that provide services on behalf of institutions, allow employers and others who seek directory information about a student, such as

whether a student has ever attended the institution or received a degree, to submit the student's SSN as a means of identifying the individual. These regulations are needed to provide a legally binding interpretation that this practice violates FERPA unless the student has provided prior written consent for the institution to disclose the student's SSN, even if the institution or vendor only explicitly releases or confirms directory information about the student. Use of an SSN to identify a student or the student's records constitutes an implicit confirmation of the SSN, even if several other data elements are also used to help identify the student in the process.

10. Enforcement (§§ 99.62, 99.64, 99.65, 99.66, and 99.67)

These proposed amendments are intended to clarify the Secretary's enforcement authority in light of the decision of the U.S. Supreme Court in *Gonzaga University* v. *Doe,* 536 U.S. 273 (2002). They do not reflect an intention or plan on the part of the Secretary to initiate FERPA institutional compliance reviews or otherwise expand FERPA investigations beyond the current practice of the Office. The Department will exercise its authority to investigate a specific agency or institution only when possible violations are brought to The Department's attention.

Statute: 20 U.S.C. 1232g(f) and (g) directs the Secretary to take appropriate actions to enforce FERPA. The statute does not specify any requirements an educational agency or institution must meet in connection with the Office's investigation of complaints and violations of FERPA.

Section 99.62 (Information Required for the Office To Investigate and Resolve Complaints and Violations)

Current Regulations: Under § 99.62 the Office may require an educational agency or institution to submit reports containing information needed by the Office to resolve complaints.

Proposed Regulations: The proposed regulations in § 99.62 would specify materials that the Office may require an educational agency or institution to submit in order to carry out its investigation and other enforcement responsibilities, including information on the agency's or institution's policies and procedures, annual notifications, training materials, and other relevant information.

Reasons: The regulations are needed to clarify the kinds of information that may be required should the Office seek to determine whether a violation constitutes a policy or practice of the agency or institution.

Section 99.64 (Complaint and Investigation Procedure)

Statute: 20 U.S.C. 1232g(g) provides that the Secretary must establish or designate an office and review board to investigate, process, review, and adjudicate FERPA violations and complaints alleging FERPA violations. The statute does not specify the requirements of a complaint or procedures to be followed by the Office in investigating and resolving alleged FERPA violations.

Current Regulations: Section 99.64(a) provides that a complaint must contain specific allegations of fact that an educational agency or institution has violated FERPA. Under § 99.64(b), the Office investigates each timely complaint to determine whether a violation occurred.

Proposed Regulations: The proposed regulations provide in § 99.64(a) that a complaint does not have to allege that a violation or failure to comply with FERPA is based on a policy or practice of the agency or institution. Under proposed § 99.64(b), if the Office determines that the agency or institution has violated or failed to comply with a FERPA requirement, the Office may also seek to determine whether the violation or failure to comply was based on a policy or practice of the agency or institution. In addition, the Office may investigate a possible FERPA violation even if it has not received a timely complaint from a parent or student or if a valid complaint is subsequently withdrawn.

Reasons: The proposed regulations are needed to clarify that the Department's enforcement responsibilities, as described in *Gonzaga University* v. *Doe*, 536 U.S. 273 (2002), include the authority to investigate possible FERPA violations even if no complaint has been filed or a complaint has been withdrawn. While not a widespread problem, the Department needs to establish in its regulations that the Office may investigate allegations of non-compliance provided by a school official or some other party who is not a parent or eligible student because sometimes parents and students are not aware of an ongoing FERPA problem that needs to be addressed.

The proposed amendments to § 99.64 are also needed to clarify that the Office may investigate a FERPA complaint even if the party has not specifically alleged that the agency or institution has a policy or practice in violation of FERPA. In these circumstances, the Office may elect to investigate and determine whether conduct that violates a specific FERPA requirement also constitutes a policy or practice of the agency or institution. (As explained below in connection with proposed amendments to § 99.66, the Department may not seek to withhold funding, terminate eligibility to receive funding under an applicable program, or take other enforcement actions unless it determines that an educational agency or institution has a policy or practice in violation of FERPA requirements and has not come into compliance voluntarily.)

Section 99.65 (Content of Notice of Investigation)

Statute: The statute does not specify what information the Office must include in a notice of investigation of a FERPA violation.

Current Regulations: Under § 99.65 the Office asks an educational agency or institution to submit a written response to a notice of investigation.

Proposed Regulations: Proposed § 99.65(a) would allow the Office to ask an educational agency or institution to submit a written response and other relevant information as set forth in § 99.62.

Reasons: The regulations are needed to clarify that the Office may ask an agency or institution to submit any relevant information needed to resolve a complaint or otherwise conduct an investigation under FERPA.

Section 99.66 (Enforcement Responsibilities of the Office)

Statute: 20 U.S.C. 1232g(a)(1)(A) and (B) provides that no funds shall be made available under any program administered by the Secretary to an educational agency or institution or an SEA that has a policy of denying or effectively prevents parents from exercising their right to inspect and review the student's education records. 20 U.S.C. 1232g(a)(2) provides that no funds shall be made available under any program administered by the Secretary to an educational agency or institution unless parents are provided an opportunity for a hearing to challenge the content of the student's education records under specified conditions. 20 U.S.C. 1232g(b)(1) and (b)(2) provide that no funds shall be made available under any program administered by the Secretary to an educational agency or institution that has a policy or practice of permitting the release of, releasing, or providing access to personally identifiable information in education records without prior written consent except as authorized under FERPA. 20

U.S.C. 1232g(f) directs the Secretary to take appropriate actions to enforce and deal with FERPA violations, except that action to terminate assistance may be taken only if the Secretary finds that there has been a failure to comply and that compliance cannot be secured by voluntary means. The statute does not specify what steps the Secretary should take to conduct investigations and seek voluntary compliance.

Current Regulations: Under § 99.66, the Office reviews a complaint and response from an educational agency or institution and may permit the parties to submit further written or oral arguments or information. Following its investigation, the Office provides to the complainant and the agency or institution written notice of its findings, including the basis for its findings. If the Office finds that the educational agency or institution has failed to comply with a FERPA requirement, its notice includes a statement of the specific steps that the agency or institution must take to comply and provides a reasonable period of time, given all the circumstances, during which the agency or institution may comply voluntarily.

Proposed Regulations: Section 99.66(c) would allow the Office to issue a notice of findings that an educational agency or institution violated FERPA without also finding that the violation constituted a policy or practice of the agency or institution.

Reasons: In light of the Supreme Court's ruling in *Gonzaga*, the proposed regulations are needed to clarify that, consistent with its current practice, the Office may find that an agency or institution violated FERPA even if the Office does not make a further determination that the violation was based on a policy or practice of the agency or institution. As explained below in connection with proposed amendments to § 99.67(a), however, the Secretary may not take an enforcement action unless the Office has determined that the educational agency or institution has a policy or practice in violation of FERPA.

Section 99.67 (Enforcement Actions)

Statute: 20 U.S.C. 1232g(a)(1)(A) and (B) provides that no funds shall be made available under any program administered by the Secretary to an educational agency or institution or an SEA that has a policy of denying or effectively prevents parents from exercising their right to inspect and review the student's education records. 20 U.S.C. 1232g(a)(2) provides that no funds shall be made available under any program administered by the Secretary to an educational agency or institution unless parents are provided an opportunity for a hearing to challenge the content of the student's education records under specified conditions. 20 U.S.C. 1232g(b)(1) and (b)(2) provide that no funds shall be made available under any program administered by the Secretary to an educational agency or institution that has a policy or practice of permitting the release of, releasing, or providing access to education records without prior written consent except as authorized under FERPA. 20 U.S.C. 1232g(f) directs the Secretary to take appropriate actions to enforce and deal with FERPA violations, except that action to terminate assistance may be taken only if the Secretary finds that there has been a failure to comply and that compliance cannot be secured by voluntary means. The statute does not specify what steps the Secretary should take to conduct investigations and seek voluntary compliance or what enforcement actions the Secretary may take in cases of non-compliance.

Current Regulations: Under § 99.67(a), the Secretary may withhold further payments under any applicable program, issue a complaint to compel compliance through a cease and desist order, or terminate eligibility to receive funding under any applicable program only if an educational agency or institution fails to comply voluntarily with a notice finding that the agency or institution has not complied with the Act.

Proposed Regulations: Under proposed § 99.67(a), the Secretary may take enforcement actions if the Office determines that the educational agency or institution has a policy or practice in violation of FERPA requirements and has failed to come into compliance voluntarily. The proposed regulations also clarify that the Secretary may take any other appropriate enforcement action in addition to those listed specifically in the regulations.

Reasons: The proposed regulations are needed to clarify that the Office may issue a notice of violation or failure to comply with specific FERPA requirements, such as a single failure to provide a parent with access to education records, and require corrective action. However, the Office may not seek to withhold payments, terminate eligibility for funding, or take other enforcement actions unless the Office determines that the agency or institution has a policy or practice in violation of FERPA requirements. The proposed regulations are also needed to clarify that the Secretary may take any other enforcement action that is legally available, such as entering into a compliance agreement under 20 U.S.C. 1234f or seeking an injunction.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

1. Potential Costs and Benefits

Following is an analysis of the potential costs and benefits of the most significant proposed changes to the FERPA regulations. In conducting this analysis, the Department examined the extent to which the regulations add to or reduce the costs of educational agencies and institutions and, where appropriate, State educational agencies (SEAs) and other State and local educational authorities in relation to their costs of complying with the FERPA regulations prior to these changes.

This analysis is based on data from the most recent *Digest of Education Statistics* (2006) published by the National Center for Education Statistics (NCES), which projects total enrollment of 48,948,000 students in public elementary and secondary schools and 17,648,000 students in postsecondary institutions; and a total of 96,513 public K–12 schools; 14,315 school districts; and 6,585 postsecondary institutions. (Excluded are data from private institutions that do not receive Federal funding from the Department and, therefore, are not subject to FERPA.) Based on this analysis, the Secretary has concluded that the changes in these proposed regulations would not impose

significant net costs on educational agencies and institutions. Analyses of specific provisions follow.

Alumni Records

The proposed regulations clarify the current exclusion from the definition of *education records* for records that only contain information about an individual after he or she is no longer a student, which is intended to cover records of alumni and similar activities. Some institutions have applied this exclusion to records that are created after a student has ceased attending the institution but that are directly related to his or her attendance as a student, such as investigatory reports and settlement agreements about incidents and injuries that occurred during the student's enrollment. The amendment would clarify that this provision applies only to records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

We believe that most of the more than 102,000 K–12 schools and postsecondary institutions subject to FERPA already adhere to this revised interpretation in the proposed regulations and that for those that do not, the number of records affected is likely to be very small. Assuming that each year one half of one percent of the 66,596,000 students enrolled in these institutions have one record each affected by the proposed change, in the year following issuance of the regulations institutions would be required to try to obtain written consent before releasing 332,980 records that they would otherwise release without consent. We estimate that for the first year contacting the affected parent or student to seek and process written consent for these disclosures would take approximately ½ hour per record at an average cost of $32.67 per hour for a total cost of $5,439,229. (Compensation for administrative staff time is based on published estimates for 2005 from the Bureau of Labor Statistics' National Compensation Survey of $23.50 per hour plus an average 39 percent benefit load for Level 8 administrators in education and related fields.)

In terms of benefits, the proposed change would protect the privacy of parents and students by clarifying the intent of this regulatory exclusion and help prevent the unlawful disclosure of these records. It would also provide greater legal certainty and therefore some cost savings for those agencies and institutions that may be required to litigate this issue in connection with a request under a State open records act or other legal proceeding. For these reasons, we believe that the overall benefits outweigh the potential costs of this change.

Exclusion of SSNs and ID Numbers From Directory Information

The proposed regulations clarify that a student's SSN or student ID number is personally identifiable information that may not be disclosed as *directory information* under FERPA. The principal effect of this change is that educational agencies and institutions may not post grades by SSN or student ID number and may not include these identifiers with directory information they disclose about a student, such as a student's name, school, and grade level or class, on rosters or sign-in sheets that are made available to students and others. (Educational agencies and institutions may continue to include SSNs and student ID numbers on class rosters and schedules that are disclosed only to teachers and other school officials who have legitimate educational interests in this information.)

A class roster or sign-in sheet that contains or requires students to affix their SSN or student ID number makes that information available to every individual who signs-in or sees the document and who may be able to use it for identity theft or to find out a student's grades or other confidential educational information. In regard to posting grades, an individual who knows which classes a particular student attends may be able to ascertain that student's SSN or student ID number by comparing class lists for repeat numbers. Because SSNs are not randomly generated, it may be possible to identify a student by State of origin based on the first three (area) digits of the number, or by date of issuance based on the two middle digits.

The Department does not have any actual data on how many class or test grades are posted by SSN or student ID number at this time, but we believe that the practice is rare or non-existent below the secondary level. Although the practice was once widespread, particularly at the postsecondary level, anecdotal evidence suggests that as a result of consistent training and informal guidance by the Department over the past several years, together with the increased attention States and privacy advocates have given to the use of SSNs, many institutions now either require teachers to use a code known only to the teacher and the student or prohibit posting of grades entirely.

The most recent figures available from the Bureau of Labor Statistics (2004) indicate that there are approximately 2.7 million secondary and postsecondary teachers in the United States. As noted above, we assume that most of these teachers either do not post grades at all or already use a code known only to the teacher or student. We assume further that additional costs to deliver grades personally in the classroom or through electronic mail, instead of posting, would be minimal. For purposes of this analysis, we estimate that no more than 5 percent of 2.7 million, or 135,000 teachers would continue to post grades and need to convert to a code, which would require them to spend an average of one half hour each semester establishing and managing grading codes for students. Using the Bureau of Labor Statistics' published estimate of average hourly wages of $42.98 for teachers at postsecondary institutions and an average 39 percent load for benefits, we estimate an average cost of $59.74 per teacher per year, for a total of $8,064,900. Parents and students should incur no costs except for the time they might have to spend to contact the school official if they forget the student's grading code.

This proposed change will benefit parents and students and educational agencies and institutions by reducing the risk of identity theft associated with posting grades by SSN, and the risk of disclosing grades and other confidential educational information caused by posting grades by student ID number. It is difficult to quantify the value of reducing the risk of identity theft. We note, however, that for the past few years over one-third of complaints filed with the Federal Trade Commission have been for identity theft. See Federal Trade Commission, *Consumer Fraud and Identity Theft Data*, February 2008, at page 2.

According to the Better Business Bureau, identity theft cost businesses nearly $57 billion in 2006 while victims spent an average of 40 hours resolving identity theft issues. It is even more difficult to measure the benefits of enhanced privacy protections for student grades and other confidential educational information from education records because the value individuals place on the privacy of this information varies considerably and because we are unable to determine how often it happens. Therefore, the Secretary seeks public comment on the value of these enhanced privacy protections in relation to the expected costs to implement the proposed changes.

Prohibit Use of SSN To Confirm Directory Information

The proposed regulations would prevent an educational agency or institution (or a contractor providing services for an agency or institution) from using a student's SSN (or student ID number) to identify the student when releasing or confirming directory information. This occurs, for example, when a prospective employer or insurance company telephones an institution or submits a Web site inquiry to find out whether a particular individual is enrolled in or has graduated from the institution. While this provision would apply to educational agencies and institutions at all grade levels, we believe that it will affect mainly postsecondary institutions because enrollment and degree verification services typically are not offered at the K–12 level.

A survey conducted in March 2002 by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) showed that nearly half of postsecondary institutions used SSNs as the primary means to track students in academic databases. Since then, use of SSNs as a student identifier has decreased significantly in response to public concern about identity theft. While postsecondary institutions may continue to collect students SSNs for financial aid and tax reporting purposes, many have ceased using the SSN as a student identifier either voluntarily or in compliance with State laws. Also, over the past several years the Department has provided training on this issue and published on the Office Web site a 2004 letter finding a postsecondary institution in violation of FERPA when its agent used a student's SSN, without consent, to search its database to verify that the student had received a degree. *http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/auburnuniv.html*. In these circumstances, we estimate that possibly one-quarter of the nearly 6,585 postsecondary institutions in the United States, or 1,646 institutions, may ask a requester to provide the student's SSN (or student ID number) in order to locate the record and respond to an inquiry for directory information.

Under the proposed amendment an educational agency or institution that identifies students by SSN (or student ID number) when releasing directory information will either have to ensure that the student has provided written consent to disclose the number to the requester, or rely solely on a student's name and other properly designated directory information to identify the student, such as address, date of birth, dates of enrollment, year of graduation, major field of study, degree received, etc. Costs to an institution of ensuring that students have provided written consent for these disclosures, for example by requiring the requester to fax copies of each written consent to the institution or its contractor, or making arrangements to receive them electronically, could be substantial for large institutions and organizations that utilize electronic recordkeeping systems. Institutions may choose instead to conduct these verifications without using SSNs or student IDs, which may make it more difficult to ensure that the correct student has been identified because of the known problems in matching records without the use of a universal identifier. Increased institutional costs either to verify that the student has provided consent or to conduct a search without use of SSNs or student ID numbers should be less for smaller institutions, where the chances of duplicate records are decreased. Parents and students may incur additional costs if an employer, insurance company, or other requester is unable to verify enrollment or graduation based solely on directory information and written consent for disclosure of the student's SSN or student ID number is required. Due to the difficulty in ascertaining actual costs associated with these transactions, the Secretary asks for public comment on costs that educational agencies and institutions and parents and students would expect to incur under this proposed change.

The enhanced privacy protections of this proposed amendment will benefit students and parents by reducing the risk that third parties will use a student's SSN without consent and possibly confirm a questionable number for purposes of identity theft. Similarly, preventing institutions from implicitly confirming a questionable student ID number will help prevent unauthorized individuals from obtaining confidential information from education records. In evaluating the benefits or value of this proposed change, we note that this provision does not affect any activity that an educational agency or institution is required to perform under FERPA or other Federal law, such as using SSNs to confirm enrollment for student loan purposes, which is permitted without consent under the financial aid exception in § 99.31.

User ID for Electronic Communications

The proposed regulations would allow an educational agency or institution to disclose as directory information a student's user ID or other electronic identifier so long as it functions like a name, that is, it cannot be used without a PIN, password, or some other authentication factor to gain access to education records. This change would impose no costs and would result in regulatory relief by allowing agencies and institutions to use directory services in electronic communications systems without incurring the administrative costs associated with obtaining student consent for these disclosures.

Costs related to honoring a student's decision to opt out of these disclosures should be minimal because of the small number of students who would elect not to participate in electronic communications at their school. Applying this proposed change to records of both K–12 and postsecondary students and assuming that one-tenth of a percent of parents and eligible students would opt out of these disclosures, we estimate that institutions would have to flag the records of approximately 67,000 students for opt out purposes. Recognizing that institutions currently flag records for directory information opt outs for other purposes, the Secretary seeks public comment on the administrative and information technology costs institutions would incur to process these potential new directory information opt outs.

Student Anonymity in the Classroom

The proposed regulations would ensure that parents and students do not use the right to opt out of directory information disclosures to prevent disclosure of the student's name, institutional e-mail address, or electronic identifier in the student's physical or electronic classroom. We estimate that this change would result in a small net benefit to educational agencies and institutions because they would have greater legal certainty about this element of classroom administration, and it would reduce the institutional costs of responding to complaints from students and parents about the release of this information. FERPA could not be used to allow students to remain anonymous to their peers in class, but the safety of students might be enhanced by allowing them to know the name of every student in their class.

Disclosing Education Records to New School and to Party Identified as Source Record

The proposed amendment to § 99.31(a)(2) would allow an educational agency or institution to disclose education records, or

personally identifiable information from education records, to a student's new school even after the student is already attending the new school so long as the disclosure relates to the student's enrollment in the new school. This change would provide regulatory relief by reducing legal uncertainty about how long a school may continue to send records or information to a student's new school, without consent, under the ''seeks or intends to enroll'' exception.

The proposed amendment to the definition of *disclosure* in § 99.3 would allow a school that has concerns about the validity of a transcript, letter of recommendation, or other record to return these documents (or personally identifiable information from these documents) to the student's previous school or other party identified as the source of the record in order to resolve questions about their validity. Combined with the proposed change to § 99.31(a)(2), discussed earlier in this analysis, this change would also allow the student's previous school to continue to send education records, or clarification about education records, to the student's new school in response to questions about the validity or meaning of records sent previously by that party. We believe that these changes would provide significant regulatory relief to educational agencies and institutions by helping to reduce transcript and other educational fraud based on falsified records.

Outsourcing

The proposed regulations would allow educational agencies and institutions to disclose education records, or personally identifiable information from education records, without consent to contractors, volunteers, and other non-employees performing institutional services and functions as school officials. The agency or institution may have to amend its annual notification of FERPA rights to include these parties as school officials with legitimate educational interests.

This change would provide regulatory relief by permitting and clarifying the conditions for a non-consensual disclosure of education records that is not allowed under current regulations. Our experience suggests that virtually all of the more than 102,000 schools subject to FERPA will take advantage of this provision. We have no actual data on how many school districts publish annual FERPA notifications for the 96,513 K–12 public schools included in the 102,000 total and, therefore, how many entities would be affected by this requirement. However, since educational agencies and institutions are already required under existing regulations to publish a FERPA notification annually, we believe that costs to include this new information would be minimal.

Access Control and Tracking

The proposed regulations in § 99.31(a)(1)(ii) would require an educational agency or institution to use reasonable methods to ensure that teachers and other school officials obtain access to only those education records in which they have legitimate educational interests. This requirement would apply to both computerized or electronic records and paper, film, and other hard copy records. Agencies and institutions that choose not to restrict access with physical or technological controls, such as locked cabinets and role-based software security, must ensure that their policy is effective and that school officials gain access to only those education records in which they have legitimate educational interests.

Information gathered by the director of the Family Policy Compliance Office at numerous FERPA training sessions and seminars, along with recent discussions with software vendors and educational organizations, indicates that the vast majority of mid and large size school districts and postsecondary institutions currently use commercial software for student information systems. We have been advised that these systems all include role-based security features that allow administrators to control access to specific records, screens, or fields according to a school official's duties and responsibilities; these systems also typically contain transactional logging features that document or track a user's actual access to particular records, which an agency or institution may use to help ensure the effectiveness of its policies regarding access to education records. Educational agencies and institutions that already have these systems would incur no additional costs to comply with the proposed regulations.

For purposes of this analysis we excluded from a total of 14,315 school districts and 6,585 postsecondary institutions those with more than 1,000 students, for a total of 6,998 small K–12 districts and 3,933 small postsecondary institutions that may not have software with access control security features. The director's discussions with numerous SEAs and local districts suggest that the vast majority of these small districts and institutions do not make education records available to school officials electronically or by computer but instead use some system of administrative and physical controls.

We estimate for this analysis that 20 percent, or 1,400, of these small districts and institutions use home-built computerized or electronic systems that may not have the role-based security features of commercial software. The most recent published estimate we have for software costs comes from the final Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rule) published by the Department of Health and Human Services (HHS) on December 28, 2000, which estimated that the cost of software upgrades to track the disclosure of medical records would be $35,000 initially for each hospital. 65 FR 82462, 82768. We determined that use of the cost estimate from the HIPAA Privacy Rule was appropriate because, as discussed above, software that tracks disclosure history can also be used to control or restrict access to electronic records. Recent discussions with information technology (IT) staff in the Department suggested that it was reasonable to conclude that an institutional license for software that controls and tracks access to electronic records would cost approximately $35,000 at this time; adjustments for inflation were not deemed necessary because software costs do not track with inflation in as straightforward a way as do other goods and services. Further, while discussions with HHS staff indicate that the disclosure tracking software cost estimates in the HIPAA Privacy Rule preamble were provided primarily with hospitals and larger institutions in mind, the Department's IT staff found no difference between software costs depending on the size of the institutions.

Based on these determinations and assumptions, if 1,400 small K–12 districts and postsecondary institutions purchased student information software to comply with the proposed regulations, they would incur estimated costs of $49,000,000. We believe that the remaining 5,600 small districts and institutions would not purchase new software because they do not make education records available electronically and rely instead on less costly administrative and physical methods to control access to records by school officials. Districts and institutions that provide school officials with open access to education records may need to devote some additional administrative staff time to ensuring that their policies are effective and that they remain in compliance with the

legitimate educational interest requirement with respect to school officials who access records. However, no reliable estimates exist for the average number of teachers and other school officials who access education records or the number of times access is sought. Accordingly, we are seeking public comment on any potential net costs associated with this proposed requirement for ensuring that legitimate educational interest policies are effective.

Identification and Authentication of Identity

The proposed regulations in § 99.31(c) would require educational agencies and institutions to use reasonable methods to identify and authenticate the identity of parents, students, school officials and other parties to whom the agency or institution discloses personally identifiable information from education records. They would impose no new costs for educational agencies and institutions that disclose hard copy records through the U.S. postal service or private delivery services with use of the recipient's name and last known official address. We were unable to find reliable data that would allow us to estimate the additional administrative time that educational agencies and institutions would incur to check photo identification, where appropriate, when releasing education records in person and seek public comment on this point.

Authentication of identity for electronic records involves a wider array of security options because of continuing advances in technologies but is not necessarily more costly than authentication of identity for hard copy records. We assume that educational agencies and institutions that require users to enter a secret password or PIN to authenticate identity will deliver the password or PIN through the U.S. postal service or in person. We estimate that no new costs would be associated with this process because agencies and institutions already have direct contact with parents, eligible students, and school officials for a variety of other purposes and would use these opportunities to deliver a secret authentication factor.

As noted above, single-factor authentication of identity, such as a standard form user name combined with a secret password or PIN, may not provide reasonable protection for access to all types of education records or under all circumstances. The Secretary invites public comment on the potential costs of authenticating identity when educational agencies and institutions allow authorized users to access sensitive personal or financial information in electronic records for which single-factor authentication would not be reasonable.

Redisclosure and Recordkeeping

The proposed regulations would allow the officials and agencies listed in § 99.31(a)(3)(i) (the U.S. Comptroller General; the U.S. Attorney General; the Secretary; and State and local educational authorities) to redisclose education records, or personally identifiable information from education records, without consent under the same conditions that apply currently to other recipients of education records under § 99.33(b). This proposed change would provide substantial regulatory relief to these parties by allowing them to redisclose information on behalf of educational agencies and institutions under any provision in § 99.31(a), which allows disclosure of education records without consent. For example, States would be able to consolidate K–16 education records under the SEA or State higher educational authority without having to obtain written consent under § 99.30. Parties that currently request access to records from individual school districts and postsecondary institutions would in many instances be able to obtain the same information in a more cost effective manner from the appropriate State educational authority, or from the Department.

In accordance with existing regulations in § 99.32(b), an educational agency or institution must record any redisclosure of education records made on its behalf under § 99.33(b), including the names of the additional parties to which the receiving party may redisclose the information and their legitimate interests or basis for the disclosure without consent under § 99.31 in obtaining the information. The proposed regulations would allow SEAs and other State educational authorities (such as higher education authorities), the Secretary, and other officials or agencies listed in § 99.31(a)(3)(i) to maintain the record of redisclosure required under § 99.32(b), provided that the educational agency or institution makes that record available to parents and eligible students as required under § 99.32(c).

SEAs and other officials listed in § 99.31(a)(3)(i) would incur new administrative costs if they elect to maintain the record of redisclosure for the educational agency or institution on whose behalf they redisclose education records under the proposed regulations. We estimate that two educational authorities or agencies in each State and the District of Columbia (one for K–12 and one for postsecondary) and the Department itself, for a total of 103 authorities will elect to maintain the required records of redisclosures. We estimate further that these authorities will need to record two redisclosures per year from their records and that it will take one hour of administrative time to record each redisclosure electronically at an average hourly rate of $32.67, for a total annual administrative cost of $6,730. (Compensation for administrative staff time is explained above.) We also assume for purposes of this analysis that State educational authorities and the Department already have software that would allow them to record these disclosures electronically.

State educational authorities and other officials that elect to maintain records of redisclosures would also have to make that information available to a parent or eligible student, on request, if the educational agency or institution on whose behalf the information was redisclosed does not do so. We assume that few parents and students request this information and, therefore, use an estimate that one in one thousand of a total of 66,596,000 students will make such a request each year, or 66,596 requests. If it takes one-quarter of an hour to locate and printout a record of disclosures at an average administrative hourly rate of $32.67, the average annual administrative cost for this service would be $543,923, plus mailing costs (at $.41 per letter) of $27,304, for a total of $571,227. Educational agencies and institutions themselves would incur these costs if they make these records of redisclosure available to parents and students instead.

The Department believes that the proposed change would result in a net benefit to both educational agencies and institutions and the officials that redisclose information under this provision because the redisclosing parties would not have to send their records of redisclosure to the educational agencies and institutions unless a parent or student requests that information and the educational agency or institution wishes to make the record available itself. Further, the costs to State authorities and the Department to record their own redisclosures would be outweighed by the savings that educational agencies and institutions would realize by not having to record the disclosures themselves.

Notification of Compliance With Court Order or Subpoena

The proposed regulations would require any party that redisclosures

education records in compliance with a court order or subpoena under § 99.31(a)(9) to provide the notice to parents and eligible students required under § 99.31(a)(9)(ii). We anticipate that this provision will affect mostly State and local educational authorities, which maintain education records they have obtained from their constituent districts and institutions and, under the proposed regulations discussed above, may redisclose the information, without consent, in compliance with a court order or subpoena under § 99.31(a)(9).

There is no change in costs as a result of shifting responsibility for notification to the disclosing party under this proposed change. However, we believe that minimizing or eliminating uncertainty about which party is legally responsible for the notification would result in a net benefit to all parties.

State Auditors

The proposed regulations would allow State auditors to have access to education records without consent under §§ 99.31(a)(3) and 99.35, which allows disclosures in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements related to those programs. This change would involve no increased costs and provide regulatory relief by clarifying that these disclosures are permitted even if the State auditor is not a State educational authority (or other official listed in § 99.31(a)(3)(i)).

The proposed change is limited to disclosures for purposes of an *audit*, which is defined as testing compliance with applicable laws, regulations, and standards. We believe that this limitation does not impose additional costs because a State auditor may conduct activities outside the scope of an audit, such as evaluate the effectiveness of educational programs, by establishing a contractual relationship with the State educational authority or school district or institution in possession of the records that qualifies the auditor as an authorized representative or school official, respectively.

Directory Information Opt Outs

The proposed regulations clarify that while an educational agency or institution is not required to notify former students under § 99.37(a) about the institution's directory information policy or allow former students to opt out of directory information disclosures, they must continue to honor a parent's or student's decision to opt out of directory information disclosures after the student leaves the institution. Most agencies and institutions should already comply with this requirement because of informal guidance and training provided by FPCO. We have insufficient information to estimate the number of institutions affected and the additional costs involved in changing systems to maintain opt out flags on education records of former students and seek public comment on the matter.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 99.30 Under what conditions is prior consent required to disclose information?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) that receive Federal funds from the Department and certain 4- and 2-year colleges and for-profit postsecondary trade and technical schools with small enrollments that receive Federal funds, such as student aid programs under Title IV of the HEA. However, the regulations would not have a significant economic impact on these small agencies and institutions because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure that LEAs and postsecondary institutions comply with the educational privacy protection requirements in FERPA.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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. The proposed regulations in §§ 99.3 through 99.67 may have federalism implications, as defined in Executive Order 13132, in that they will have some effect on the States and the operation of educational agencies and institutions subject to FERPA. We encourage State and local elected officials to review and provide comments on these proposed regulations. To facilitate review and comment by appropriate State and local officials, the Department will, aside from publication in the **Federal Register**, post the NPRM to the FPCO Web site and to the Office of Planning, Evaluation, and Policy Development (OPEPD) Web site and make a specific e-mail posting via a special listserv that is sent to each State department of education superintendent and higher education commission director.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Department Recommendations for Safeguarding Education Records

The Department recognizes that agencies and institutions face significant challenges in safeguarding educational records. We are providing the following information and recommendations to assist agencies and institutions in meeting these challenges.

As noted elsewhere in this document, FERPA provides that no funds administered by the Secretary may be made available to any educational agency or institution that has a policy or practice of releasing, permitting the release of, or providing access to personally identifiable information from education records without the prior written consent of a parent or eligible student except in accordance with specified exceptions. In light of these requirements, the Secretary encourages educational agencies and institutions to utilize appropriate methods to protect education records, especially in electronic data systems.

In recent months the following incidents have come to the Department's attention:

- Students' grades or financial information, including SSNs, have been posted on publicly available web servers;
- Laptops and other portable devices containing similar information from education records have been lost or stolen;
- Education records, or devices that maintain education records, have not been retrieved from school officials upon termination of their employment or service as a contractor, consultant, or volunteer;
- Computer systems at colleges and universities have become favored targets because they hold many of the same records as banks but are much easier to access. See ''College Door Ajar for Online Criminals'' (May 2006), available at *http://www.uh.edu/ednews/2006/latimes/200605/20060530hackers.html* and July 10, 2006, Viewpoint in BusinessWeek/Online available at *http://www.businessweek.com/technology/content/jul2006/tc20060710_558020.htm*;
- Nearly 65 percent of postsecondary educational institutions identified theft of personal information (SSNs, credit/debit/ATM card, account or PIN numbers, etc.) as a high risk area. See Table 7, Perceived Risks at *http://www.educause.edu/ir/library/pdf/ecar_so/ers/ers0606/Ekf0606.pdf*; and
- In December 2006, a large postsecondary institution alerted some 800,000 students and others that the campus computer system containing their names, addresses and SSNs had been compromised.

The Department's Office of Inspector General (OIG) noted in Final Inspection Alert Memorandum dated February 3, 2006, that between February 15, 2005, and November 19, 2005, there were 93 documented computer breaches of electronic files involving personal information from education records such as SSNs, credit card information, and dates of birth. According to the reported data, 45 percent of these incidents have occurred at colleges and universities nationwide. OIG expressed concern that student information may be compromised due to a failure to implement or administer proper security controls for information systems at postsecondary institutions.

The Department recognizes that no system for maintaining and transmitting education records, whether in paper or electronic form, can be guaranteed safe from every hacker and thief, technological failure, violation of administrative rules, and other causes of unauthorized access and disclosure. Although FERPA does not dictate requirements for safeguarding education records, the Department encourages the holders of personally identifiable information to consider actions that mitigate the risk and are reasonably calculated to protect such information. Of course, an educational agency or institution may use any method, combination of methods, or technologies it determines to be reasonable, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as social security numbers or directory information); and methods used by other institutions in similar circumstances. The greater the harm that would result from unauthorized access or disclosure and the greater the likelihood that unauthorized access or disclosure will be attempted, the more protections an agency or institution should consider using to ensure that its methods are reasonable.

One resource for administrators of electronic data systems is ''The National Institute of Standards and Technology (NIST) 800–100, Information Security Handbook: A Guide for Managers'' (October 2006). A second resource is NIST 800–53, which catalogs information security controls. Similarly, a May 22, 2007 memorandum to heads of federal agencies from the Office of Management and Budget requires executive departments and agencies to ensure that proper safeguards are in place to protect personally identifiable information that they maintain, eliminate the unnecessary use of SSNs, and develop and implement a ''breach notification policy.'' This memorandum, although directed towards federal agencies, may also serve as a resource for educational agencies and institutions. See *http://www.whitehouse.gov/omb/memoranda/fy2007/m07–16.pdf*.

Finally, if an educational agency or institution has experienced a theft of files or computer equipment, hacking or other intrusion, software or hardware malfunction, inadvertent release of data to Internet sites, or other unauthorized release or disclosure of education records, the Department suggests consideration of one or more of the following steps:

- Report the incident to law enforcement authorities.
- Determine exactly what information was compromised, *i.e.*, names, addresses, SSNs, ID numbers, credit card numbers, grades, and the like.
- Take steps immediately to retrieve data and prevent any further disclosures.
- Identify all affected records and students.
- Determine how the incident occurred, including which school officials had control of and responsibility for the information that was compromised.
- Determine whether institutional policies and procedures were breached, including organizational requirements governing access (user names, passwords, PINS, etc.); storage; transmission; and destruction of information from education records.
- Determine whether the incident occurred because of a lack of monitoring and oversight.
- Conduct a risk assessment and identify appropriate physical, technological and administrative measures for preventing similar incidents in the future.
- Notify students that the Department's Office of Inspector General maintains a Web site describing steps students may take if they suspect they are a victim of identity theft at *http://www.ed.gov/about/offices/list/oig/misused/idtheft.html;* and *http://www.ed.gov/about/offices/list/oig/misused/victim.html*.

FERPA does not require an educational agency or institution to notify students that information from their education records was stolen or otherwise subject to an unauthorized release, although it does require the agency or institution to maintain a record of each disclosure. 34 CFR 99.32(a)(1). (However, student

notification may be required in these circumstances for postsecondary institutions under the Federal Trade Commission's Standards for Insuring the Security, Confidentiality, Integrity and Protection of Customer Records and Information (''Safeguards Rule'') in 16 CFR part 314.) In any case, direct student notification may be advisable if the compromised data includes student SSNs and other identifying information that could lead to identity theft.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Directory information, Education records, Information, Parents, Privacy, Records, Social Security Numbers, Students.

Dated: March 17, 2008.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.2 is amended by revising the note following the authority citation to read as follows:

§ 99.2 What is the purpose of these regulations?

* * * * *

Note to § 99.2: 34 CFR 300.610 through 300.626 contain requirements regarding the confidentiality of information relating to children with disabilities who receive evaluations, services or other benefits under Part B of the Individuals with Disabilities Education Act (IDEA). 34 CFR 303.402 and 303.460 identify the confidentiality of information requirements regarding children and infants and toddlers with disabilities and their families who receive evaluations, services or other benefits under Part C of IDEA.

3. Section 99.3 is amended by:

A. Adding, in alphabetical order, a definition for *State auditor.*

B. Revising the definitions of *Attendance, Directory information, Disclosure,* and *Personally identifiable information.*

C. In the definition of *Education records,* revising paragraph (b)(5) and adding a new paragraph (b)(6).

These additions and revisions read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Attendance includes, but is not limited to—

(a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

* * * * *

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

(a) Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (*e.g.*, undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

(b) Directory information does not include a student's social security number or student identification (ID) number.

(c) Directory information includes a student's user ID or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the electronic identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

* * * * *

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2))

* * * * *

Education Records

* * * * *

(b) * * *

(5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

(6) Grades on peer-graded papers before they are collected and recorded by a teacher.

* * * * *

Personally Identifiable Information

The term includes, but is not limited to

(a) The student's name;

(b) The name of the student's parent or other family members;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number, student number, or biometric record;

(e) Other indirect identifiers, such as date of birth, place of birth, and mother's maiden name;

(f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

(g) Information requested by a person who the educational agency or institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates.

(Authority: 20 U.S.C. 1232g)

* * * * *

State auditor means a party under any branch of government with authority

and responsibility under State law for conducting audits.

(Authority: 20 U.S.C. 1232g(b)(5))

* * * * *

4. Section 99.5 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 99.5 What are the rights of students?

(a)(1) * * *

(2) Nothing in this section prevents an educational agency or institution from disclosing education records, or personally identifiable information from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the conditions in § 99.31(a)(8), § 99.31(a)(10), § 99.31(a)(15), or any other provision in § 99.31(a).

* * * * *

5. Section 99.31 is amended by:

A. Redesignating paragraph (a)(1) as paragraph (a)(1)(i)(A) and adding new paragraphs (a)(1)(i)(B) and (a)(1)(ii).

B. Revising paragraph (a)(2).

C. Revising paragraph (a)(6)(ii).

D. In paragraph (a)(9)(ii)(A), removing the word '' or'' after the punctuation '';''.

E. In paragraph (a)(9)(ii)(B), removing the punctuation ''.'' and adding in its place the word ''; or''.

F. Adding paragraph (a)(9)(ii)(C).

G. Adding paragraph (a)(16).

H. Revising paragraph (b).

I. Adding paragraphs (c) and (d).

J. Revising the authority citation at the end of the section.

The additions and revisions read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(1)(i)(A) * * *

(B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—

(*1*) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(*2*) Is under the direct control of the agency or institution; and

(*3*) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

(ii) An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement in paragraph 99.31(a)(1)(i)(A).

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

Note: Section 4155(b) of the No Child Left Behind Act of 2001, 20 U.S.C. 7165(b), requires each State to assure the Secretary of Education that it has a procedure in place to facilitate the transfer of disciplinary records of a student who was suspended or expelled by a local educational agency to any private or public elementary or secondary school in which the student is subsequently enrolled or seeks, intends, or is instructed to enroll.

(6) * * *

(ii) An educational agency or institution may disclose personally identifiable information under paragraph (a)(6)(i) of this section only if it enters into a written agreement with the organization specifying the purposes of the study. An educational agency or institution is not required to agree with or endorse the conclusions or results of the study. The written agreement required under this paragraph must ensure that—

(A) Information from education records is used only to meet the purpose or purposes of the study stated in the written agreement;

(B) The organization conducts the study in a manner that does not permit personal identification of parents and students, as defined in this part, by individuals other than representatives of the organization that conducts the study; and

(C) The information is destroyed or returned to the educational agency or institution when it is no longer needed for the purposes for which the study was conducted.

* * * * *

(9) * * *

(ii) * * *

(C) An *ex parte* court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

* * * * *

(16) The disclosure concerns an individual required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was obtained and disclosed by the educational agency or institution in compliance with a State community notification program under 42 U.S.C. 14071(e) or (j) and applicable Federal guidelines. Nothing in the Act or these regulations requires or encourages an educational agency or institution to collect or maintain information about registered sex offenders.

(b)(1) *De-identified records and information.* An educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information without the consent required by § 99.30 after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable because of unique patterns of information about that student, whether through single or multiple releases, and taking into account other reasonably available information.

(2) An educational agency or institution, or a party that has received education records or information from education records under this part, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that—

(i) An educational agency or institution or other party that releases de-identified data under paragraph (b) of this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;

(ii) The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and

(iii) The record code is not based on a student's social security number or other personal information.

(c) An educational agency or institution must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the

agency or institution discloses personally identifiable information from education records.

(d) Paragraphs (a) and (b) of this section do not require an educational agency or institution or any other party to disclose education records or information from education records to any party.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b), (h), (i), and (j))

6. Section 99.32 is amended by revising paragraph (d)(5) to read as follows:

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

* * * * *

(d) * * *

(5) A party seeking or receiving records in accordance with § 99.31(a)(9)(ii)(A) through (C).

* * * * *

7. Section 99.33 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 99.33 What limitations apply to the redisclosure of information?

* * * * *

(b)(1) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(i) The disclosures meet the requirements of § 99.31; and

(ii) The educational agency or institution has complied with the requirements of § 99.32(b).

(2) A party that redisclosures personally identifiable information from education records on behalf of an educational agency or institution in response to a court order or lawfully issued subpoena under § 99.31(a)(9) must provide the notification required under § 99.31(a)(9)(ii).

(c) Paragraph (a) of this section does not apply to disclosures under § 99.31(a)(8), (9), (11), (12), (14), (15), (16), and to information that postsecondary institutions are required to disclose under the Clery Act to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.

(d) An educational agency or institution must inform a party to whom disclosure is made of the requirements of paragraph (a) of this section except for disclosures made under § 99.31(a)(8), (9), (11), (12), (14), (15), and (16), and to information that postsecondary institutions are required to disclose under the Clery Act to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.

(e) If this Office determines that a third party outside the educational agency or institution improperly redisclosures personally identifiable information from education records in violation of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

* * * * *

8. Section 99.34 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 99.34 What conditions apply to disclosure of information to other educational agencies and institutions?

(a) * * *

(1) * * *

(ii) The annual notification of the agency or institution under § 99.7 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

* * * * *

9. Section 99.35 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a)(1) Authorized representatives of the officials or agencies headed by officials listed in § 99.31(a)(3)(i) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs.

(2) Authority for an agency or official listed in § 99.31(a)(3)(i) to conduct an audit, evaluation, or compliance or enforcement activity is not conferred by the Act or this part and must be established under other Federal, State, or local law, including valid administrative regulations.

(3) State auditors that are not authorized representatives of State and local educational authorities may have access to education records in connection with an audit of Federal or State supported education programs. For purposes of this provision, an audit is limited to testing compliance with applicable laws, regulations, and standards.

(b) * * *

(1) Be protected in a manner that does not permit personal identification of individuals by anyone other than the officials or agencies headed by officials referred to in paragraph (a) of this section, except that those officials or agencies may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of § 99.33(b); and

* * * * *

10. Section 99.36 is amended by revising paragraphs (a) and (c) to read as follows:

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

* * * * *

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the safety or health of a student or other individuals. If the educational agency or institution determines that there is articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health and safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

* * * * *

11. Section 99.37 is amended by:

A. Revising paragraph (b).

B. Adding new paragraphs (c) and (d).

The revision and additions read as follows:

§ 99.37 What conditions apply to disclosing directory information?

* * * * *

(b) An educational agency or institution may disclose directory information about former students without complying with the notice and opt out conditions in paragraph (a) of this section. However, the agency or

institution must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request.

(c) A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, electronic identifier, or institutional e-mail address in a class in which the student is enrolled.

(d) An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

* * * * *

12. Section 99.62 is revised to read as follows:

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports, information on policies and procedures, annual notifications, training materials, and other information necessary to carry out its enforcement responsibilities under the Act or this part.

(Authority: 20 U.S.C. 1232g(f) and (g))

13. Section 99.64 is amended by:

A. Revising the section heading.

B. Revising paragraphs (a) and (b).

The revisions read as follows:

§ 99.64 What is the investigation procedure?

(a) A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred. A complaint does not have to allege that a violation is based on a policy or practice of the educational agency or institution.

(b) The Office investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether an educational agency or institution has failed to comply with a provision of the Act or this part. If the Office determines that an educational agency or institution has failed to comply with a provision of the Act or this part, it may also determine whether the failure to comply is based on a policy or practice of the agency or institution.

* * * * *

14. Section 99.65 is revised to read as follows:

§ 99.65 What is the content of the notice of investigation issued by the Office?

(a) The Office notifies the complainant, if any, and the educational agency or institution in writing if it initiates an investigation under § 99.64(b). The notice to the educational agency or institution—

(1) Includes the substance of the allegations against the educational agency or institution; and

(2) Directs the agency or institution to submit a written response and other relevant information, as set forth in § 99.62, within a specified period of time, including information about its policies and practices regarding education records.

(b) The Office notifies the complainant if it does not initiate an investigation because the complaint fails to meet the requirements of § 99.64.

(Authority: 20 U.S.C. 1232g(g))

15. Section 99.66 is amended by revising paragraphs (a), (b), and the introductory text of paragraph (c) to read as follows:

§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews a complaint, if any, information submitted by the educational agency or institution, and any other relevant information. The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant, if any, and the educational agency or institution a written notice of its findings and the basis for its findings.

(c) If the Office finds that an educational agency or institution has not complied with a provision of the Act or this part, it may also find that the failure to comply was based on a policy or practice of the agency or institution. A notice of findings issued under paragraph (b) of this section to an educational agency or institution that has not complied with a provision of the Act or this part—

* * * * *

16. Section 99.67 is amended by:

A. Revising the introductory text of paragraph (a).

B. In paragraph (a)(1), removing the punctuation ''; '' and adding, in its place, the punctuation ''.''.

C. In paragraph (a)(2) removing the word ''; or'' and adding, in its place, the punctuation ''.''.

The revision reads as follows:

§ 99.67 How does the Secretary enforce decisions?

(a) If the Office determines that an educational agency or institution has a policy or practice in violation of the Act or this part, the Secretary may take any legally available enforcement action, including the following enforcement actions available in accordance with part E of the General Education Provisions Act:

* * * * *

[FR Doc. E8–5790 Filed 3–21–08; 8:45 am]

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Federal Register

Monday,
March 24, 2008

Part III

Environmental Protection Agency

40 CFR Parts 51 and 59

National Volatile Organic Compound Emission Standards for Aerosol Coatings; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 59

[EPA–HQ–OAR–2006–0971; FRL–8498–6]

RIN 2060–AN69

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for the aerosol coatings (aerosol spray paints) category under section 183(e) of the Clean Air Act (CAA). The standards implement section 183(e) of the CAA, as amended in 1990, which requires the Administrator to control volatile organic compounds (VOC) emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and ozone nonattainment. This regulation establishes nationwide reactivity-based standards for aerosol coatings. States have previously promulgated rules for the aerosol coatings category based upon reductions of VOC by mass; however, EPA has concluded that a national rule based upon the relative reactivity approach will achieve more reduction in ozone formation than may be achieved by a mass-based approach for this specific product category. This rule will better control a product's contribution to ozone formation by encouraging the use of less reactive VOC ingredients, rather than treating all VOC in a product alike through the traditional mass-based approach. We are also revising EPA's regulatory definition of VOC. This revision is necessary to include certain compounds that would otherwise be exempt in order to account for the reactive compounds in aerosol coatings that contribute to ozone formation. Therefore, certain compounds that would not be VOC under the otherwise applicable definition will count towards the applicable reactivity limits under this final regulation. The initial listing of product categories and schedule for regulation was published on March 23, 1995 (60 FR 15264). This final action announces EPA's final decision to list aerosol coatings for regulation under Group III of the consumer and commercial product category for which regulations are mandated under section 183(e) of the CAA.

DATES: *Effective Date:* This final rule is effective March 24, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 24, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0971. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2006–0971, EPA Headquarters Library, Room 3334 in the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center telephone number is (202) 566–1744, and the facsimile number for the EPA Docket Center is (202) 566–9744. EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times.

Informational updates will be provided via the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* as they are available.

FOR FURTHER INFORMATION CONTACT: For questions about the final rule, contact Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–2509; facsimile number (919) 541–3470; e-mail address: *whitfield.kaye@epa.gov*. For information concerning the CAA section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460, facsimile number (919) 541–3470, e-mail address: *moore.bruce@epa*.gov.

SUPPLEMENTARY INFORMATION:

Entities Potentially Affected by This Action. The entities potentially affected by this regulation encompass all steps in aerosol coatings operations. This includes manufacturers, processors, wholesale distributors, or importers of aerosol coatings for sale or distribution in the United States, or manufacturers, processors, wholesale distributors, or importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States. The entities potentially affected by this action include:

Category	NAICS code [a]	Examples of regulated entities
Paint and Coating Manufacturing	32551	Manufacturing of lacquers, varnishes, enamels, epoxy coatings, oil and alkyd vehicle, plastisols, polyurethane, primers, shellacs, stains, water repellant coatings.
All Other Miscellaneous Chemical Production and Preparation Manufacturing.	325998	Aerosol can filling, aerosol packaging services.

[a] North American Industry Classification System *http://www.census.gov/epcd/www/naics.html*.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether you would be affected by this action, you should examine the applicable industry description in section I.E of the promulgation preamble. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket. The docket number for the National Volatile Organic Compounds Emission Standards for Aerosols Coating (40 CFR part 59, subpart E) is Docket ID No. EPA–HQ–OAR–2006–0971.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW. Following the Administrator's signature, a copy of the final rule will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 23, 2008. Under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''if the person raising the objection can demonstrate to EPA that it was impracticable to raise such an objection [within the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Organization of This Document. The information presented in this notice is organized as follows:

I. Background
A. The Ozone Problem
B. Statutory and Regulatory Background
C. Photochemical Reactivity
D. Role of Reactivity in VOC/Ozone Regulations
E. The Aerosol Coating Industry
II. Summary of the Final Standards and Changes Since Proposal
A. Applicability of the Standards and Regulated Entities
B. VOC Regulated Under This Rule
C. Regulatory Limits
D. Compliance Dates
E. Labeling Requirements
F. Recordkeeping and Reporting
G. Variance
H. Test Methods
III. Response to Significant Comments
A. Format of Regulation
B. Downwind Effects and Robustness of Relative Reactivity Scale
C. Consideration of Other Factors in the Consideration of Best Available Control
D. Variance, Small Quantity Manufacturers and Extended Compliance Date
E. Additional Reporting Requirements
IV. Summary of Impacts
A. Environmental Impacts
B. Energy Impacts
C. Cost and Economic Impacts
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Background

A. The Ozone Problem

Ground-level ozone, a major component of smog, is formed in the atmosphere by reactions of VOC and oxides of nitrogen in the presence of sunlight. The formation of ground-level ozone is a complex process that is affected by many variables.

Exposure to ground-level ozone is associated with a wide variety of human health effects, as well as agricultural crop loss, and damage to forests and ecosystems. Controlled human exposure studies show that acute health effects are induced by short-term (1 to 2 hour) exposures (observed at concentrations as low as 0.12 parts per million (ppm)), generally while individuals are engaged in moderate or heavy exertion, and by prolonged (6 to 8 hour) exposures to ozone (observed at concentrations as low as 0.08 ppm and possibly lower), typically while individuals are engaged in moderate exertion. Transient effects from acute exposures include pulmonary inflammation, respiratory symptoms, effects on exercise performance, and increased airway responsiveness. Epidemiological studies have shown associations between ambient ozone levels and increased susceptibility to respiratory infection, increased hospital admissions and emergency room visits. Groups at increased risk of experiencing elevated exposures include active children, outdoor workers, and others who regularly engage in outdoor activities. Those most susceptible to the effects of ozone include those with pre-existing respiratory disease, children, and older adults. The literature suggests the possibility that long-term exposures to ozone may cause chronic health effects (*e.g.*, structural damage to lung tissue and accelerated decline in baseline lung function).

B. Statutory and Regulatory Background

Under section 183(e) of the CAA, EPA conducted a study of VOC emissions from the use of consumer and commercial products to assess their potential to contribute to levels of ozone that violate the National Ambient Air Quality Standards (NAAQS) for ozone, and to establish criteria for regulating VOC emissions from these products. Section 183(e) of the CAA directed EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone (i.e., ozone nonattainment areas), and to divide the list of categories to be regulated into four groups.

EPA published the initial list in the **Federal Register** on March 23, 1995 (60 FR 15264). In that notice, EPA stated that it may amend the list of products for regulation, and the groups of product categories listed for regulation, in order to achieve an effective regulatory program in accordance with EPA's discretion under CAA section 183(e). EPA has revised the list several times. Most recently, in May 2006, EPA revised the list to add one product category, portable fuel containers, and to remove one product category, petroleum dry cleaning solvents. See 71 FR 28320 (May 16, 2006). The aerosol spray paints (aerosol coatings) category currently is listed for regulation as part of Group III of the CAA section 183(e) list.

CAA section 183(e) directs EPA to regulate consumer and commercial products using ''best available controls'' (BAC). CAA section 183(e)(1)(A) defines BAC as ''the degree of emissions reduction that the Administrator

determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.'' CAA section 183(e) also provides EPA with authority to use any system or systems of regulation that EPA determines is the most appropriate for the product category. Under CAA section 183(e)(4), EPA can impose ''any system or systems of regulation as the Administrator deems appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption or disposal of the product.'' Under these provisions, EPA has previously issued national regulations for architectural coatings, autobody refinishing coatings, consumer products, and portable fuel containers.[1 2 3 4 5]

For any category of consumer or commercial products, the Administrator may issue control techniques guidelines (CTG) in lieu of national regulations if the Administrator determines that such guidance will be substantially as effective as a national regulation in reducing emissions of VOC which contribute to ozone levels in areas which violate the NAAQS for ozone. In many cases, a CTG can be an effective regulatory approach to reduce emissions of VOC in nonattainment areas because of the nature of the specific product and the uses of such product. A critical distinction between a national rule and a CTG is that a CTG may include provisions that affect the users of the products. For other product categories, such as wood furniture coatings and shipbuilding coatings, EPA has previously determined that, under CAA section 183(e)(3)(C), a CTG would be substantially as effective as a national rule and, therefore, issued CTGs to provide guidance to States for development of appropriate State regulations. Most recently, EPA determined that a CTG would be substantially as effective as a national rule for three other Group III categories: Paper, Film and Foil Coating; Metal Furniture Coating; and Large Appliance Coating.[6]

For the category of aerosol coatings, EPA has determined that a national rule applicable nationwide is the best system of regulation to achieve necessary VOC emission reductions from this type of product. Aerosol coatings are typically used in relatively small amounts by consumers and others on an occasional basis and at varying times and locations. Under such circumstances, reformulation of the VOC content of the products is a more feasible way to achieve VOC emission reductions, rather than through a CTG approach that would only affect a smaller number of relatively large users.

Aerosol coatings regulations are already in place in three States (California, Oregon, and Washington), and other States are considering developing regulations for these products. For the companies that market aerosol coatings in different States, trying to fulfill the differing requirements of State rules may create administrative, technical, and marketing problems. Although Section 183(e) does not preempt States from having more stringent State standards, EPA's national rule is expected to provide some degree of consistency, predictability, and administrative ease for the industry. A national rule also helps States reduce potential compliance problems associated with noncompliant coatings being transported into nonattainment areas from neighboring areas and neighboring States. A national rule will also enable States to obtain needed VOC emission reductions from this sector in the near term, without having to expend their limited resources to develop similar rules in each State.[7]

C. Photochemical Reactivity

There are thousands of individual species of VOC that can participate in a series of reactions involving nitrogen oxides (NO_X) and the energy from sunlight, resulting in the formation of ozone. The impact of a given species of VOC on formation of ground-level ozone is sometimes referred to as its ''reactivity.'' It is generally understood that not all VOC are equal in their effects on ground-level ozone formation. Some VOC react extremely slowly and changes in their emissions have limited effects on ozone pollution episodes. Some VOC form ozone more quickly than other VOC, or they may form more ozone than other VOC. Other VOC not only form ozone themselves, but also act as catalysts and enhance ozone formation from other VOC. By distinguishing between more reactive and less reactive VOC, however, EPA concludes that it may be possible to develop regulations that will decrease ozone concentrations further or more efficiently than by controlling all VOC equally.

Assigning a value to the reactivity of a specific VOC species is a complex undertaking. Reactivity is not simply a property of the compound itself; it is a property of both the compound and the environment in which the compound is found. Therefore, the reactivity of a specific VOC varies with VOC:NO_X ratios, meteorological conditions, the mix of other VOC in the atmosphere, and the time interval of interest. Designing an effective regulation that takes account of these interactions is difficult. Implementing and enforcing such a regulation requires an extra burden for both industry and regulators, as those impacted by the rule must characterize and track the full chemical composition of VOC emissions rather than only having to track total VOC content as is required by traditional mass-based rules. EPA's September 13, 2005, final rule approving a comparable reactivity-based aerosol coating rule as part of the California State Implementation Plan for ozone contains additional background information on photochemical reactivity.[8] Recently, EPA issued interim guidance to States regarding the use of VOC reactivity information in the development of ozone control measures.[9]

1. What Research Has Been Conducted on VOC Reactivity?

Much of the initial work on reactivity scales was funded by the California Air

[1] ''National Volatile Organic Compound Emission Standards for Architectural Coatings'' 63 FR 48848, (September 11, 1998).

[2] ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings'' 63 FR 48806, (September 11, 1998).

[3] ''Consumer and Commercial Products: Schedule for Regulation'' 63 FR 48792, (September 11, 1998)

[4] National Volatile Organic Compound Emission Standards for Consumer Products'' 63 FR 48819, (September 11, 1998).

[5] ''National Volatile Organic Compound Emission Standards for Portable Fuel Containers'' 72 FR 8428, (February 26, 2007).

[6] ''Consumer and Commercial Products: Control Techniques Guidelines in Lieu of Regulations for Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings'' 72 FR 57215, (October 9, 2007).

[7] Courts have already approved EPA's creation of national rules under section 183(e). *See, ALARM Caucus* v. *EPA,* 215 F.3d 61,76 (D.C. Cir. 2000), *cert. denied,* 532 U.S. 1018 (2001).

[8] ''Revisions to the California State Implementation Plan and Revision to the Definition of Volatile Organic Compounds (VOC)-Removal of VOC Exemptions for California's Aerosol Coating Products Reactivity-based Regulation'' 70 FR 53930, (September 13, 2005).

[9] ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'') 70 FR 54046, (September 13, 2005).

Resources Board (CARB), which was interested in comparing the reactivity of emissions from different alternative fuel vehicles. In the late 1980s, CARB provided funding to William P. L. Carter at the University of California to develop a reactivity scale. Carter investigated 18 different methods of ranking the reactivity of individual VOC in the atmosphere using a single-cell trajectory model with a state-of-the-art chemical reaction mechanism.[10] Carter suggested three scales for further consideration:

i. Maximum Incremental Reactivity (MIR) scale—an ozone yield scale derived by adjusting the NO_X emissions in a base case to yield the highest incremental reactivity of the base reactive organic gas mixture.

ii. Maximum Ozone Incremental Reactivity (MOIR) scale—an ozone yield scale derived by adjusting the NO_X emission in a base case to yield the highest peak ozone concentration.

iii. Equal Benefit Incremental Reactivity (EBIR) scale—an ozone yield scale derived by adjusting the NO_X emissions in a base case scenario so VOC and NO_X reductions are equally effective in reducing ozone.

Carter concluded that, if only one scale is used for regulatory purposes, the MIR scale is the most appropriate.[11] The MIR scale is defined in terms of environmental conditions where ozone production is most sensitive to changes in hydrocarbon emissions and, therefore, represents conditions where hydrocarbon controls would be the most effective. CARB used the MIR scale to establish fuel-neutral VOC emissions limits in its low-emitting vehicle and alternative fuels regulation.[12] [13] Subsequently, Carter has updated the MIR scale several times as the chemical mechanisms in the model used to derive the scale have evolved with new scientific information. CARB incorporated a 1999 version of the MIR scale in its own aerosol coatings rule. The latest revision to the MIR scale was issued in 2003.

In addition to Carter's work, there have been other attempts to create reactivity scales. One such effort is the work of R.G. Derwent and co-workers, who have published articles on a scale called the photochemical ozone creation potential (POCP) scale.[14] [15] This scale was designed for the emissions and meteorological conditions prevalent in Europe. The POCP scale is generally consistent with that of Carter, although there are some differences because it uses a different model, chemical mechanism, and emission and meteorological scenarios. Despite these differences, there is a good correlation of r^2=0.9 between the results of the POCP and the MIR scales.[16]

As CARB worked to develop reactivity-based regulations in California, EPA began to explore the implications of applying reactivity scales in other parts of the country. In developing its regulations, CARB has maintained that the MIR scale is the most appropriate metric for application in California, but cautioned that its research has focused on California atmospheric conditions and that the suitability of the MIR scale for regulatory purposes in other areas has not been demonstrated. In particular, specific concerns have been raised about the suitability of using the MIR scale in relation to multi-day stagnation or transport scenarios or over geographic regions with very different VOC:NO_X ratios than those of California.

In 1998, EPA participated in the formation of the Reactivity Research Working Group (RRWG), which was organized to help develop an improved scientific basis for reactivity-related regulatory policies.[16] All interested parties were invited to participate. Since that time, representatives from EPA, CARB, Environment Canada, States, academia, and industry have met in public RRWG meetings to discuss and coordinate research that would support this goal.

The RRWG has organized a series of research efforts to explore:

i. The sensitivity of ozone to VOC mass reductions and changes in VOC composition under a variety of environmental conditions;

ii. The derivation and evaluation of reactivity scales using photochemical airshed models under a variety of environmental conditions;

iii. The development of emissions inventory processing tools for exploring reactivity-based strategies; and

iv. The fate of VOC emissions and their availability for atmospheric reactions.

This research has led to a number of findings that increase EPA's confidence in the ability to develop regulatory approaches that differentiate between specific VOC on the basis of relative reactivity. The first two research objectives listed above were explored in a series of three parallel modeling studies that resulted in four reports and one journal article.[17] [18] [19] [20] [21] EPA commissioned a review of these reports to address a series of policy-relevant science questions.[22] In 2007, an additional peer review was commissioned by EPA to assess the appropriateness of basing a national aerosol coatings regulation on reactivity. Generally, the peer reviews support the appropriateness of the use of the box-model based MIR metric nationwide for the aerosol coatings category. The results are available in the rulemaking docket.

The results of the RRWG-organized study and the subsequent reviews suggest that there is good correlation between different relative reactivity metrics calculated with photochemical airshed models, regardless of the choice of model, model domain, scenario, or averaging times. Moreover, the scales calculated with photochemical airshed models correlate relatively well with the MIR metric derived with a single cell, one-dimensional box model. Prior to the

[10] Carter, W. P. L. (1994) ''Development of ozone reactivity scales for organic gases,'' *J. Air Waste Manage. Assoc.,* 44: 881–899.

[11] ''Initial Statement of Reasons for the California Aerosol Coatings Regulation, California Air Resources Board,'' 2000.

[12] California Air Resources Board ''Proposed Regulations for Low-Emission Vehicles and Clean Fuels—Staff Report and Technical Support Document,'' State of California, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, August 13, 1990.

[13] California Air Resources Board ''Proposed Regulations for Low-Emission Vehicles and Clean Fuels—Final Statement of Reasons,'' State of California, Air Resources Board, July 1991.

[14] Derwent, R.G., M.E. Jenkin, S.M. Saunders and M.J. Pilling (2001) ''Characterization of the Reactivities of Volatile Organic Compounds Using a Master Chemical Mechanism,'' J. Air Waste Management Assoc., 51: 699–707.

[15] Derwent, R.G., M.E. Jenkin, S.M. Saunders and M.J. Pilling (1998) ''Photochemical Ozone Creation Potentials for Organic Compounds in Northwest Europe Calculated with a Master Chemical Mechanism,'' Atmos. Env., 32(14/15):2429–2441.

[16] See *http://www.narsto.org/section.src?SID=10.*

[17] Carter, W.P.L., G. Tonnesen, and G. Yarwood (2003) Investigation of VOC Reactivity Effects Using Existing Regional Air Quality Models, Report to American Chemistry Council, Contract SC–20.0-UCR-VOC-RRWG, April 17, 2003.

[18] Hakami, A., M.S. Bergin, and A.G. Russell (2003) Assessment of the Ozone and Aerosol Formation Potentials (Reactivities) of Organic Compounds over the Eastern United States, Final Report, Prepared for California Air Resources Board, Contract No. 00–339, January 2003.

[19] Hakami, A., M.S. Bergin, and A.G. Russell (2004a) Ozone Formation Potential of Organic Compounds in the Eastern United States: A Comparison of Episodes, Inventories, and Domains, Environ. Sci. Technol. 2004, 38, 6748–6759.

[20] Hakami, A., M. Arhami, and A.G. Russell (2004b) Further Analysis of VOC Reactivity Metrics and Scales, Final Report to the U.S. EPA, Contract #4D–5751–NAEX, July 2004.

[21] Arunachalam S., R. Mathur, A. Holland, M.R. Lee, D. Olerud, Jr., and H. Jeffries (2003) Investigation of VOC Reactivity Assessment with Comprehensive Air Quality Modeling, Prepared for U.S. EPA, GSA Contract # GS–35F–0067K, Task Order ID: 4TCG68022755, June 2003.

[22] Derwent, R.G. (2004) Evaluation and Characterization of Reactivity Metrics, Final Draft, Report to the U.S. EPA, Order No. 4D–5844-NATX, November 2004.

RRWG-organized studies, little analysis of the robustness of the box-model derived MIR metric and its applicability to environmental conditions outside California had been conducted. Although these studies were not specifically designed to test the robustness of the box-model derived MIR metrics, the results suggest that the MIR metric is relatively robust.

D. Role of Reactivity in VOC/Ozone Regulations

Historically, EPA's general approach to regulation of VOC emissions has been based upon control of total VOC by mass, without distinguishing between individual species of VOC. EPA considered the regulation of VOC by mass to be the most effective and practical approach based upon the scientific and technical information available when EPA developed its VOC control policy.

EPA issued the first version of its VOC control policy in 1971, as part of EPA's State Implementation Plan (SIP) preparation guidance.[23] In that guidance, EPA emphasized the need to reduce the total mass of VOC emissions, but also suggested that substitution of one compound for another might be useful when it would result in a clearly evident decrease in reactivity and thus tend to reduce photochemical oxidant formation. This latter statement encouraged States to promulgate SIPs with VOC emission substitution provisions similar to the Los Angeles County Air Pollution Control District's (LACAPCD) Rule 66, which allowed some VOC that were believed to have low to moderate reactivity to be exempted from control. The exempt status of many of those VOC was questioned a few years later, when research results indicated that, although some of those compounds do not produce much ozone close to the source, they may produce significant amounts of ozone after they are transported downwind from urban areas.

In 1977, further research led EPA to issue a revised VOC policy under the title ''Recommended Policy on Control of Volatile Organic Compounds,'' (42 FR 35314, July 8, 1977), offering its own, more limited, list of exempt organic compounds. The 1977 policy identified four compounds that have very low photochemical reactivity and determined that their contribution to ozone formation and accumulation could be considered negligible. The policy exempted these ''negligibly reactive'' compounds from VOC emissions limitations in programs designed to meet the ozone NAAQS. Since 1977, EPA has added other compounds to the list of negligibly reactive compounds based on new information as it has been developed. In 1992, EPA adopted a formal regulatory definition of VOC for use in SIPs, which explicitly excludes compounds that have been identified as negligibly reactive [40 CFR 51.100(s)].

To date, EPA has exempted 54 compounds or classes of compounds in this manner. In effect, EPA's current VOC exemption policy has generally resulted in a two bin system in which most compounds are treated equally as VOC, and are controlled. A separate smaller group of compounds are treated as negligibly reactive, and are exempt from VOC controls.[24] This approach was intended to encourage the reduction of emissions of all VOC that participate in ozone formation. From one perspective, it appears that this approach has been relatively successful. EPA estimates that, between 1970 and 2003, VOC emissions from man-made sources nationwide declined by 54 percent. This decline in VOC emissions has helped to decrease average ozone concentration by 29 percent (based on 1-hour averages) and 21 percent (based on 8-hour averages) between 1980 and 2003. These reductions occurred even though, between 1970 and 2003, population, vehicle miles traveled, and gross domestic product rose 39 percent, 155 percent and 176 percent, respectively.[25]

On the other hand, some have argued that a reactivity-based approach for reducing VOC emissions would be more effective than the current mass-based approach. One group of researchers conducted a detailed modeling study of the Los Angeles area and concluded that, compared to the current approach, a reactivity-based approach could achieve the same reductions in ozone concentrations at significantly less cost or, for a given cost, could achieve a significantly greater reduction in ozone concentrations.[26] The traditional approach to VOC control that focused on reducing the overall mass of emissions may be adequate in some areas of the country. However, EPA's recent SIP guidance recognizes that approaches to VOC control that differentiate between VOC based on relative reactivity are likely to be more effective and efficient under certain circumstances.[27] In particular, reactivity-based approaches are likely to be important in areas for which aggressive VOC control is a key strategy for reducing ozone concentrations. Such areas include:

- Areas with persistent ozone nonattainment problems;
- Urbanized or other NO_X-rich areas where ozone formation is particularly sensitive to changes in VOC emissions;
- Areas that have already implemented VOC reasonably available control technology (RACT) measures and need additional VOC emission reductions.

In these areas, there are a variety of possible ways of addressing VOC reactivity in the SIP development process, including:

- Developing accurate, speciated VOC emissions inventories.
- Prioritizing control measures using reactivity metrics.
- Targeting emissions of highly-reactive VOC compounds with specific control measures.
- Encouraging VOC substitution and composition changes using reactivity-weighted emission limits.

The CARB aerosol coatings rule is an example of this last application of the concept of reactivity. CARB's reactivity-based rule for aerosol coatings was designed to encourage the use of compounds that are less effective at producing ozone. It contains limits for aerosol coatings expressed as grams of ozone formed per gram of product instead of the more traditional limits expressed as percent VOC by mass. EPA approved CARB's aerosol coatings rule as part of the California SIP for ozone. EPA's national aerosol coatings rule builds largely upon CARB's efforts to regulate this product category using the relative reactivity approach.

E. The Aerosol Coating Industry

Aerosol coatings include all coatings that are specially formulated and

[23] ''Requirements for Preparation, Adoption and Submittal of Implementation Plans'', Appendix B, 36 FR 15495, (August 14, 1971).

[24] For some analytical purposes, EPA has distinguished between VOC and ''highly reactive'' VOC, such as in the EPA's initial evaluation of consumer products for regulation. *See,* ''Final Listing,'' 63 FR 48792, 48795–6 (Sept. 11, 1998) (explaining EPA's approach); *see also, ALARM Caucus* v. *EPA,* 215 F. 3d 61, 69–73 (D. C. Cir. 2000), *cert. denied,* 532 U.S. 1018 (2001) (approving EPA's approach as meeting the requirements of CAA section 183(e)).

[25] ''Latest Findings on National Air Quality: 2002 Status and Trends,'' EPA 454/K–03–001, (August 2003); and ''The Ozone Report Measuring Progress through 2003,'' EPA 454/K–04-001, (April 2004); Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina.

[26] A. Russell, J. Milford, M. S. Bergin, S. McBride, L. McNair, Y. Yang, W. R. Stockwell, B. Croes, ''Urban Ozone Control and Atmospheric Reactivity of Organic Gases,'' Science, 269: 491–495, (1995).

[27] ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans,'' 70 FR 54046, September 13, 2005).

packaged for use in pressurized cans. They are used by both professional and do-it-yourself (DIY) consumers. The DIY segment accounts for approximately 80 percent of all sales. The remainder of aerosol coatings is sold for industrial maintenance and original equipment manufacturer use. Aerosol coatings are used for a number of applications including small domestic coating jobs, field and construction site marking, and touch-up of marks and scratches in paintwork of automobiles, appliances and machinery.

The aerosol coatings industry includes the formulators and manufacturers of the concentrated product. These manufacturers may package the product or they may use toll fillers (processors). These toll fillers may work not only with the large manufacturers, but for other coating manufacturers who do not have the specialized equipment necessary to fill aerosol containers. The fillers may then supply the product to coating dealers, home supply stores, distributors, company-owned stores and industrial customers.

An aerosol consists of a gas in which liquid or solid substances may be dispensed. Aerosol coatings are pressurized coatings that, like other coatings, consist of pigments and resins and solvents. However, aerosol coatings also contain a propellant that dispenses the product ingredients. A controlled amount of propellant in the product vaporizes as it leaves the container, creating the aerosol spray. The combination of product and propellant is finely tuned to produce the correct concentration and spray pattern for an effective product.

Aerosol coatings can be packaged in disposable cans for hand-held applications or for use in specialized equipment in ground traffic/marking applications. As with other coatings, aerosol coatings are available in both solvent-based and water-based formulations.

In developing the final national rule for aerosol coatings, EPA has used the same coating categories, and the same definitions for those categories, previously identified by CARB in its comparable regulation for aerosol coatings. We believe these categories adequately categorize the industry and encompass the range of products included in our own analysis of this category that we conducted in preparing EPA's Report to Congress (EPA–453/R–94–066–A). Use of the same definitions and categories has the added benefit of providing regulated entities with consistency between the CARB and national rules. The categories of aerosol coatings regulated in the final rule include six general categories and 30 specialty categories. Based on a survey of aerosol coating manufacturers conducted by CARB in 1997, VOC emissions from the six general categories together with the specialty category of Ground Traffic/Marking Coatings account for approximately 85 percent of the ozone formed as a result of the use of aerosol coatings. These categories are defined in this regulation and are described in more detail in the docket to this rulemaking.

There are currently no national regulations addressing VOC emissions from aerosol coatings. California, Oregon and Washington are the only States that currently regulate aerosol coating products and Oregon's and Washington's rules are identical to the Tier 1 VOC mass-based limits developed by CARB that became effective in 1996. Unlike other EPA or State regulations and previous CARB regulations for aerosol coatings that regulate VOC ingredients by mass in the traditional approach, the current California regulation for aerosol coatings is designed to limit the ozone formed from VOC emissions from aerosol coatings by establishing limits on the reactivity of the cumulative VOC ingredients of such coatings.

II. Summary of the Final Standards and Changes Since Proposal

This section presents a summary of the major features of the final rule, as well as a summary of the changes made to the proposed rule. The reasons for the changes in the final rule are explained in Section III.

A. Applicability of the Standards and Regulated Entities

The final Aerosol Coatings Reactivity Rule (ACRR) will apply to manufacturers, processors, wholesale distributors, or importers of aerosol coatings used by both the general population (i.e., the ''Do It Yourself'' market) and industrial applications (e.g., at original equipment manufacturers and other industrial sites). This regulation will apply to distributors, if the name of the distributor appears on the label of the aerosol products.

The final rule includes an exemption from the limits in Table 1 of the rule for those manufacturers that make a small annual volume of aerosol coating products, i.e., with a total VOC content by mass of no more than 7,500 kilograms of VOC per year in the aggregate for all aerosol coating products. EPA notes that an exemption under EPA's national rule for aerosol coatings under section 183(e) does not alter any requirements under any applicable State or local regulations. The regulatory language in this final rule has been changed from the proposed rule to clarify the regulated entity that is responsible for compliance with each portion of the regulation.

The final rule includes a provision in section 59.501(f) that allows foreign manufacturers to qualify for the small quantity manufacturer exemption in section 59.501(e). Although foreign manufacturers are not regulated entities under this rule, some may choose to voluntarily become regulated entities in order to qualify for the small quantity manufacturer exemption. To qualify, the foreign manufacturer must (1) meet the same 7500 kilogram per year VOC mass limit that domestic small volume manufacturers must meet; (2) comply with the same recordkeeping and reporting requirements that domestic manufacturers must fulfill; and (3) comply with certain provisions in 40 CFR 59.501(f)(3), which are similar to those used in other EPA rules to ensure that EPA may effectively monitor and implement this rule with respect to foreign entities.[28]

B. VOC Regulated Under This Rule

This rule regulates emissions of VOC from aerosol coatings. Because even less reactive VOC contribute to ozone formation, we are amending the regulatory definition of VOC for purposes of this rule by adding 40 CFR 51.100(s)(7). As provided in that new subsection, any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit if it: (1) Has a reactivity factor (RF) value greater than that of ethane (0.3), or (2) is used in amounts greater than 7.3 percent of the product weight in the product formulation.

Table 2A currently includes those organic compounds we know to be used in aerosol coatings that have an RF value greater than that of ethane (0.3). Under the proposed rule, we had a single de minimis threshold that provided that a compound would not be counted towards the applicable limit, regardless of its reactivity, if the compound represented less than 0.1 percent of the product weight. In the final rule, we have provided a two-part threshold: (1) A 0.1 percent threshold for compounds with an RF value greater than 0.3; and (2) a 7.3 percent threshold

[28] *See* Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners, Final Rule, 62 FR 45,533, 45,537–38 (August 28, 1997).

for compounds with an RF value of 0.3 or less.

The rationale for the 7.3 percent threshold is that compounds with an RF value of 0.3 or less will contribute minimally to ozone formation from this product category. We calculated the 7.3 percent figure as follows. We first determined the maximum RF value for a compound, which is 22.04 (the default value for compounds of unknown reactivity). We then multiplied that value by 0.1(the proposed percentage threshold for all organic compounds irrespective of their RF value), which resulted in a value of 2.2. To determine an appropriate percentage threshold for organic compounds with an RF value of 0.3 or less, we then divided 2.2 by 0.3 (the RF for ethane) which resulted in the 7.3 percent threshold for such compounds. Therefore, in determining compliance with the limits of this rule, this rule does not require inclusion of de minimis amounts of ingredients taking into consideration the relative reactivity of the compound.

As provided in 40 CFR 59.505(e)(2), if in the future, compounds with an RF value of 0.3 or less are used in amounts greater than or equal to 7.3 percent of a particular aerosol coatings product formulation, then those compounds will be counted towards the applicable limits of this rule at that time.

The emission limits in the rule are expressed in terms of weight of ozone generated from the VOC ingredients per weight of coating material, rather than the traditional weight of VOC ingredients per weight (or volume) of product. EPA has concluded that this approach will reduce the overall amount of ozone that results from the VOC emitted to the atmosphere from these products, while providing regulated entities with greater flexibility to select VOC ingredients for their products. This approach provides incentives to regulated entities to use VOC ingredients that have lower reactivity and that will therefore generate less ozone.

EPA has revised the list of compounds in Table 2A in order to include only those compounds actually used as ingredients in aerosol coating products. In addition, EPA has provided a mechanism to add additional compounds to the table if a regulated entity elects to use them as an ingredient in aerosol coatings.

C. Regulatory Limits

The regulatory limits for the final rule are a series of reactivity limits for six general coating categories and 30 specialty categories of specialty coatings. These reactivity limits are expressed in terms of grams of ozone generated per gram of product. The reactivity of each VOC ingredient is specified in the table of values included in the regulation. No changes have been made to the regulatory limits since proposal.

D. Compliance Dates

The final rule requires all regulated entities to comply by January 1, 2009, for all aerosol coating products, except those that require registration under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 40 CFR 136–136y) (FIFRA), which are not subject to the requirements of this rule until January 1, 2010. The rule also includes a provision that allows regulated entities to seek a compliance extension if they have not previously manufactured, imported, or distributed in California or elsewhere any aerosol coating product that complies with applicable California regulations. This extension would give the regulated entity until January 1, 2011, to comply with the requirements of the final rule.

Beginning on the compliance date, the regulated entities under this rule will be required to conduct initial compliance demonstration calculations for all coating formulations manufactured or filled at each of their facilities, and to maintain compliance demonstration data for each batch of aerosol coating. These calculations and the underlying documents must be maintained for at least 5 years after the product is manufactured, processed, distributed, or imported, and must be submitted to the EPA upon request. The regulated entity may use formulation data to make the compliance calculations; however, EPA is adopting California Air Resources Board Method 310 as the underlying test method (i.e., formulation data must be verifiable with California Air Resources Board Method 310, if requested). Facilities are also allowed to use EPA's Test Method 311.

EPA has added a provision allowing the extension of the compliance date for FIFRA-registered compounds as a revision to the proposed rule. This provision was added to the final rule due to the additional approvals (e.g., approval of labels and formulation changes) that must be obtained for all FIFRA-registered products.

E. Labeling Requirements

The final rule also includes labeling requirements to facilitate implementation and enforcement of the limits. Labels must clearly identify the product category or the category code provided in Table 1 of the regulation, the limit for that product category, and the product date code. If the product date is not obvious from the date code, an explanation of the code is required in the initial notification discussed below. In the final rule, EPA has made a change to allow a regulated entity to develop a facility-specific category code system, if the system is explained in the initial notification.

F. Recordkeeping and Reporting

The final rule includes a requirement for an Initial Notification from all regulated entities to EPA at least 90 days before the compliance date. This notification will provide basic information about the regulated entity as well as contact information for the certifying official. In addition, this notification will need to explain the product date code system used to label products and the category code system, if the facility is not using the default category codes included in Table 1. The Initial Notification must also include VOC formulation data for each aerosol coatings product that is subject to this rule. The formulation data must provide the weight fraction (g compound/g product) for each VOC compound used in the product in an amount equal to or greater than 0.1 percent. The notification must also identify any volatile organic compound or mixture that is not currently listed in Table 2A, 2B, or 2C, if that compound or mixture will be used in an aerosol coatings formulation. Finally, the notification must include a statement certifying that all of the regulated entity's products will be in compliance with the limits by the compliance date.

The regulated entity is required to submit a revised notification if there is a change in the information in the Initial Notification, with the exception of changes to product formulations. The regulated entity is not required to submit a revised notification if the VOC formulations submitted in its Initial Notification change. The regulated entity is required to submit a revised notification if the manufacturer, for example, adds a new coating category, changes the product date code system or batch definition, or begins to use a VOC that is not listed in Table 2A, 2B, or 2C.

The regulated entity is required to maintain compliance calculations for each of its aerosol coatings formulations. For each batch of a particular formulation, the regulated entity must maintain records of the date(s) the batch was manufactured, the volume of the batch, and the VOC formula for the formulation. Records of these calculations must be maintained for 5 years after the product is manufactured, processed, distributed for

wholesale, or imported for sale or distribution in interstate commerce in the United States. The regulated entity must supply this information to EPA within 60 days of a written request. The final rule includes the addition of a provision that allows for manufacturers or importers to accept the responsibility for recordkeeping and reporting requirements that would otherwise be required of their distributors.

The promulgated rule requires that every 3 years, beginning with calendar year 2011, each regulated entity must submit a triennial report. The triennial report would provide updated VOC formulation data and, for each VOC formulation, the total mass of each individual VOC or mixture used as ingredients in the aerosol coatings manufactured, imported, or distributed that year. This information must be provided only for the second year of the reporting cycle, which in the case of the first report would be information from 2010. Subsequent reports will be required at three year intervals. In other words, a report containing data from 2013 will be due in 2014, a report containing data from 2016 will be due in 2017, and so forth. EPA intends to provide mechanisms for regulated entities to provide this information through the electronic submission facilities being expanded under the National Emissions Inventory (NEI) program and will provide additional information and guidance to regulated entities before the first report is due. This report has been added to the final rule to address concerns raised during the public comment period, as explained in section III.E of this preamble.

The final rule requires those small manufacturers who qualify for exemption from the limits of Table 1 of subpart E to make an annual report to EPA providing necessary information and documentation to establish that the products made by the entity should be exempt.

EPA notes that the contents of any reports, including the VOC composition of the coatings subject to this rule, are ''emissions data'' under section 114 of the CAA and EPA's regulatory definition of such term in 40 CFR part 2. As such, this information must be available to the public regardless of whether EPA obtains the information through a reporting requirement or through a specific request to the regulated entity. Therefore, such information is not eligible for treatment as ''confidential business information'' under 40 CFR 59.516 of this rule.

G. Variance

The final rule allows regulated entities to submit a written application to EPA requesting a temporary variance if, for reasons beyond their reasonable control, they cannot comply with the requirements of the rule. An approved variance order would specify a final compliance date and a condition that imposes increments of progress necessary to assure timely compliance. A variance would end immediately if the regulated entity failed to comply with any term or condition of the variance. The Administrator will provide special consideration to variance requests from regulated entities, particularly small businesses that have not marketed their products in areas subject to State regulations for these products prior to this rulemaking. EPA notes that a variance under EPA's national rule for aerosol coatings under section 183(e) does not alter any requirements under any applicable State or local regulations. No changes were made to this section since the proposal.

H. Test Methods

Although regulated entities may use formulation data to demonstrate compliance with the reactivity limits, EPA concludes it is also necessary to have test methods in place that can be used to verify the accuracy of the formulation data. Therefore, we have included two test methods that may be used by regulated entities or EPA to determine compliance with the reactivity limits. In those cases where the formulation data and test data are not in agreement, data collected using the approved test methods will prevail. Regulated entities or regulatory agencies may use either California Air Resources Board Method 310—Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products, or EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) to determine the reactive organic compound content of an aerosol coating. California Air Resources Board Method 310 includes some test procedures that are not required to determine the VOC content of aerosol coatings; for example, California Air Resources Board Method 310 incorporates EPA Method 24 for determining the VOC content of a coating. We have identified those sections of California Air Resources Board Method 310 that are not required for compliance demonstration purposes in the regulation. EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) was originally developed for liquid coatings, so it does not include provisions for the collection of the propellant portion of an aerosol coating. Therefore, those choosing to use EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) must separate the aerosol propellant from the coating using either ASTM D3063–94 or ASTM D 3074–94. There were no changes to the test methods in the final rule.

III. Response to Significant Comments

During the public comment period, we received a total of 18 comment letters. Of these, seven were brief letters in support of the proposed regulation. A summary of the most significant comments is presented below. A summary of all comments received on this rule, as well as complete responses to each of these comments, are presented in the docket (EPA–HQ–OAR–2006–0971).

A. Format of Regulation

Several commenters discussed the use of a reactivity-based rule versus a mass-based rule. Two commenters fully supported the reactivity-based rule, while five commenters raised some concerns over some aspects of this approach.

The commenters supporting the rule generally supported the use of a reactivity-based approach both nationally and in California. One commenter stated that EPA did a good job in evaluating the reactivity regulation in California and the feasibility of making it apply nationwide, calling it a ''bold step forward in the arena of air quality regulations.'' Another commenter stated that ''[t]he rule is an important advancement in the use of reactivity-based emissions regulations for VOC.'' The commenter provided the following points in support of this rule and the future use of reactivity-based VOC emission limits in other consumer product and coating standards:

1. Reactivity-based VOC emission regulations are more appropriate and effective for addressing the environmental concern of interest, ozone formation potential.

2. This national proposed rule is based on an established CARB regulation for aerosol coatings which has already been approved by EPA and in use for several years.

3. Reactivity-based VOC emission regulations provide product formulators with more options for meeting environmental performance standards while providing technically feasible product performance, and stimulating future product development enhancements.

4. There is evidence that lower mass-based VOC limits in some products may be leading to the increased use of more photochemically reactive VOC, eliminating some of the anticipated environmental benefit (ozone reduction) of these regulations, and possibly increasing the actual ozone formation potential of the products themselves.

This commenter also stated that the reactivity-based approach is consistent with EPA's September 2005 ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans,'' which specifically ''encourages States to consider recent scientific information on the photochemical reactivity of volatile organic compounds in the development of state implementation plans designed to meet the national ambient air quality standards for ozone [70 FR 54046–54051; September 13, 2005].''

The commenter concluded that reactivity-based VOC standards should not be considered ''only as a supplement to mass-based approaches, but as a scientifically valid and appropriate means for controlling ozone formation.'' The commenter also stated that in its approval of the CARB regulation, EPA appropriately stated that the reactivity-based rule will improve the SIP in part by ''creating an incentive for the use of solvents with relatively low contribution to ozone formation [70 FR 1642].'' The commenter further stated that some VOC mass-based limits in the previous version of CARB's aerosol coatings rule ''presented particularly difficult reformulation challenges'' for product manufacturers [70 FR 1642]. The commenter stated that EPA correctly noted that CARB's regulation will preserve the air quality benefits of its previous rule, while at the same time allowing manufacturers greater flexibility in reformulating their products, by replacing existing mass-based VOC limits for aerosol spray coatings with reactivity-based limits that are designed to achieve equivalent air quality benefits [70 FR 1642]. The commenter concluded that expanding this aerosol coating regulation to the rest of the United States expands the benefits of this working reactivity-based VOC regulation to other areas of the United States where ozone formation is a concern, while allowing aerosol coating manufacturers to develop single formulations for the entire United States.

Several commenters raised concerns over some aspects of an approach based on reactivity. These commenters stated that a reactivity-based approach may have merit, but only if EPA first addresses numerous ''unanswered questions'' about the potential adverse impact of such an approach on other equally, if not more, important components of air quality management programs, such as the effect on ambient fine particulate matter ($PM_{2.5}$) levels and air toxics. The commenters also raised the issues of downwind ozone impacts and enforceability. One commenter provided an extensive history of the evolution of EPA's use of reactivity, noting that EPA is not obligated to issue a reactivity-based regulation, stating that the required reactivity-based portion of EPA's obligation under § 183(e) was fulfilled during the listing process. The commenter questioned whether EPA had adequately addressed all possible impacts of a reactivity-based approach before proceeding with the proposal.

Some commenters advocated that EPA should issue a mass-based rule, rather than one based on reactivity. The commenters pointed to the uncertainty of the use of a reactivity-based approach, including concerns over the toxicity of pollutants that are used as substitutes, the potential inter-relationship with $PM_{2.5}$ issues, downwind ozone and enforceability concerns. The commenters concluded that, given these concerns, and the fact that a fully implemented rule only yields a benefit equivalent to a 19 percent reduction of VOC, that EPA may be ''better served to establish a National rule based on the 1996 CARB rule amended with 2002 mass-based limits known to be feasible.'' The commenters stated that this is the approach used by two other States, Oregon and Washington, that have aerosol coating rules. One commenter further stated that because these limits would be feasible for all manufacturers, the small manufacturer exemption, the extended compliance date, and the variance provisions would all be unnecessary. Therefore, the commenter concluded that a mass-based approach would achieve the most reductions and would allow EPA time to conduct the required investigations to address issues and not ''rely on expectations that may not hold to be true.'' One commenter stated that ''EPA appears to have neglected to consider an approach that combines mass-based and reactivity-based components.''

EPA considered these comments, but we still conclude that the reactivity-based approach for this rule is appropriate. Under CAA section 183(e), EPA is charged with developing regulations that implement BAC for the purposes of decreasing ground-level ozone formation. For aerosol coatings, EPA has determined that the proposed reactivity-based regulation remains BAC. The reactivity-based limits are based on those adopted in CARB's reactivity-based rule and are designed to achieve a comparable decrease in ozone formation that would have been achieved by CARB's 2002 mass-based limits, which are lower than CARB's 1996 mass-based limits. Moreover, while some of CARB's 2002 mass-based limits are now considered unfeasible and are not in force, the reactivity-based limits are now in effect and many manufacturers are producing and selling compliant products. Oregon and Washington have adopted CARB's 1996 mass-based limits. However, even if these limits were lowered for some categories to the 2002 limits, where deemed feasible, this hybrid approach proposed by the commenters would not achieve the same level of ozone decrease that the reactivity-based limits will. Furthermore, it is not clear that manufacturers who are not currently subject to the CARB reactivity-based limits would have any more or less difficulty meeting the hybrid mass limits than they would meeting the reactivity-based limits in the proposed rule. In other words, any mass-based rule would also likely include provisions for small businesses and other variances.

The determination of BAC depends on EPA's determination that the proposed relative reactivity factors can be used to reasonably predict the changes in the ozone formation that will occur due to changes in the emissions from this source category. After thoughtful consideration of the available research, EPA has concluded that this determination is justified. EPA has followed and contributed to the development of the science underlying reactivity-based regulations since such an approach was considered in the early 1990s. EPA's position on the acceptability of reactivity scales has evolved along with the science. The most recent results of research performed under the RRWG, cited in section I of this preamble, provide evidence that the relative reactivity factors in the proposed rule are reasonably robust over a wide variety of environmental conditions. Concerns about the potential for increased ozone downwind are addressed in a separate section below.

Although recent research suggests that other reactivity scales may more accurately represent the behavior of ozone in current air quality models, it is not clear that emission limits based on these scales would be achievable or that the use of a different scale would lead to significantly different ozone decreases from this source category. Furthermore, emission limits based on a different scale than that used by CARB would lead to increased costs to comply. Therefore, EPA has determined that use of the proposed relative reactivity factors is reasonable and will lead to net decreases of ground-level ozone. The consideration of fine particle formation, toxics exposures, and stratospheric ozone depletion are addressed below in a separate section, as are concerns about the complexity of enforcement.

One commenter disagreed with EPA's statement in the preamble that this regulation was needed because there are areas of the country that need VOC substitution strategies to address nonattainment issues. The commenter argued that there are many opportunities to reduce VOC mass by implementing readily available and proven programs ''before embarking into VOC substitution.'' The commenter continued that most nonattainment areas around the country have not taken aggressive steps to limit VOC. Therefore, the commenter contended that there are significant reductions that can be obtained from programs, such as implementing RACT or updating decades-old RACT programs, fuel strategies, and other area source regulations like consumer products, architectural coatings, and Stage I vapor recovery.

EPA disagrees with this commenter. Several of the commenters on the proposed rule inaccurately portray the choice between mass-based emission limits and reactivity-based emission limits as a choice between emission reductions and emission substitutions. For aerosol coating products, any new emission limitation, whether it is mass-based or reactivity-based, will be achieved by reformulating the product, thereby changing the composition of the associated emissions. With a reactivity-based limit, the reformulation will be guided by relative reactivity factors that will encourage manufacturers to use lower reactivity compounds and will limit the overall ozone formation associated with the product. All VOC components with an RF value greater than 0.3 are included in the calculation. With a mass-based limit, manufacturers may shift to more powerful solvents, some of which may often be higher in reactivity, and which cumulatively may contribute more to ozone formation. There is no explicit limit on the ozone formation associated with the product. The precise impacts (on ozone, fine particles, air toxics, or other environmental endpoints of concern) of either reactivity-based or mass-based emission limits are difficult to predict given the reformulations that may be used to achieve the limits. However, reactivity-based limits derived using a reasonable set of relative reactivity factors provide the appropriate incentives to shift formulations to compounds with lower reactivity, and limit the overall ozone contribution of the regulated products.

The commenter's assertion that reactivity-based regulations should not be pursued until other mass-based VOC control measures, including RACT, have been implemented or strengthened is not a factor in the decision of how EPA fulfills its obligations under CAA section 183(e) to implement best available controls. However, EPA does believe that traditional mass-based VOC control measures continue to be effective tools for addressing VOC contributions to ozone nonattainment problems in many situations and that reactivity-based control measures are most useful where mass-based controls have reached the limits of technological feasibility. In the case of aerosol coatings, EPA has determined that it is possible to use reactivity-based limits to go beyond what is achievable with mass-based limits, and therefore, has found reactivity-based limits to be BAC for this product category.

B. Downwind Effects and Robustness of Relative Reactivity Scale

Several commenters discussed the state of the science of reactivity and whether EPA's statements about the science of reactivity were correct. Some commenters questioned EPA's statement that the expected realistic changes in the formulation of aerosol products are unlikely to result in noticeable increases in ozone downwind of the source, stating that EPA does not know this to be the case. The commenters asserted that this issue is important ''for the simple fact that ozone nonattainment areas in the Northeastern United States have the highest recorded ozone values downwind of urban centers, and this effort has the potential to increase ozone in the very place where ozone reductions are most needed, confounding the ozone attainment plans that are being developed by the states.'' The commenters also stated that increased ozone downwind from urban centers could result in more impacts to agricultural and forested areas of the country.

One commenter further stated that the statements made in the preamble related to future ozone levels seem to be based on expectations rather than demonstrations based on modeling efforts. The commenter encouraged EPA, given the potential for further tightening of the current ozone NAAQS, to perform studies demonstrating that there would be no increase in downwind ozone ''so that the implementation of this rule does not worsen ozone nonattainment problems found in the Northeastern United States.''

EPA recognizes the commenters' concerns about downwind ozone formation but has concluded that the VOC reformulations resulting from this reactivity-based regulation will reduce overall ozone formation and exposure. First, any enhancements of downwind ozone caused by upwind substitution of larger amounts of less reactive VOC are expected to be smaller than the concurrent reductions of upwind ozone. Carter *et al.* (2003), in modeling large-scale VOC substitution scenarios, found larger local ozone reductions and smaller downwind ozone increases. Similarly, Arunachalam *et al.* (2003) found that ''high-versus-low reactivity substitution'' is ''an effective strategy for reducing high levels of ozone,'' especially in, or downwind of, urban areas. In a modeling exercise conducted to inform this rulemaking, Luecken (2007; see docket) substituted lower reactivity VOC for higher reactivity VOC in the Chicago area and found the resulting downwind ozone disbenefits to be much smaller than the upwind ozone benefits. In general, upwind ozone reductions are expected to occur in or near densely populated urban areas, where ozone levels are highest, thus reducing overall population exposure. Second, downwind areas, particularly remote, rural, or suburban areas, are likely to be NO_X-limited (Sillman, 1999; AQCD, 2006), thus restricting ozone formation from small additional amounts of upwind anthropogenic VOC. The implementation of other regulations such as the Clean Air Interstate Rule will likely reduce NO_X further in such areas. Third, in downwind areas that may be VOC-limited, the simultaneous VOC substitutions occurring in these areas may counterbalance, to some extent, the introduction of VOC from upwind. Fourth, the reductions in upwind reactivity and ozone formation are likely to reduce the direct transport of ozone and ozone precursors such as aldehydes downwind from urban areas.

EPA agrees that modeling can be useful for demonstrating the impacts of regulatory changes. While EPA did not perform nationwide modeling specific to this regulation, the three studies cited above support the EPA's contention that downwind ozone increases are likely to be small, especially compared to upwind ozone reductions. Thus, while additional modeling will continue to shed light on VOC reactivity, there is an adequate basis for proceeding with this reactivity-based regulation. As the science evolves, EPA will continue to invest and participate in research into VOC chemistry and the use of reactivity measures.

One commenter stated that, while reactivity-based approaches may provide significant benefits ''where the science is sufficiently robust to ensure that the expected benefits are achieved in practice,'' the commenter stated that, based on the proposal, ''it is not clear that EPA has adequately addressed all the relevant technical issues or that this reactivity-based regulation is appropriate at this time.'' The commenter notes that EPA must adequately (and accurately) account for the differences in the various environmental conditions (and resulting variations in VOC behavior) throughout the United States. The commenter stated that the complexity of the interactions of VOC in the ambient air makes it extremely difficult to accurately predict the actual VOC forming capacity of a chemical compound. The commenter stated that ''assuming an essentially uniform ''reactivity'' for a compound used in any coating product anywhere in the country presents the potential for an inaccurate assessment of the actual VOC-related effects of the product nationwide.'' The commenter further stated that ''EPA's half-hearted assertion in the proposed rule that its scientific understanding of VOC reactivity has evolved sufficiently to allow it to reliably and accurately predict the behavior of individual species of VOC in a regulatory context is far from unequivocal.''

Another commenter had a different position and asserted that:

> Controlling VOC emissions from coatings and consumer products based on photochemical reactivity is a scientifically sound and appropriate means of addressing ozone formation potential. There can be enormous differences in the capacity of various VOC to react in the atmosphere to form tropospheric ozone. As reflected in EPA's proposal, scientific research shows that photochemical reactivity has a more direct correlation to the ozone-forming potential (i.e., potential air quality impacts) of VOC emissions than does a simple mass-based measure of emissions. The impact of mass-based VOC emissions reductions on ozone formation potential is uncertain and can vary greatly depending on the VOC substitution decisions made to meet specific mass limits. Reactivity-based VOC emissions limits, by considering the rate and mechanism of photo oxidation in the troposphere, are reflective of the actual processes that lead to ozone formation. Relative photochemical reactivity thus provides a more rigorous scientific approach to assessing an individual compound's potential contribution to ozone accumulation than does consideration of its mass alone.

Accordingly, this commenter concluded that EPA's approach is scientifically sound and represents a significant step forward in aerosol coatings regulation.

EPA recognizes the concerns raised by the commenters, but agrees with the latter commenter. EPA acknowledges the difficulty in assessing reactivity in widely different environmental conditions. As noted in the proposal, a compound's reactivity can depend on the VOC:NO_X ratio, meteorological conditions, and the mix of other VOC. Many different methods have been suggested for measuring the reactivity of individual compounds. EPA has chosen the MIR scale, which is an ozone yield scale derived by adjusting the NO_X emissions in a base case simulation to yield the highest incremental reactivity of the base reactive organic gas mixture. These are environmental conditions where ozone production is most sensitive to changes in VOC emissions and, therefore, where VOC controls would be most effective. These tend to reflect conditions in or near urban areas where VOC emissions are most likely to produce ozone, and thus EPA has determined the MIR scale is the most appropriate for regulatory purposes (see also Carter, 1994). Research conducted under the auspices of the RRWG has shown good correlation between the MIR scale and other reactivity scales, including those computed with photochemical airshed models. Also, this research has supported the nationwide applicability of reactivity scales, and peer reviews of the RRWG reports have specifically supported the use of the MIR scale for a nationwide aerosol coatings regulation (see docket). For more detail, refer to the proposal (72 FR 38952). As noted above, EPA will continue to invest and participate in research into VOC chemistry and the use of reactivity measures.

C. Consideration of Other Factors in the Consideration of Best Available Controls

Several commenters presented arguments for numerous factors that should be included in EPA's determination of BAC for aerosol coatings. These factors include the potential impact on ambient PM levels, the potential for increase in emissions of certain hazardous air pollutants (HAP), and potential stratospheric ozone impacts. In addition, one commenter stated that EPA should consider the impact of the rule on agricultural and forest areas.

The commenters concerned with contribution to PM levels were primarily concerned about the aerosol fraction of measured ambient $PM_{2.5}$. The commenters stated that EPA should consider ''negative co-effects'' of the rule on fine particulate matter, because the substitution with compounds with low reactivities could increase the mass of emissions of low reactive compounds, which could impact both primary and secondary ozone formation. The commenter stated that this would be even more important in the near future, as the $PM_{2.5}$ NAAQS is revised and given the fact that $PM_{2.5}$ nonattainment is coincident with ozone nonattainment in many areas in the country. The commenter concluded that EPA must examine the impacts of increasing low reactive VOC on $PM_{2.5}$ before establishing a regulatory framework that encourages substitution.

Several commenters were concerned that EPA did not consider the toxicity of compounds when establishing BAC for this category. Some commenters identified several examples of HAP, including benzene and diisocyanates, with relatively low reactivity factors and noted that EPA overlooked the fact that all VOC are not equal when it comes to their individual toxic potential. The commenters stated that toxicity should be considered in setting emission limits, with one commenter suggesting that EPA consider a substitution protocol for VOC that includes ''low to high'' toxicity in addition to ''low to high'' reactivity.

Another commenter also noted that the table of reactivity factors also includes compounds that have been banned under Title VI of the CAA because they are considered stratospheric ozone depletors.

EPA has addressed the impacts of the factors mentioned by the commenters in the final rule to the extent allowed by the CAA.

With respect to the commenter's concerns about HAP emissions from aerosol coatings, EPA notes that section 183(e) only provides the EPA with authority to regulate VOC emissions from consumer and commercial products for purposes of reducing ozone nonattainment. Other provisions of the Act, such as section 112, provide the statutory mechanism for reduction of

HAP emissions. Thus, although EPA shares the concerns of the commenter about unnecessary exposure to HAPs, the EPA does not have authority like that of the State of California to restrict or ban the use of specific HAPs as ingredients in aerosol coatings. Nevertheless, EPA believes that sufficiently stringent limits can have the beneficial effect of reducing the use of certain HAPs such as toluene and benzene. Because these compounds are highly reactive, the limits of the final rule will serve to restrict the use of these compounds as ingredients in aerosol coatings as a practical matter.

With respect to the comment concerning compounds that are banned under Title VI, EPA is clarifying that the compounds included in 72 FR 38951 are not a list of compounds ''approved'' for use in aerosol coatings. On the contrary, it is merely a list of compounds for which relative reactivity factors have been derived. Therefore, if a compound had been banned by Title VI, or banned for use for any other reason, they cannot be used as ingredients in aerosol coatings.

However, EPA has revisited the decision to include an exhaustive list of compounds in Table 2A. Based on concerns raised by commenters and an internal review at EPA, we have revised Table 2A. That table currently includes those organic compounds we know to be used in aerosol coatings products that: (1) Have an RF value greater than that of ethane (0.3), and (2) are used in amounts greater than 7.3 percent of the product weight. This changes the role of Table 2A from a listing of available reactivity factor (RF) values to a table defining the compounds that have defined RF factors for this rule.

If a regulated entity identifies a compound or mixture of compounds that is not on Table 2A, 2B, or 2C, the regulated entity can still use the compound or mixture as an ingredient, as follows:

(1) The regulated entity can inform EPA that it intends to use the compound and request that the compound be added to Table 2A, 2B, or 2C, pursuant to the procedures in section 59.511(j) of the final rule. However, if the compound has a reactivity factor that is less than 0.30 g O_3/g VOC, and the compound is less than or equal to 7.3 percent by weight in any of your products, the regulated entity can use an RF equal to zero in all calculations. Any requests submitted to EPA on or before June 1, 2008 will be considered, and if appropriate, incorporated into the appropriate Table on or before January 1, 2009.

(2) If the compound does not have an established reactivity factor listed in Table 2A, 2B, or 2C, the compound can be used, provided an RF of 22.04 g O_3/g compound is used in all calculations for that compound. This value, which is equal to the highest RF identified to date, was selected to ensure that the environment is protected while additions to the list are being considered.

In the proposed regulation, we proposed to eliminate all of the exemptions from the definition of VOC listed in the first clause subparagraphs of § 51.100(s). This inadvertently included certain inorganic compounds listed in § 51.100(s) that are not VOC. On further review, EPA concluded that there is no need to eliminate the exemption for organic compounds that have an RF value of 0.3 or less and that represent less than 7.3 percent of a given product formulation.

However, if a regulated entity intends to use an organic compound that is not listed in Table 2A in the final rule as an ingredient in an aerosol coating, then the regulated entity is required to notify EPA via its Initial Notification or an update to that notification. EPA will then add such compounds and their reactivity factors to Table 2A. Until listed in Table 2A, such compounds may be used in aerosol coating products but are assigned the default reactivity factor of 22.04 g O_3/g compound.

Several commenters also provided input on the question raised in the proposal preamble related to a voluntary program for the reduction of HAP. The commenters were all opposed to an additional program, citing existing programs and requirements that already address the inclusion of toxic materials in coatings. For example, the Federal Hazardous Substance Act (FHSA), which requires specific labeling of products that it classifies as ''hazardous substances.'' The FHSA includes any products containing methylene chloride on that list.

EPA is not establishing a voluntary HAP reduction program at this time. Existing programs appear to be sufficient to help ensure that the unwanted outcome of increased toxicity of aerosol coating products does not occur. EPA reserves the right to revisit the potential for such a program, for this or another reactivity-based rulemaking, at a later date.

D. Variance, Small Quantity Manufacturers, Extended Compliance Date

Several commenters expressed concern about both the need for, and equity of, the three provisions in the proposed rule that either extended the compliance date or provided an exemption from the rule. These provisions were the variance provisions in the rule, the exemption for small quantity manufacturers, and the extended compliance date for regulated entities that have not previously marketed coatings compliant with CARB's reactivity based rules.

A few commenters were concerned about the potential for unfair economic advantage created by the small quantity manufacturer exemption. One commenter stated that the exemption for small manufacturers provides a competitive advantage that they could ''readily use'' to expand market share. Some commenters believed that the small quantity exemptions should be available to regulated entities of all sizes and be based on the size of the batch. This commenter gave the example of a coating supplier that provided most coating in bulk, but would supply a small quantity of matching paint in aerosol cans for exact match touch-ups. Another commenter stated that they were unable to support a proposal that specifically exempts manufacturers of certain products from regulatory requirements unless the exemption was available to all manufacturers of that type of product. The latter commenter was concerned with the anti-trust ramifications of providing such an exemption, since it could create a beneficial climate for one manufacturer, but not another.

Some commenters expressed concern that EPA overstated the emission reductions in the rule, given the number of sources that would potentially take advantage of the exemption, variances, and extensions. One commenter stated that the small quantity manufacturer exemption, in particular, would have a substantial impact on the VOC emission reductions achieved by the rule and cautioned that EPA should closely monitor the impacts of these provisions on the overall rule efficacy.

EPA does not agree that the exemption and variance provisions are likely to have a significant impact on the overall effectiveness of this rule. EPA has tailored the small quantity manufacturer exemption to provide relief only to those particularly small entities that would otherwise bear particularly high costs for compliance relative to the small amount of products they produce and, therefore, the small amount of total VOC emissions from such products. The variance provision is, likewise, narrowly tailored and provides only temporary variance from the limits of the rule. Each of these provisions is targeted to small subsets of

regulated entities that would otherwise be disproportionately impacted by this rule.

The two-year compliance extension for facilities that have not previously manufactured coatings compliant with CARB coating limits is provided to ensure that facilities have adequate time to reformulate products to meet the rule. If a regulated entity has not previously developed compliant products, it may take longer (i.e., beyond January 1, 2009) to reformulate and market a new product. However, because EPA estimates that well over 85 percent of the aerosol coatings in the United States have already been reformulated to meet the California limits, we do not expect many facilities to qualify for this provision. Similarly, EPA does not anticipate that a large number of regulated entities will need to request a variance under this rule. In California, only one variance request was ever requested for the comparable CARB aerosol coating rule.

EPA established the small quantity manufacturer exemption with the primary focus of assisting small businesses that may make only a small quantity of aerosol coatings. Because small businesses do not always do business across the country, EPA concluded that it was possible that some may not have previously been subject to the reactivity-based requirements in California. While we have included the costs of developing reformulated products in the cost assessment of this rule, we also recognize that the average cost (i.e., cost on a ''per can'' basis) could be higher for a company producing a smaller product line. Recognizing this, we established this provision to exempt those most likely to experience the highest per-can reformulation costs.

EPA also does not concur with the commenter's concerns that the small quantity manufacturer exemption creates an unfair competitive advantage or antitrust issues. The total mass of VOC per exemption (7500 kg) represents less than 0.01 percent of the total VOC used in aerosol coatings (based on the 1990 survey). Even adjusting for emission reductions that have occurred since 1990, the mass for this exemption would remain well below one percent of the market. We disagree that this small fraction of the total aerosol coating market could give anyone a competitive advantage. Further, a significant expansion in a small quantity manufacturer's market share would likely result in the manufacturer no longer qualifying for the exemption.

Finally, EPA also does not agree that creation of the exemption for small quantity manufacturers creates an antitrust issue. Such issues generally arise where members of an industry collude to create unfair market advantage, as by agreeing not to compete on prices for their respective products. EPA, in its capacity as government regulator, can promulgate regulations with features such as exemptions for certain members of an industry without violation of the applicable statutes and regulations pertaining to antitrust issues. Moreover, EPA is obligated to take the specific concerns of small entities into account in the regulatory process and, where appropriate, to provide mechanisms such as exemptions in order to mitigate disproportionate and unnecessary impacts upon small businesses. In the case of this regulation, EPA has determined that it is appropriate to provide an exemption of this type because it will permit the implementation of a rule that will achieve significant VOC emission reductions across the industry as a whole and the percentage of emissions reductions that will be foregone by virtue of the exemption are anticipated to be *de minimis*.

As discussed in the air impacts section of this preamble, we do not expect any of these provisions to have a significant impact on overall VOC emission reductions that will result from the rule, largely due to the small number of regulated entities that we expect to qualify for these exemptions. Therefore, EPA has concluded that all exemptions should remain in the rule, as proposed. We have made some changes to the regulatory language, particularly with respect to the small quantity manufacturer, to ensure that the provisions are clear.

One commenter asked EPA to clarify whether an importer's products are exempt as specified under the small quantity manufacturer exemption in § 59.501(e). First, EPA notes that the small quantity manufacturer exemption is only available to manufacturers. Second, in response to this comment, EPA has added a provision in § 59.501(f) that specifies how foreign manufacturers may qualify for the small quantity manufacturer exemption.

E. Additional Reporting Requirements

Numerous commenters provided input on the need, or lack of need, for additional reporting requirements, in general, and the annual reporting of formulation data, in particular. Some commenters contended that no additional periodic reporting was warranted, while others stated their belief that the rule is not enforceable without additional reporting.

One commenter argued that more detailed records, including formulation data, must be mandated by this rule. This commenter said that it would be unreasonable for EPA not to provide for adequate data reporting that would allow for meaningful oversight and enforcement of the rule, stating that formulation data are critical to this assessment. The commenter does not believe that the proposed approach (i.e., the regulated entity responding to an EPA request for data) is sufficient. The commenter stated that EPA must include reporting requirements in the rule that will ensure it can quickly and effectively verify compliance and intervene appropriately where a violation occurs. Other commenters supported gathering additional information, with one stating that they believe that without full electronic reporting of all formulation data, the burden on EPA's compliance and enforcement staff would be too great and that any effective enforcement would be impossible.

Other commenters strongly disagreed that additional reporting is warranted. These commenters pointed to the requirements to supply information to EPA on the types of products they manufacture, as well as contact information. They contended that the requirement to supply the more detailed information, including formulation data for the volatile components in their products, is unnecessary. When EPA chose to make a compliance review, there were provisions in the proposed rule that gave EPA the ability to obtain the specific information, as needed. The commenters encouraged EPA to maintain the provisions related to reporting requirements as they were proposed.

EPA appreciates the comments received on this topic from all sides and understands both positions. When EPA is establishing the recordkeeping and reporting requirements for a rule, we have the responsibility to balance the burden imposed by the requirements with the need for a rule that is implementable as a practical matter. We must ensure that the information needed to implement the rule is available, while ensuring that we do not require industry to gather and submit information that will never be used. This rulemaking, the first national VOC rule incorporating reactivity-based limits, raises additional concerns about the types of information that should be gathered. Based on a thoughtful review of the comments and our own review, we have concluded that there are two

basic needs for information: (1) Information that allows EPA (and others) to ensure that the requirements are being met, and (2) information that allows EPA (and others) to assess whether the reactivity-based approach is resulting in the ozone reductions we have determined, based on information we have analyzed to date, should occur. Each of these basic information needs warrant a different approach.

EPA has revised the reporting requirements of the final rule to ensure that adequate information is available. EPA concurs with the commenters who believe that we have an obligation to ensure that our new approach to regulating some VOC sources through the use of reactivity-based limits is working. In the final rule, EPA has included a requirement for regulated entities to provide information about the VOC composition of their products in their Initial Notifications and to update this information every three years, beginning with data for calendar year 2010, along with information about the quantities of individual VOC species in each formulation manufactured, imported, or distributed in the reporting year. This triennial reporting will enable EPA to better assess the efficacy of the reactivity-based approach, including the manner in which the program's requirements are being achieved. For example, the information will enable us to ascertain how manufacturers are responding to the regulation, what the impact of the rule is on the aerosol coatings category, and whether the rule has any unintended consequences or impacts. The information will also enable us to compare the changes in VOC emissions under a mass-based approach as compared to a reactivity-based approach. EPA intends to integrate the triennial report into the expanded electronic reporting processes being developed for the National Emissions Inventory. EPA will provide additional information and guidance to regulated entities prior to the first required triennial report due in 2011. This information will be sent to regulated entities, based on contact information submitted in their Initial Notifications.

IV. Summary of Impacts

This section presents a summary of the impacts expected as a result of this rule. To ensure that the impacts are not underestimated, we followed an approach that would provide conservative estimates for each impact. For environmental impacts, we ensured that our estimated positive impacts (i.e., emission reduction) were not overstated (i.e., we state positive impacts conservatively low). For cost and economic impacts, we ensured that our estimated impacts were not understated (i.e., we state cost and economic impacts conservatively high). This approach ensures that conclusions drawn on the overall impact on facilities, including small businesses, are based on conservative assumptions.

A. Environmental Impacts

In accordance with section 183(e), EPA has evaluated what regulatory approach would constitute ''best available controls'' for this product category, taking into account the considerations noted in the statute. EPA has evaluated the incremental increase or decrease in air pollution, water pollution, and solid waste reduction that would result from implementing the final standards.

1. Air Pollution Impacts

The final rule will reduce the amount of ozone generated from the use of aerosol coatings. Because most States will use the VOC emission reductions resulting from this rule in their ozone SIP planning, we have calculated the reductions associated with the rule in terms of mass VOC emissions and we will refer to a reduction in mass VOC emissions when discussing the impacts of the final regulation. EPA concludes this is appropriate because the reactivity limits were designed to ensure that the ozone reductions that would be achieved by the limits were equivalent to the mass VOC reductions that would have been achieved by the CARB 2002 mass-based VOC limits. However, because the limits actually reduce the amount of ozone generated from the VOC used in aerosol coatings rather than VOC content by mass, the VOC reductions that we refer to are more accurately described as an ''equivalent reduction in VOC emissions.'' We will use the term ''reduction'' in subsequent discussions. Additional information on the method used to calculate the air impacts of the rule are included in the impacts calculation memorandum contained in the docket to this rulemaking.

EPA has estimated that this rule will reduce nationwide emissions of VOC from the use of aerosol coatings by an estimated 17,130 tons (15,570 Mg) from the 1990 baseline. This represents a 19.4 percent reduction from the 1990 baseline of 88,300 tons (80,270 Mg) of VOC emissions from the product category. While we believe that the above numbers accurately assess the impacts of the final rule for SIP credit purposes, we recognize that significant reductions have already occurred as the result of the implementation of the CARB aerosol coatings regulations. Because many manufacturers sell ''CARB compliant'' coatings across the country, some of these VOC emission reductions have already been achieved outside of California. We estimate that approximately 18 percent of the total products sold are not currently compliant with this rule's limits. Therefore, we estimate that this rule will result in additional VOC reductions equivalent to 3,100 tons per year (i.e., 18 percent of 17,130 tons per year).

The reduction of 3,100 tons per year of VOC emissions represents new reductions. However, for ozone SIP purposes, we are providing States that do not currently have aerosol coating regulations in place full credit for the 19.4 percent reduction from the 1990 baseline. This 19.4 percent reduction is equivalent to a 0.114 pound of VOC reduction per capita.

Although we have not quantified the anticipated impacts of this rule on HAP emissions, EPA expects that the final rule will reduce emissions of toluene and xylene, two highly reactive toxic and volatile compounds. Toluene and xylene are hazardous air pollutants that manufacturers have historically used extensively in some aerosol coating formulations. However, both of these compounds are also highly reactive VOC. Therefore, it will be difficult for regulated entities to continue to use these compounds in significant concentrations and still meet the reactivity limits in the final rule. EPA maintains that a regulation based upon VOC reactivity, rather than VOC mass, will provide a significant incentive for regulated entities to cease or reduce use of toluene and xylene in their products.

Due to the reduction in equivalent VOC emissions and ozone formation and the anticipated reduction in hazardous air pollutant emissions, we believe the rule will improve human health and the environment.

2. Water and Solid Waste Impacts

There are no adverse solid waste impacts anticipated from the compliance with this rule. Companies can continue to sell and distribute coatings that do not meet the applicable limits after the compliance date, as long as those coatings were manufactured before the compliance date. Therefore, the industry does not have to dispose of aerosol cans containing noncompliant product, which would result in an increase in solid waste. It is possible that the rule will actually result in a reduction in solid waste, as more concentrated higher solids coatings may be used as an option for meeting the

regulatory limits. This will result in fewer containers requiring disposal when the same volume of solids is applied by product users.

There are no anticipated adverse water impacts from this rulemaking.

B. Energy Impacts

There are no adverse energy impacts anticipated from compliance with this rule. EPA expects that regulated entities will comply through product reformulation, which will not significantly alter energy impacts. The rule does not include add-on controls or other measures that would add to energy usage or other impacts.

C. Cost and Economic Impacts

There are four types of facilities that will be impacted by the final rule. These include the aerosol coating manufacturers, aerosol coating processors, and aerosol coating wholesale distributors, and importers of aerosol coatings. For some products, the manufacturer is also the filler and distributor, while for other products the manufacturing process, the filling process, and the distribution may be done by three separate companies. The primary focus of our cost and economic analysis is the aerosol coating manufacturers as we anticipate that the costs to the fillers, distributors, or importers will be minimal.

For the aerosol coating manufacturer, we evaluated three components in determining the total cost of the final rule. These three components include the cost of the raw materials that the manufacturer will use to formulate coatings that comply with the regulatory limits, the cost of research and development efforts that will be necessary to develop compliant formulations, and the cost of the recordkeeping and reporting requirements associated with the rule. These costs are explained in more detail in the proposed rule.[29] The only change to this rule since proposal that could impact the cost analysis from the proposed rule is the addition of triennial reporting, as discussed elsewhere. However, the estimated increase in burden from this increased reporting did not affect the average reporting and recordkeeping burden on a per can basis. Therefore, there was no change in the economic assessment.

If all of the cans of aerosol coating product subject to the rule required reformulation, the total nationwide cost of the final rule would be $20,360,521. However, we know that significant progress has already been made in reformulating aerosol coatings to meet the promulgated limits. Even before CARB's regulation became effective, its survey data showed that for 10 coating categories, 100 percent of the coatings were complying with the limits in 1997. For the remaining categories, all but two had complying market shares greater than 20 percent in 1997. With CARB's 2002 reactivity-based regulation in place, EPA anticipates that the number of coatings already meeting the limits has increased significantly.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2266.02.

The information collection requirements are based on recordkeeping and reporting requirements. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 and section 183(e). All information submitted to EPA for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B, as appropriate. The content of the reports required by this rule will not be eligible for treatment as confidential business information.

The promulgated standards would require regulated entities to submit an initial notification and other reports as outlined in section II.F.

We estimate that about 62 regulated entities are subject to the promulgated standards. New and existing regulated entities would have no capital costs associated with the information collection requirements in the promulgated standards.

The estimated recordkeeping and reporting burden in the third year after the effective date of the promulgated rule is estimated to be 15,818 labor hours at a cost of $1.0 million. This estimate includes the cost of reporting, including reading instructions, information gathering, preparation of initial and supplemental reports, triennial reporting of formulation data, and variance or compliance extension applications. Recordkeeping cost estimates include reading instructions, planning activities, calculation of reactivity, and maintenance of batch information. The average hours and cost per regulated entity in the third year would be 197 hours and $16,400. About 62 facilities would respond per year.

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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or

[29] ''National Volatile Organic Compound Emission Standards for Aerosol Coatings: Proposed Rule'' 72 FR 38951 (July 16, 2007).

special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this regulatory action, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are manufacturers, wholesale distributors, and importers of aerosol coating products. We have determined that up to 40 out of a total of 60 entities (or 67%) could experience a cost-to-sales ratio increase of up to 1.42 percent. This ratio does not include revenues from other products that small regulated entities may sell. In addition, significant progress has already been made in reformulating aerosol coatings to meet previously promulgated CARB emission limits. Both of these factors would significantly reduce the cost-to-sales ratio. Consequently it is very unlikely that the cost-to-sales ratio for any small entity would exceed 1 percent. Thus, a significant impact is not expected for a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has made efforts to reduce the potential impact of the regulation. These efforts include active participation in National Small Business Environmental Assistance Program (SBEAP) meetings, and in follow-up meetings with SBEAP States in Region 5. As a result, several States provided information to small businesses regarding the rule. The final rule includes several provisions designed to minimize the potential adverse impacts on small businesses. They include a small quantity manufacturer exemption, a compliance extension for entities that have not previously developed CARB-compliant aerosol coatings formulations, and a variance provision.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this regulatory action contains no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this action is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

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

The regulatory action does not have federalism implications. The action does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the relationship between the Federal Government and the States, and this action does not impact that relationship. Thus, EO 13132 does not apply to this regulatory action.

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

Executive Order (EO) 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have tribal implications'' is defined in the EO to include regulations that have ''substantial direct effects on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This final action does not have Tribal implications as defined by EO 13175. The final regulatory action does not have a substantial direct effect on one or more Indian tribes, in that this action imposes no regulatory burdens on Tribes. Furthermore, the action does not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian tribes. The CAA and the Tribal Authority Rule (TAR) establish the relationship of the Federal Government and Tribes in implementing the CAA. Because the rule does not have Tribal implications, EO 13175 does not apply.

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

Executive Order (EO) 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under EO 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 EO directs the EPA 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 EPA.

This regulatory action is not subject to EO 13045 because it is not an economically significant regulatory action as defined by EO 12866. In addition, EPA interprets EO 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulations. This regulatory action is not subject to EO 13045 because it does not include regulatory requirements based on health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order (EO) 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the EPA does not use available and applicable VCS.

This final rule involves technical standards. EPA cites the following standards in this rule: California Air Resources Board Method 310—Determination of VOC in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products; EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A), in conjunction with American Society of Testing and Materials (ASTM) Method D3063–94 or D3074–94 for analysis of the propellant portion of the coating; South Coast Air Quality Management District (SCAQMD) Method 318–95, Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction, July, 1996, for metal content; and ASTM D523–89 (Reapproved 1999), Standard Test Method for Specular Gloss for specular gloss of flat and nonflat coatings.

EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) also is a compilation of voluntary consensus standards. The following are incorporated by reference in EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A): ASTM D1979–91, ASTM D3432–89, ASTM D4457–85, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these methods. No applicable voluntary consensus standards were identified.

For the methods required by the rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions.

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

Executive Order (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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income populations. Further, it establishes national emission standards for VOC in aerosol coatings.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule amendment in the **Federal Register**. The final rule amendment is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule is effective on March 24, 2008.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound, Consumer products, Aerosol products, Aerosol coatings, Consumer and commercial products.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, parts 51 and 59 of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.100 is amended by adding paragraph (s)(7) to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(7) For the purposes of determining compliance with EPA's aerosol coatings reactivity based regulation (as described in 40 CFR part 59—National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit, as provided in part 59, subpart E. Therefore, the compounds that are used in aerosol coating products and that are identified in paragraph (s) of this section as negligibly reactive and excluded from EPA's definition of VOC are to be counted towards a product's reactivity limit for the purposes of determining compliance with EPA's aerosol coatings reactivity-based national regulation, as provided in part 59, subpart E.

* * * * *

PART 59—[AMENDED]

■ 3. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 7414 and 7511b(e).

■ 4. Subpart E is added to read as follows:

Subpart E—National Volatile Organic Compound Emission Standards for Aerosol Coatings

Sec.

59.500 What is the purpose of this subpart?
59.501 Am I subject to this subpart?
59.502 When do I have to comply with this subpart?
59.503 What definitions apply to this subpart?
59.504 What limits must I meet?
59.505 How do I demonstrate compliance with the reactivity limits?
59.506 How do I demonstrate compliance if I manufacture multi-component kits?
59.507 What are the labeling requirements for aerosol coatings?
59.508 What test methods must I use?
59.509 Can I get a variance?
59.510 What records am I required to maintain?
59.511 What notifications and reports must I submit?
59.512 Addresses of EPA regional offices.
59.513 State authority.
59.514 Circumvention.
59.515 Incorporations by reference.
59.516 Availability of information and confidentiality
Table 1 to Subpart E of Part 59—Product-Weighted Reactivity Limits by Coating Category
Table 2A to Subpart E of Part 59—Reactivity Factors
Table 2B to Subpart E of Part 59—Reactivity Factors for Aliphatic Hydrocarbon Solvent Mixtures
Table 2C to Subpart E of Part 59—Reactivity Factors for Aromatic Hydrocarbon Solvent Mixtures

Subpart E—National Volatile Organic Compound Emission Standards for Aerosol Coatings

§ 59.500 What is the purpose of this subpart?

This subpart establishes the product-weighted reactivity (PWR) limits regulated entities must meet in order to comply with the national rule for volatile organic compounds (VOC) emitted from aerosol coatings. This subpart also establishes labeling, recordkeeping, and reporting requirements for regulated entities.

§ 59.501 Am I subject to this subpart?

(a) The regulated entities for an aerosol coating product are the manufacturer or importer of an aerosol coating product and a distributor of an aerosol coating product if named on the label. Distributors whose names do not appear on the label for the product are not regulated entities. Distributors include retailers whose names appear on the label for the product. If your name appears on the label, you are a regulated entity.

(b) Except as provided in paragraph (e) of this section, the responsibilities of each regulated entity are detailed in paragraphs (b)(1) through (b)(4) of this section.

(1) If you are a manufacturer or importer, you are the regulated entity responsible for ensuring that all aerosol coatings manufactured or imported by you meet the PWR limits presented in § 59.504, even if your name is not on the label.

(2) If you are a distributor named on the label, you are the regulated entity responsible for compliance with all sections of this subpart except for the limits presented in § 59.504. If you are a distributor that has specified formulations to be used by a manufacturer, then you are responsible for compliance with all sections of this subpart.

(3) If there is no distributor named on the label, then the manufacturer or importer is the regulated entity responsible for compliance with all sections of this subpart.

(4) If you are a manufacturer or importer, you can choose to certify that you will provide any or all of the recordkeeping and reporting requirements of §§ 59.510 and 59.511 by following the procedures of § 59.511(g) and (h).

(c) Except as provided in paragraph (e) of this section, the provisions of this subpart apply to aerosol coatings manufactured on or after January 1, 2009, for sale or distribution in the United States. Aerosol coatings that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136y) (FIFRA). For FIFRA registered aerosol coatings, the provisions of this subpart apply to aerosol coatings manufactured on or after January 1, 2010, for sale or distribution in the United States.

(d) You are not a regulated entity under this subpart for the aerosol coatings products that you manufacture (in or outside of the United States) that are exclusively for sale outside the United States.

(e) If you meet the definition of small quantity manufacturer for a given year, the products you manufacture in that year are not subject to the PWR limits presented in § 59.504 or the labeling requirements of § 59.507. To qualify for this exemption, small aerosol coating manufacturers must comply with the applicable recordkeeping and reporting requirements in §§ 59.510 and 59.511.

(f) If you are a person who manufactures or processes aerosol coatings outside of the United States, you may qualify for the small quantity manufacturer exemption in paragraph (e) of this section if you meet the requirements of paragraphs (f)(1) through (f)(3) of this section.

(1) The total VOC by mass included in all aerosol coatings you manufacture, at all facilities, in a given calendar year, in the aggregate, is less than 7,500 kilograms.

(2) You comply with the recordkeeping and reporting requirements in §§ 59.510 and 59.511.

(3) You commit to and comply with the requirements of paragraphs (f)(3)(i) through (f)(3)(vii) of this section.

(i) You must provide an initial notification no later than 90 days before the compliance date, or at least 90 days before you start manufacturing aerosol coating products that are sold in the United States. This initial notification must state that you are a foreign manufacturer that is intending to qualify for the small quantity manufacturer exemption in paragraph (e) of this section, provide all of the information specified in § 59.511(b), and provide all the information in paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

(A) The name, address, telephone number, and e-mail address of an agent located in the United States who will serve as your point of contact for communications with EPA.

(B) The address of each of your facilities that is manufacturing aerosol coatings for sale in the United States.

(ii) You must notify the Administrator of any changes in the information provided in your initial notification within 30 days following the change.

(iii) The agent identified above must maintain a copy of the compliance records specified in § 59.510(b). Those records must be kept by the agent such that the agent will be able to provide the written report which must be submitted upon 60 days notice under § 59.511(d) and able to make those records available for inspection and review under § 59.511(e).

(iv) You must give any EPA inspector or auditor full, complete, and immediate access to your facilities and records to conduct inspections and audits of your manufacturing facilities.

(v) You must agree that United States substantive and procedural law shall apply to any civil or criminal enforcement action against you under this subpart, and that the forum for any civil or criminal enforcement action under this subpart shall be governed by the CAA, including the EPA administrative forum where allowed under the CAA.

(vi) Any person certifying any notification, report, or other communication from you to EPA must state in the certification that United States substantive and procedural law shall apply to any civil or criminal enforcement action against him or her under this subpart, and that the forum for any civil or criminal enforcement action under this section shall be governed by the CAA, including the EPA administrative forum where allowed under the CAA.

(vii) All reports and other communications with EPA must be in English. To the extent that you provide any documents as part of any report or other communication with EPA, an English language translation of that document must be provided with the report or communication.

§ 59.502 When do I have to comply with this subpart?

(a) Except as provided in § 59.509 and paragraphs (b) and (c) of this section, you must be in compliance with all provisions of this subpart by January 1, 2009.

(b) The Administrator will consider issuance of a special compliance extension that extends the date of compliance until January 1, 2011, to regulated entities that have never manufactured, imported, or distributed aerosol coatings for sale or distribution in California that are in compliance with California's Regulation for Reducing Ozone Formed From Aerosol Coating Product Emissions, Title 17, California Code of Regulations, sections 94520–94528. In order to be considered for an extension of the compliance date, you must submit a special compliance extension application to the EPA Administrator no later than 90 days before the compliance date or within 90 days before the date that you first manufacture aerosol coatings, whichever is later. This application must contain the information in paragraphs (b)(1) through (b)(5) of this section. If a regulated entity remains unable to comply with the limits of this rule by January 1, 2011, the regulated entity may seek a variance in accordance with § 59.509.

(1) Company name;

(2) A signed certification by a responsible company official that the regulated entity has not at any time manufactured, imported, or distributed for sale or distribution in California any product in any category listed in Table 1 of this subpart that complies with California's Regulation for Reducing Ozone Formed From Aerosol Coating Product Emissions, Title 17, California Code of Regulations, sections 94520–94528;

(3) A statement that the regulated entity will, to the extent possible within its reasonable control, take appropriate action to achieve compliance with this subpart by January 1, 2011;

(4) A list of the product categories in Table 1 of this subpart that the regulated entity manufactures, imports, or distributes; and,

(5) Name, title, address, telephone, e-mail address, and signature of the certifying company official.

(c) Except as provided in paragraph (b) of this section, the compliance date for aerosol coatings that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C 136–136y) (FIFRA) is January 1, 2010.

§ 59.503 What definitions apply to this subpart?

The following terms are defined for the purposes of this subpart only.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.

Aerosol Coating Product means a pressurized coating product containing pigments or resins that is dispensed by means of a propellant and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications. For the purpose of this regulation, applicable aerosol coatings categories are listed in Table 1 of this subpart.

Art Fixative or Sealant means a clear coating, including art varnish, workable art fixative and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces or other closely related art uses, in order to provide a final protective coating or to fix preliminary stages of artwork while providing a workable surface for subsequent revisions.

ASTM means the American Society for Testing and Materials.

Autobody Primer means an automotive primer or primer surfacer coating designed and labeled exclusively to be applied to a vehicle body substrate for the purposes of corrosion resistance and building a repair area to a condition in which, after drying, it can be sanded to a smooth surface.

Automotive Bumper and Trim Product means a product, including adhesion promoters and chip sealants, designed and labeled exclusively to repair and refinish automotive bumpers and plastic trim parts.

Aviation Propeller Coating means a coating designed and labeled exclusively to provide abrasion resistance and corrosion protection for aircraft propellers.

Aviation or Marine Primer means a coating designed and labeled exclusively to meet federal specification TT–P–1757.

Clear Coating means a coating which is colorless, containing resins but no pigments except flatting agents, and is designed and labeled to form a transparent or translucent solid film.

Coating Solids means the nonvolatile portion of an aerosol coating product, consisting of the film-forming ingredients, including pigments and resins.

Commercial Application means the use of aerosol coating products in the production of goods, or the providing of services for profit, including touch-up and repair.

Corrosion Resistant Brass, Bronze, or Copper Coating means a clear coating designed and labeled exclusively to prevent tarnish and corrosion of uncoated brass, bronze, or copper metal surfaces.

Distributor means any person who purchases or is supplied aerosol coating product for the purposes of resale or distribution in commerce. Retailers who fall within this definition are distributors. Importers are not distributors.

Enamel means a coating which cures by chemical cross-linking of its base resin and is not resoluble in its original solvent.

Engine Paint means a coating designed and labeled exclusively to coat engines and their components.

Exact Match Finish, Engine Paint means a coating which meets all of the following criteria:

(1) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint;

(2) The product is labeled with the manufacturer's name for which they were formulated; and

(3) The product is labeled with one of the following:

(i) The original equipment manufacturer's (O.E.M.) color code number;

(ii) The color name; or

(iii) Other designation identifying the specific O.E.M. color to the purchaser.

Exact Match Finish, Automotive means a topcoat which meets all of the following criteria:

(1) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes;

(2) The product is labeled with the manufacturer's name for which they were formulated; and

(3) The product is labeled with one of the following:

(i) The original equipment manufacturer's (O.E.M.) color code number;

(ii) The color name; or

(iii) Other designation identifying the specific O.E.M. color to the purchaser. Notwithstanding the foregoing, automotive clear coatings designed and labeled exclusively for use over automotive exact match finishes to replicate the original factory-applied finish shall be considered to be automotive exact match finishes.

Exact Match Finish, Industrial means a coating which meets all of the following criteria:

(1) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products;

(2) The product is labeled with the manufacturer's name for which they were formulated; and

(3) The product is labeled with one of the following:

(i) O.E.M. color code number;

(ii) The color name; or

(iii) Other designation identifying the specific O.E.M. color to the purchaser.

Flat Paint Products means a coating which, when fully dry, registers specular gloss less than or equal to 15 on an 85° gloss meter, or less than or equal to 5 on a 60° gloss meter, or which is labeled as a flat coating.

Flatting Agent means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.

Floral Spray means a coating designed and labeled exclusively for use on fresh flowers, dried flowers, or other items in a floral arrangement for the purposes of coloring, preserving or protecting their appearance.

Formulation Data, unless otherwise specified, means the recipe used to formulate or manufacture a coating product in terms of the weight fraction (g compound/g product) of each individual VOC in the product.

Fluorescent Coating means a coating labeled as such, which converts absorbed incident light energy into emitted light of a different hue.

Glass Coating means a coating designed and labeled exclusively for use on glass or other transparent material to create a soft, translucent light effect, or to create a tinted or darkened color while retaining transparency.

Ground Traffic/Marking Coating means a coating designed and labeled exclusively to be applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots. Such coatings must be in a container equipped with a valve and spray head designed to direct the spray toward the surface when the can is held in an inverted vertical position.

High Temperature Coating means a coating, excluding engine paint, which is designed and labeled exclusively for use on substrates which will, in normal use, be subjected to temperatures in excess of 400 °F.

Hobby/Model/Craft Coating means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces by weight or less.

Importer means any person who brings an aerosol coating product that was manufactured, filled, or packaged at a location outside of the United States into the United States for sale or distribution in the United States.

Ingredient means a component of an aerosol coating product.

Impurity means an individual chemical compound present in a raw material which is incorporated in the final aerosol coatings formulation, if the compound is present in amounts below the following in the raw material:

(1) For individual compounds that are carcinogens each compound must be present in an amount less than 0.1 percent by weight;

(2) For all other compounds present in a raw material, a compound must be present in an amount less than 1 percent by weight.

Lacquer means a thermoplastic film-forming material dissolved in organic solvent, which dries primarily by solvent evaporation, and is resoluble in its original solvent.

Manufacturer means any person who manufactures or processes an aerosol coating product for sale or distribution within the United States. Manufacturers include:

(1) Processors who blend and mix aerosol coatings;

(2) Contract fillers who develop formulas and package these formulations under a distributor's name; and

(3) Contract fillers who manufacture products using formulations provided by a distributor.

Marine Spar Varnish means a coating designed and labeled exclusively to provide a protective sealant for marine wood products.

Metallic Coating means a topcoat which contains at least 0.5 percent by weight elemental metallic pigment in the formulation, including propellant, and is labeled as ''metallic,'' or with the name of a specific metallic finish such as ''gold,'' ''silver,'' or ''bronze.''

Multi-Component Kit means an aerosol spray paint system which requires the application of more than one component (e.g. foundation coat and topcoat), where both components are sold together in one package.

Nonflat Paint Product means a coating which, when fully dry, registers a specular gloss greater than 15 on an 85° gloss meter or greater than five on a 60° gloss meter.

Ozone means a colorless gas with a pungent odor, having the molecular form O_3.

Person means an individual, corporation, partnership, association, state, any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

Photograph Coating means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.

Pleasure Craft means privately owned vessels used for noncommercial purposes.

Pleasure Craft Finish Primer/Surfacer/Undercoater means a coating designed and labeled exclusively to be applied prior to the application of a pleasure craft topcoat for the purpose of corrosion resistance and adhesion of the topcoat, and which promotes a uniform surface by filling in surface imperfections.

Pleasure Craft Topcoat means a coating designed and labeled exclusively to be applied to a pleasure craft as a final coat above the waterline and below the waterline when stored out of water. This category does not include clear coatings.

Polyolefin Adhesion Promoter means a coating designed and labeled exclusively to be applied to a polyolefin or polyolefin copolymer surface of automotive body parts, bumpers, or trim parts to provide a bond between the surface and subsequent coats.

Primer means a coating labeled as such, which is designed to be applied to a surface to provide a bond between that surface and subsequent coats.

Product-Weighted Reactivity (PWR) Limit means the maximum allowed ''product-weighted reactivity,'' as calculated in § 59.505, of an aerosol coating product that is subject to the limits specified in § 59.504 for a specific category, expressed as grams of ozone per gram (g O_3/g of product).

Propellant means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

Reactivity Factor (RF) is a measure of the change in mass of ozone formed by adding a gram of a VOC to the ambient atmosphere, expressed to hundredths of a gram (g O_3/g VOC). The RF values for individual compounds and hydrocarbon solvent mixtures are specified in Tables 2A, 2B, and 2C of this subpart.

Retailer means any person who sells, supplies, or offers aerosol coating products for sale directly to consumers. Retailers who fall within the definition of ''distributor'' in this section are distributors.

Retail Outlet means any establishment where consumer products are sold, supplied, or offered for sale, directly to consumers.

Shellac Sealer means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (*Laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Slip-Resistant Coating means a coating designed and labeled exclusively as such, which is formulated with synthetic grit and used as a safety coating.

Small quantity manufacturer means a manufacturer whose total VOC by mass included in all aerosol coatings manufactured at all facilities in a given calendar year, in the aggregate, is less than 7,500 kilograms.

Spatter Coating/Multicolor Coating means a coating labeled exclusively as such wherein spots, globules, or spatters of contrasting colors appear on or within the surface of a contrasting or similar background.

Stain means a coating which is designed and labeled to change the color of a surface but not conceal the surface.

United States means the United States of America, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Vinyl/Fabric/Leather/Polycarbonate Coating means a coating designed and labeled exclusively to coat vinyl, fabric, leather, or polycarbonate substrates or to coat flexible substrates including rubber or thermoplastic substrates.

Volatile Organic Compound (VOC) means any organic compound as defined in § 51.100(s) of this chapter. As provided in 40 CFR 51.100(s)(7), exemptions from the definition of VOC in 40 CFR 51.100(s) for certain compounds that are used in aerosol coatings are inapplicable for purposes of this subpart.

Webbing/Veiling Coating means a coating designed and labeled exclusively to provide a stranded to spider webbed appearance when applied.

Weight Fraction means the weight of an ingredient divided by the total net weight of the product, expressed to thousandths of a gram of ingredient per gram of product (excluding container and packaging).

Weld-Through Primer means a coating designed and labeled exclusively to provide a bridging or conducting effect for corrosion protection following welding.

Wood Stain means a coating which is formulated to change the color of a wood surface but not conceal the surface.

Wood Touch-Up/Repair/Restoration means a coating designed and labeled exclusively to provide an exact color or sheen match on finished wood products.

Working Day means any day from Monday through Friday, inclusive, except for days that are Federal holidays.

§ 59.504 What limits must I meet?

(a) Except as provided in § 59.509, each aerosol coating product you manufacture, distribute or import for sale or use in the United States must meet the PWR limits presented in Table 1 of this subpart. These limits apply to the final aerosol coating, including the propellant. The PWR limits specified in Table 1 of this subpart are also applicable to any aerosol coating product that is assembled by adding bulk coating to aerosol containers of propellant.

(b) If a product can be included in both a general coating category and a specialty coating category and the product meets all of the criteria of the specialty coating category, then the specialty coating limit will apply instead of the general coating limit, unless the product is a high temperature coating. High-temperature coatings that contain at least 0.5 percent by weight of an elemental metallic pigment in the formulation, including propellant, are subject to the limit specified for metallic coatings.

(c) Except as provided in paragraph (b) of this section, if anywhere on the container of any aerosol coating product subject to the limits in Table 1 of this subpart, or on any sticker or label affixed to such product, or in any sales or advertising literature, the manufacturer, importer or distributor of the product makes any representation that the product may be used as, or is suitable for use as a product for which a lower limit is specified, then the lowest applicable limit will apply.

§ 59.505 How do I demonstrate compliance with the reactivity limits?

(a) To demonstrate compliance with the PWR limits presented in Table 1 of this subpart, you must calculate the PWR for each coating as described in paragraphs (a)(1) through (2) of this section:

(1) Calculate the weighted reactivity factor (WRF) for each propellant and coating component using Equation 1:

$$WRF_i = RF_i \times WF_i \qquad \text{Equation 1}$$

Where:

WRF_i = weighted reactivity factor of component i, g O_3/g component i.

RF_i = reactivity factor of component i, g O_3/g component i, from Table 2A, 2B, or 2C.

WF_i = weight fraction of component i in the product,

(2) Calculate the PWR of each product using Equation 2:

$$PWR_p = (WRF)_1 + (WRF)_2 + \ldots + (WRF)_n \qquad \text{Equation 2}$$

Where:

PWR_p = PWR for product P, g O_3/g product.

WRF_1 = weighted reactivity factor for component 1, g O_3/g component.

WRF_2 = weighted reactivity factor for component 2, g O_3/g component.

WRF_n = weighted reactivity factor for component n, g O_3/g component.

(b) In calculating the PWR, you must follow the guidelines in paragraphs (b)(1) through (b)(4) of this section.

(1) Any ingredient which does not contain carbon is assigned a RF value of 0.

(2) Any aerosol coating solid, including but not limited to resins, pigments, fillers, plasticizers, and extenders is assigned a RF of 0. These items do not have to be identified individually in the calculation.

(3) All individual compounds present in the coating in an amount equal to or exceeding 0.1 percent will be considered ingredients regardless of whether or not the ingredient is reported to the manufacturer.

(4) All individual compounds present in the coating in an amount less than 0.1 percent will be assigned an RF value of 0.

(5) Any component that is a VOC but is not listed in Table 2A, 2B, or 2C of this subpart is assigned an RF value as detailed in paragraph (e) of this section.

(c) You may use either formulation data (including information for both the liquid and propellant phases), California Air Resources Board Method 310—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (May 5, 2005) (incorporated by reference in 59.515), or EPA's Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A), to calculate the PWR. However, if there are inconsistencies between the formulation data and the California Air Resources Board Method 310 (May 5, 2005) (incorporated by reference in 59.515), or EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) results, the California Air Resources Board Method 310 (May 5, 2005) (incorporated by reference in 59.515), or EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) results will govern.

(d) If you manufacture a coating containing either an aromatic or aliphatic hydrocarbon solvent mixture, you must use the appropriate RF for that mixture provided in Table 2B or 2C of this subpart when calculating the PWR using formulation data. However, when calculating the PWR for a coating containing these mixtures using data from California Air Resources Board Method 310 (May 5, 2005) (incorporated by reference in 59.515), or EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A), you must identify the individual compounds that are present in the solvent mixture and use the weight fraction of those individual compounds and their RF from Table 2A of this subpart in the calculation.

(e) If a VOC is used in a product but not listed in Table 2A of this subpart, the Reactivity Factor (RF) is assigned according to paragraphs (e)(1), (e)(2), (e)(3) or (e)(4) of this section.

(1) If the VOC is not listed in Table 2A of this subpart, but has an RF greater than 0.3, the regulated entity may petition EPA to add the VOC to Table 2A, as described in § 59.511(j). Based on these petitions, EPA will periodically update the appropriate table. Once an RF for a VOC is listed on the appropriate table, that RF will be used for that VOC for the purposes of this rule. As provided in § 59.511(j), any petitions submitted to EPA on or before June 1, 2008, will be considered, and if appropriate, incorporated into Table 2A on or before January 1, 2009.

(2) If the VOC is used in a product but not listed in Table 2A of this regulation, and has an RF less than or equal to 0.3, and will be used at a level greater than or equal to 7.3 weight percent (g of compound/g product) in any of the regulated entity's formulations, the regulated entity may petition EPA as described in § 59.511(j). Based on these petitions, EPA will periodically update the appropriate table. Once an RF for a VOC is listed on the appropriate table, that RF will be used for that VOC for the purposes of this rule. As provided in § 59.511(j), any petition submitted to EPA on or before June 1, 2008 will be considered, and if appropriate, incorporated into Table 2A on or before January 1, 2009.

(3) If a compound has an RF less than or equal to 0.3, and will not be used at a level greater than or equal to 7.3 weight percent (g of compound/g product) in any of the regulated entity's formulations, the RF to be used in all calculations by that entity for this subpart is 0.

(4) Except as provided in paragraph (e)(1), (e)(2) and (e)(3) of this section, if a VOC is not listed in Table 2A of this subpart, it is assigned a default RF factor of 22.04 g O3/g VOC. As described in § 59.511(j), regulated entities may petition the Administrator to add a compound or mixture to Table 2A, 2B, or 2C of this subpart.

(f) In calculating the PWR value for a coating containing an aromatic hydrocarbon solvent with a boiling range different from the ranges specified in Table 2C of this subpart, you must assign an RF as described in paragraphs (f)(1) and (f)(2) of this section:

(1) If the solvent boiling point is lower than or equal to 420 degrees F, then you must use the RF in Table 2C of this subpart specified for bin 23;

(2) If the solvent boiling point is higher than 420 degrees F, then you must use the RF specified in Table 2C of this subpart for bin 24.

(g) For purposes of compliance with the PWR limits, all compounds listed in Tables 2A, 2B, or 2C that are used in the aerosol coating products must be included in the calculation. This includes compounds that may otherwise be exempted from the definition of VOC in § 59.100(s).

§ 59.506 How do I demonstrate compliance if I manufacture multi-component kits?

(a) If you manufacture multi-component kits as defined in § 59.503, then the Kit PWR must not exceed the Total Reactivity Limit.

(b) You must calculate the Kit PWR and the Total Reactivity Limit as follows:

(1) KIT PWR = $(PWR_{(1)} \times W_1) + (PWR_{(2)} \times W_2) + \ldots + (PWR_{(n)} \times W_n)$

(2) Total Reactivity Limit = $(RL_1 \times W_1) + (RL_2 \times W_2) + ... + (RL_n \times W_n)$.

(3) Kit PWR ≤ Total Reactivity Limit.

Where:

W = the weight of the product contents (excluding container).

RL = the PWR Limit specified in Table 1 of this subpart.

Subscript 1 denotes the first component product in the kit.

Subscript 2 denotes the second component product in the kit.

Subscript n denotes any additional component product.

§ 59.507 What are the labeling requirements for aerosol coatings?

(a) The labels of all aerosol products manufactured on and after the applicable compliance date listed in § 59.502 must contain the information listed in paragraphs (a)(1) through (4) of this section.

(1) The aerosol coating category code for the coating, based on the category definitions in § 59.503. This code can be the default category code shown in Table 1 of this subpart or a company-specific code, if that code is explained as required by § 59.511(a);

(2) The applicable PWR limit for the product specified in Table 1 of this subpart;

(3) The day, month, and year on which the product was manufactured, or a code indicating such date;

(4) The name and a contact address for the manufacturer, distributor, or importer that is the regulated entity under this subpart.

(b) The label on the product must be displayed in such a manner that it is readily observable without removing or disassembling any portion of the product container or packaging. The information may be displayed on the bottom of the container as long as it is clearly legible without removing any product packaging.

§ 59.508 What test methods must I use?

(a) Except as provided in § 59.505(c), you must use the procedures in California Air Resource Board Method 310—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (May 5, 2005) (incorporated by reference in § 59.515) or EPA's Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) to determine the speciated ingredients and weight percentage of each ingredient of each aerosol coating product. EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A) must be used in conjunction with ASTM Method D3063–94 or D3074–94 for analysis of the propellant portion of the coating. Those choosing to use California Air Resources Board Method 310 (May 5, 2005) (incorporated by reference in § 59.515) must follow the procedures specified in section 5.0 of that method with the exception of section 5.3.1, which requires the analysis of the VOC content of the coating. For the purposes of this subpart, you are not required to determine the VOC content of the aerosol coating. For both California Air Resources Board Method 310 (May 5, 2005) (incorporated by reference in § 59.515) and EPA Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph (40 CFR part 63, appendix A), you must have a listing of the VOC ingredients in the coating before conducting the analysis.

(b) To determine the metal content of metallic aerosol coating products, you must use South Coast Air Quality Management District (SCAQMD) Method 318–95, Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction, July, 1996, in 40 CFR part 59 (incorporated by reference in § 59.515).

To determine the specular gloss of flat and nonflat coatings you must use ASTM Method D523–89 (Reapproved 1999), Standard Test Method for Specular Gloss, in 40 CFR part 59 (incorporated by reference in § 59.515).

§ 59.509 Can I get a variance?

(a) Any regulated entity that cannot comply with the requirements of this subpart because of circumstances beyond its reasonable control may apply in writing to the Administrator for a temporary variance. The variance application must include the information specified in paragraphs (a)(1) through (a)(5) of this section.

(1) The specific products for which the variance is sought.

(2) The specific provisions of the subpart for which the variance is sought.

(3) The specific grounds upon which the variance is sought.

(4) The proposed date(s) by which the regulated entity will achieve compliance with the provisions of this subpart. This date must be no later than 3 years after the issuance of a variance.

(5) A compliance plan detailing the method(s) by which the regulated entity will achieve compliance with the provisions of this subpart.

(b) Within 30 days of receipt of the original application and within 30 days of receipt of any supplementary information that is submitted, the Administrator will send a regulated entity written notification of whether the application contains sufficient information to make a determination. If an application is incomplete, the Administrator will specify the information needed to complete the application, and provide the opportunity for the regulated entity to submit written supplementary information or arguments to the Administrator to enable further action on the application. The regulated entity must submit this information to the Administrator within 30 days of being notified that its application is incomplete.

(c) Within 60 days of receipt of sufficient information to evaluate the application, the Administrator will send a regulated entity written notification of approval or disapproval of a variance application. This 60-day period will begin after the regulated entity has been sent written notification that its application is complete.

(d) The Administrator will issue a variance if the criteria specified in paragraphs (d)(1) and (d)(2) of this section are met to the satisfaction of the Administrator.

(1) Complying with the provisions of this subpart would not be technologically or economically feasible.

(2) The compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(e) A variance must specify dates by which the regulated entity will achieve increments of progress towards compliance, and will specify a final compliance date by which the regulated entity will achieve compliance with this subpart.

(f) A variance will cease to be effective upon failure of the party to whom the variance was issued to comply with any term or condition of the variance.

§ 59.510 What records am I required to maintain?

(a) If you are the regulated entity identified in § 59.501(a) as being responsible for recordkeeping for a product, and no other person has certified that they will fulfill your recordkeeping responsibilities as provided in § 59.511(g), you must comply with paragraphs (a)(1) through (a)(5) of this section:

(1) All records must be maintained on and after the applicable compliance date listed in § 59.502.

(2) You are required to maintain records of the following at the location specified in § 59.511(b)(4) for each product subject to the PWR limits in Table 1 of this subpart: The product category, all product calculations, the PWR, and the weight fraction of all ingredients including: Water, total solids, each VOC, and any other compounds assigned a RF of zero as specified in § 59.505. Solids do not have to be listed individually in these records. If an individual VOC is present in an amount less than 0.1 percent by weight, then it does not need to be reported as an ingredient. An impurity that meets the definition provided in § 59.503 does not have to be reported as an ingredient. For each batch of each product subject to the PWR limits, you must maintain records of the date the batch was manufactured, the volume of the batch, the recipe used for formulating the batch, and the number of cans manufactured in each batch and each formulation.

(3) You must maintain a copy of each notification and report that you submit to comply with this subpart, the documentation supporting each notification, and a copy of the label for each product.

(4) If you claim the exemption under § 59.501(e), you must maintain a copy of the initial report and each annual report that you submit to EPA, and the documentation supporting such report.

(5) You must maintain all records required by this subpart for a minimum of 5 years. The records must be in a form suitable and readily available for inspection and review.

(b) By providing the written certification to the Administrator in accordance with § 59.511(g), the certifying manufacturer accepts responsibility for compliance with the recordkeeping requirements of this section with respect to any products covered by the written certification, as detailed in the written certification. Failure to maintain the required records may result in enforcement action by EPA against the certifying manufacturer in accordance with the enforcement provisions applicable to violation of these provisions by regulated entities. If the certifying manufacturer revokes its certification, as allowed by § 59.511(h), the regulated entity must assume responsibility for maintaining all records required by this section.

§ 59.511 What notifications and reports must I submit?

(a) If you are the regulated entity identified in § 59.501(a) and (b) as being responsible for notifications and reporting for a product, and no other person has certified that they will fulfill your notification and reporting responsibilities as provided in paragraph (g) of this section, you are responsible for all notifications and reports included in this section. If no distributor is named on the label, the manufacturer or importer of the aerosol coating is responsible for all requirements of this section, even if not listed on the label.

(b) You must submit an initial notification no later than 90 days before the compliance date, or at least 90 days before the date that you first manufacture, distribute, or import aerosol coatings, whichever is later. The initial notification must include the information in paragraphs (b)(1) through (b)(11) of this section.

(1) Company name;

(2) Name, title, address, telephone number, e-mail address and signature of certifying company official;

(3) A list of the product categories from Table 1 of this subpart that you manufacture, import, or distribute;

(4) The street address of each of your facilities in the United States that is manufacturing, packaging, or importing aerosol coatings that are subject to the provisions of this subpart, and the street address where compliance records are maintained for each site, if different;

(5) A description of date coding systems, clearly explaining how the date of manufacture is marked on each sales unit;

(6) An explanation of the product category codes that will be used on all required labels, or a statement that the default category codes in Table 1 of this subpart will be used;

(7) For each product category, an explanation of how the manufacturer, distributor, or importer will define a batch for the purpose of the recordkeeping requirements;

(8) A list of any compounds or mixtures that will be used in aerosol coatings that are not included in Table 2A, 2B, or 2C of this subpart;

(9) For each product category, VOC formulation data for each formulation that you anticipate manufacturing, importing, or distributing for calendar year 2009 or for the first year that includes your compliance date, if different than 2009. If a regulated entity can certify that the reporting is being completed by another regulated entity for any product, no second report is required. The formulation data must include the weight fraction (g compound/g product) for each VOC ingredient used in the product in an amount greater than or equal to 0.1 percent. The formulation data must also include the information in either paragraph (b)(9)(i) or (b)(9)(ii) of this section for each VOC ingredient reported.

(i) For compounds listed in Table 2A of this regulation, the chemical name, CAS number, and the applicable reactivity factor; or

(ii) For hydrocarbon solvent mixtures listed in either 2B or 2C or this subpart, the trade name, solvent mixture manufacturer, bin number, and the applicable reactivity factor.

(10) For each product formulation, a list of the unique product codes by Universal Product Code (UPC), or other unique identifier; and

(11) A statement certifying that all products manufactured by the company that are subject to the limits in Table 1 of this subpart will be in compliance with those limits.

(c) If you change any information included in the initial notification required by paragraph (b) of this section, including the list of aerosol categories, contact information, records location, the category or date coding system, or the list required under paragraph (b)(8) of this section, you must notify the Administrator of such changes within 30 days following the change. You are also required to notify the Administrator within 30 days of the date that you begin using an organic compound in any of your aerosol coating products if that compound has an RF less than or equal to 0.3, and is used at a level greater than or equal to 7.3 weight percent (g of compound/g product) in any of your formulations. You are not required to notify the Administrator within 30 days of changes to the information provided as required by paragraph (b)(9) of this section. Changes in formulation are to be reported in the triennial reporting required by paragraph (i) of this section.

(d) Upon 60 days written notice, you must submit to the Administrator a written report with all the information in paragraphs (d)(1) through (d)(5) of this section for each product you manufacture, distribute, or import under your name or another company's name.

(1) The brand name of the product;

(2) A copy of the product label;

(3) The owner of the trademark or brand names;

(4) The product category as defined in § 59.503;

(5) For each product, formulation data for each formulation that manufactured, imported, or distributed in the

requested time period. The formulation data must include the weight fraction (g compound/g product) for each VOC ingredient used in the product in an amount greater than or equal to 0.1 percent, plus the weight fraction of all other ingredients including: Water, total solids, and any other compounds assigned an RF of zero. The formulation data must also include the information in either paragraph (d)(5)(i) or (ii) of this section.

(i) For compounds listed in Table 2A of this subpart, the chemical name, CAS number, and the applicable reactivity factor.

(ii) For hydrocarbon solvent mixtures listed in either 2B or 2C or this table, the trade name, solvent mixture manufacturer, bin number, and the applicable reactivity factor.

(e) If you claim the exemption under § 59.501(e), you must submit an initial notification no later than 90 days before the compliance date or at least 90 days before the date that you first manufacture aerosol coatings, whichever is later. The initial notification must include the information in paragraphs (e)(1) through (e)(6) of this section.

(1) Company name;

(2) Name, title, number, address, telephone number, e-mail address, and signature of certifying company official;

(3) A list of the product categories from Table 1 of this subpart that you manufacture;

(4) The total amount of product you manufacture in each category and the total VOC mass content of such products for the preceding calendar year;

(5) The street address of each of your facilities in the United States that is manufacturing aerosol coatings that are subject to the provisions of this subpart and the street address where compliance records are maintained for each site, if different; and

(6) A list of the States in which you sell or otherwise distribute the products you manufacture.

(f) If you claim the exemption under § 59.501(e), you must file an annual report for each year in which you claim an exemption from the limits of this subpart. Such annual report must be filed by March 1 of the year following the year in which you manufactured the products. The annual report shall include the same information required in paragraphs (e)(1) through (e)(6) of this section.

(g) If you are a manufacturer, importer, or distributor who chooses to certify that you will maintain records for a regulated entity for all or part of the purposes of § 59.510 and this section, you must submit a report to the appropriate Regional Office listed in § 59.512. This report must include the information contained in (g)(1) though (g)(4) of this section.

(1) Name and address of certifying entity;

(2) Name and address(es) of the regulated entity for which you are accepting responsibility;

(3) Description of specific requirements in § 59.510 and this section for which you are assuming responsibility and explanation of how all required information under this subpart will be maintained and submitted, as required, by you or the regulated entity; and

(4) Signature of responsible official for the company.

(h) An entity that has provided certification under paragraph (g) of this section (the ''certifying entity'') may revoke the written certification by sending a written statement to the appropriate Regional Office listed in § 59.512 and to the regulated entity for which the certifying had accepted responsibility, giving a minimum of 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements outlined in the certification letter. Upon expiration of the notice period, the regulated entity must assume responsibility for all applicable requirements.

(i) As a regulated entity in accordance with paragraph (a) of this section, you must provide the information requested in paragraphs (i)(1) through (i)(4) of this section every three years beginning in 2011 for reporting year 2010. The report shall be submitted by March 31 of the year following the reporting year to the appropriate Regional Office listed in § 59.512. The first report is due March 31, 2011, for calendar year 2010.

(1) All identification information included in paragraphs (b)(1), (b)(2), and (b)(4) of this section;

(2) For each product category, VOC formulation data for each formulation that was manufactured, imported, or distributed in the reporting year. The formulation data must include the weight fraction (g compound/g product) for each VOC ingredient used in the product in an amount equal to or greater than 0.1 percent. If a regulated entity can certify that the reporting is being completed by another regulated entity for any product, no second report is required. The formulation data must include the information in either paragraph (i)(2)(i) or (i)(2)(ii) of this section for each VOC present in an amount greater than or equal to 0.1 percent.

(i) For compounds listed in Table 2A of this subpart, the chemical name, CAS number, and the applicable reactivity factor; or

(ii) For hydrocarbon solvent mixtures listed in either 2B or 2C of this subpart, the trade name, solvent mixture manufacturer, bin number, and the applicable reactivity factor.

(3) For each formulation, the total mass of each individual VOC species present in an amount greater than or equal to 0.1 percent of the formulation, that was manufactured, imported, or distributed in the reporting year; and

(4) For each formulation, a list of the individual product codes by UPC or other unique identifier.

(j) If a regulated entity identifies a VOC that is needed for an aerosol formulation that is not listed in Tables 2A, 2B, or 2C of this subpart, it is assigned a default RF factor of 22.04 g O3/g VOC. Regulated entities may petition the Administrator to add a compound to Table 2A, 2B, or 2C of this subpart. Petitions must include the chemical name, CAS number, a statement certifying the intent to use the compound in an aerosol coatings product, and adequate information for the Administrator to evaluate the reactivity of the compound and assign a RF value consistent with the values for the other compounds listed in Table 2A of this subpart. Any requests submitted to EPA on or before June 1, 2008 will be considered and, if appropriate, incorporated into Table 2A, 2B, or 2C of this subpart on or before January 1, 2009.

§ 59.512 Addresses of EPA regional offices.

All requests (including variance requests), reports, submittals, and other communications to the Administrator pursuant to this regulation shall be submitted to the Regional Office of the EPA which serves the State or territory for the address that is listed on the aerosol coating product in question. These areas are indicated in the following list of EPA Regional Offices.

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Office of Environmental Stewardship, Mailcode: SAA, JFK Building, Boston, MA 02203.

EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Division of Enforcement and Compliance Assistance, 290 Broadway, New York, NY 10007–1866.

EPA Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Air

Protection Division, 1650 Arch Street, Philadelphia, PA 19103.

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics, Management Division, 345 Courtland Street, NE., Atlanta, GA 30365.

EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.

EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Director, Air, Pesticides and Toxics Division, 1445 Ross Avenue, Dallas, TX 75202–2733.

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Toxics Division, 999 18th Street, 1 Denver Place, Suite 500, Denver, Colorado 80202–2405.

EPA Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

EPA Region X (Alaska, Oregon, Idaho, Washington), Director, Air and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.

§ 59.513 State authority.

The provisions in this regulation will not be construed in any manner to preclude any State or political subdivision thereof from:

(a) Adopting and enforcing any emission standard or limitation applicable to a manufacturer, distributor or importer of aerosol coatings or components in addition to the requirements of this subpart.

(b) Requiring the manufacturer, distributor or importer of aerosol coatings or components to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of a facility for manufacturing an aerosol coating or component.

§ 59.514 Circumvention.

Each manufacturer, distributor, and importer of an aerosol coating or component subject to the provisions of this subpart must not alter, destroy, or falsify any record or report, to conceal what would otherwise be noncompliance with this subpart. Such concealment includes, but is not limited to, refusing to provide the Administrator access to all required records and date-coding information, misstating the PWR content of a coating or component batch, or altering the results of any required tests to determine the PWR.

§ 59.515 Incorporations by reference.

(a) The following material is incorporated by reference (IBR) in the paragraphs noted in § 59.508. These incorporations by reference were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval, and notice of any changes in these materials will be published in the **Federal Register**.

(1) California Air Resources Board Method 3–0—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (May 5, 2005), IBR approved for § 59.508.

(2) South Coast Air Quality Management District (SCAQMD) Test Method 318–95, Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction, (July, 1996), IBR approved for § 59.508.

(3) ASTM Method D523–89 (Reapproved 1999), Standard Test Method for Specular Gloss, IBR approved for § 59.508.

(b) You may obtain and inspect the materials at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC; the EPA Library, 109 T.W. Alexander Drive, U.S. EPA, Research Triangle Park, North Carolina; you may inspect the materials 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*.

§ 59.516 Availability of information and confidentiality.

(a) Availability of information. The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter.

(b) Confidentiality. All confidential business information entitled to protection under section 114(c) of the Clean Air Act (CAA) that must be submitted or maintained by each regulated entity pursuant to this subpart shall be treated in accordance with 40 CFR part 2, subpart B.

(c) Reports and Applications. The content of all reports and applications required to be submitted to the Agency under § 59.511, § 59.509, or § 59.502 are not entitled to protection under Section 114(c) of the CAA.

TABLE 1 TO SUBPART E OF PART 59.—PRODUCT-WEIGHTED REACTIVITY LIMITS BY COATING CATEGORY

[g O_3/g product]

Coating category	Category code [a]	Reactivity limit
Clear Coatings	CCP	1.50
Flat Coatings	FCP	1.20
Fluorescent Coatings	FLP	1.75
Metallic Coatings	MCP	1.90
Non-Flat Coatings	NFP	1.40
Primers	PCP	1.20
Ground Traffic/Marking	GTM	1.20
Art Fixatives or Sealants	AFS	1.80
Auto body primers	ABP	1.55
Automotive Bumper and Trim Products	ABT	1.75
Aviation or Marine Primers	AMP	2.00
Aviation Propellor Coatings	APC	2.50
Corrosion Resistant Brass, Bronze, or Copper Coatings	CRB	1.80
Exact Match Finish—Engine Enamel	EEE	1.70
Exact Match Finish—Automotive	EFA	1.50
Exact Match Finish—Industrial	EFI	2.05
Floral Sprays	FSP	1.70
Glass Coatings	GCP	1.40

TABLE 1 TO SUBPART E OF PART 59.—PRODUCT-WEIGHTED REACTIVITY LIMITS BY COATING CATEGORY—Continued

[g O_3/g product]

Coating category	Category code [a]	Reactivity limit
High Temperature Coatings	HTC	1.85
Hobby/Model/Craft Coatings, Enamel	HME	1.45
Hobby/Model/Craft Coatings, Lacquer	HML	2.70
Hobby/Model/Craft Coatings, Clear or Metallic	HMC	1.60
Marine Spar Varnishes	MSV	0.90
Photograph Coatings	PHC	1.00
Pleasure Craft Primers, Surfacers or Undercoaters	PCS	1.05
Pleasure Craft Topcoats	PCT	0.60
Polyolefin Adhesion Promoters	PAP	2.50
Shellac Sealers, Clear	SSC	1.00
Shellac Sealers, Pigmented	SSP	0.95
Slip-Resistant Coatings	SRC	2.45
Spatter/Multicolor Coatings	SMC	1.05
Vinyl/Fabric/Leather/Polycarbonate Coatings	VFL	1.55
Webbing/Veiling Coatings	WFC	0.85
Weld-Through Primers	WTP	1.00
Wood Stains	WSP	1.40
Wood Touch-up/Repair or Restoration Coatings	WTR	1.50

[a] Regulated entities may use these category codes or define their own in accordance with § 59.511(b)(6).

TABLE 2A TO SUBPART E OF PART 59.—REACTIVITY FACTORS

Compound	CAS No.	Reactivity factor
1-Butanol	71–36–3	3.34
1,2,4-Trimethylbenzene	95–63–6	7.18
2-Butanol (s-Butyl alcohol)	78–92–2	1.60
2-Butoxy-1-Ethanol (Ethylene glycol monobutyl ether)	111–76–2	1.67
2-Propoxyethanol (ethylene glycol monopropyl ether)	2807–30–9	3.52
Acetone (Propanone)	67–64–1	0.43
Amyl acetate (Pentyl ethanoate, pentyl acetate)	628–63–7	0.96
Butane	106–97–8	1.33
Butyl acetate, n	123–86–4	0.89
Cyclohexanone	108–94–1	1.61
Di (2-ethylhexyl phthalate)	117–81–7	.....
Diacetone alcohol	123–42–2	0.68
Diethanolamine	111–42–2	4.05
Diisobutyl ketone	108–83–8	2.94
Dimethyl ether	115–10–6	0.93
Ethanol	64–17–5	1.69
Ethyl acetate	141–78–6	0.64
Ethyl benzene	100–41–4	2.79
Ethyl-3-Ethoxypropionate	763–69–9	3.61
Ethylene glycol monoethyl ether acetate (2-Ethoxyethyl acetate)	111–15–9	1.9
Heptane	142–82–5	1.28
Hexane	110–54–3	1.45
Isobutane	75–28–6	1.35
Isobutanol	78–83–1	2.24
Isobutyl Acetate	110–19–0	0.67
Isohexane Isomers	107–83–5	1.80
Isopropyl alcohol (2-Propanol)	67–63–0	0.71
Methanol	67–56–1	0.71
Methyl amyl ketone	110–43–0	2.80
Methyl ethyl ketone (2-Butanone)	78–93–3	1.49
Methyl isobutyl ketone	108–10–1	4.31
Methyl n-Propyl Ketone (2-Pentanone)	107–87–9	3.07
N,N-Dimethylethanolamine	108–01–0	4.76
N-Butyl alcohol (Butanol)	71–36–3	3.34
Pentane	109–66–0	1.54
Propane	74–98–6	0.56
Propylene glycol	57–55–6	2.75
Propylene glycol monomethyl ether acetate	108–65–6	1.71
Texanol (1,3 Pentanediol, 2,2,4-trimethyl, 1-isobutyrate)	25265–77–4	0.89
Toluene	108–88–3	3.97
Vinyl Chloride	75–01–4	2.92
Xylene, meta-	108–38–3	10.61
Xylene, ortho-	95–47–6	7.49
Xylene, para-	106–42–3	4.25

TABLE 2B TO SUBPART E OF PART 59.—REACTIVITY FACTORS FOR ALIPHATIC HYDROCARBON SOLVENT MIXTURES

Bin	Average boiling point * (degrees F)	Criteria	Reactivity factor
1	80–205	Alkanes (< 2% Aromatics)	2.08
2	80–205	N– & Iso-Alkanes (≥ 90% and < 2% Aromatics)	1.59
3	80–205	Cyclo-Alkanes (≥ 90% and < 2% Aromatics)	2.52
4	80–205	Alkanes (2 to < 8% Aromatics)	2.24
5	80–205	Alkanes (8 to 22% Aromatics)	2.56
6	>205–340	Alkanes (< 2% Aromatics)	1.41
7	>205–340	N– & Iso-Alkanes (≥ 90% and < 2% Aromatics)	1.17
8	>205–340	Cyclo-Alkanes (≥ 90% and < 2% Aromatics)	1.65
9	>205–340	Alkanes (2 to < 8% Aromatics)	1.62
10	>205–340	Alkanes (8 to 22% Aromatics)	2.03
11	>340–460	Alkanes (< 2% Aromatics)	0.91
12	>340–460	N– & Iso-Alkanes (≥ 90% and < 2% Aromatics)	0.81
13	>340–460	Cyclo-Alkanes (≥ 90% and < 2% Aromatics)	1.01
14	>340–460	Alkanes (2 to < 8% Aromatics)	1.21
15	>340–460	Alkanes (8 to 22% Aromatics)	1.82
16	>460–580	Alkanes (< 2% Aromatics)	0.57
17	>460–580	N- & Iso-Alkanes (≥ 90% and < 2% Aromatics)	0.51
18	>460–580	Cyclo-Alkanes (≥ 90% and < 2% Aromatics)	0.63
19	>460–580	Alkanes (2 to < 8% Aromatics)	0.88
20	>460–580	Alkanes (8 to 22% Aromatics)	1.49

* Average Boiling Point = (Initial Boiling Point + Dry Point) / 2 (b) Aromatic Hydrocarbon Solvents

TABLE 2C TO SUBPART E OF PART 59.—REACTIVITY FACTORS FOR AROMATIC HYDROCARBON SOLVENT MIXTURES

Bin	Boiling range (degrees F)	Criteria	Reactivity factor
21	280–290	Aromatic Content (≥98%)	7.37
22	320–350	Aromatic Content (≥98%)	7.51
23	355–420	Aromatic Content (≥98%)	8.07
24	450–535	Aromatic Content (≥98%)	5.00

[FR Doc. E8–5589 Filed 3–21–08; 8:45 am]

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Vol. 73, No. 57

Monday, March 24, 2008

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FEDERAL REGISTER PAGES AND DATE, MARCH

11305–11516 3
11517–11810 4
11811–12006 5
12007–12258 6
12259–12626 7
12627–12868 10
12869–13070 11
13071–13428 12
13429–13728 13
13729–14152 14
14153–14370 17
14371–14658 18
14659–14916 19
14917–15050 20
15051–15386 21
15387–15632 22

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8221 11513
8222 11515
8223 11999
8224 12001
8225 13429
8226 14915

Executive Orders:
12333 (See 13462) 11805
12863 (Revoked by 13462) 11805
12958 (See 13462) 11805
12968 (See 13462) 11805
13288 (See Notice of March 4, 2008) 12005
13391 (See Notice of March 4, 2008) 12005
13462 11805

Administrative Orders:
Notices:
Notice of March 4, 2008 12005
Notice of March 12, 2008 13727
Presidential Determinations:
No. 2008-13 of February 28, 2008 12259
No. 2008-14 of March 7, 2008 13431

4 CFR

Proposed Rules:
21 15098

5 CFR

2634 15387
2635 15387
2641 12007

Proposed Rules:
1601 12665

6 CFR

27 15051

7 CFR

51 15052
56 11517
70 11517
246 ..... 11305, 14153
457 ..... 11314, 11318
786 11519
905 14371
916 14372
917 14372
930 11323
983 14917
984 11328
1000 14153
1005 14153
1006 14153
1007 14153
1212 11470
1216 14919
3565 11811
3570 14171

Proposed Rules:
205 13795
927 14400
955 14400
956 13798
966 14400
981 11360
984 14400
1212 11470
1240 11470

8 CFR

214 15389

9 CFR

Proposed Rules:
2 14403
3 14403

10 CFR

Ch. I 14376
2 12627
72 13071
490 13729

Proposed Rules:
20 14946
30 14946
40 14946
50 ..... 13157, 14946
51 14946
70 14946
72 14946
430 ..... 13465, 13620

12 CFR

16 12009
32 14922
797 11340

Proposed Rules:
327 15459

13 CFR

121 12869

Proposed Rules:
120 15468

14 CFR

23 12542
25 12542
27 12542
29 12542
39 ..... 11346, 11347, 11527, 11529, 11531, 11534, 11536, 11538, 11540, 11542, 11544, 11545, 11812, 13071, 13075, 13076, 13078, 13081, 13084, 13087, 13093, 13096, 13098,

13100, 13103, 13106, 13109, 13111, 13113, 13115, 13117, 13120, 13433, 13436, 13438, 14377, 14378, 14659, 14661, 14665, 14666, 14668, 14670, 14673, 15395, 15397, 15399
61 14676
71 ....12010, 13122, 14677, 14679, 14680, 14924, 14925, 15049, 15058, 15060, 15061
91 ....12542, 14676, 15280
95 14381
97 ....11551, 12631, 14681, 14686
121 12542
125 12542
129 12542
135 ....12542, 14676, 15280
Proposed Rules:
39 ....11363, 11364, 11366, 11369, 11841, 12032, 12034, 12299, 12301, 12303, 12901, 12905, 12907, 12910, 12912, 13157, 13480, 13483, 13486, 13488, 13490, 13492, 13494, 13496, 13498, 13501, 13503, 13504, 13507, 13509, 13511, 13513, 13515, 13800, 13803, 13806, 14189, 14191, 14403, 14405, 14731, 14733
60 11995
71 ....13159, 13809, 13811, 14408, 14949
234 11843
253 11843
259 11843
399 11843

15 CFR
738 14687
Proposed Rules:
296 12305

16 CFR
453 13740
Proposed Rules:
Ch. I 11844
260 11371
306 12916
1634 11702

17 CFR
Proposed Rules:
230 13404
239 ....13404, 14618
240 ....13404, 15376
248 13692
249 13404
270 14618
274 14618
275 13958
279 13958

18 CFR
141 14173
385 14173
Proposed Rules:
35 12576

19 CFR
4 12634
122 12261

20 CFR
404 ....11349, 14570
416 11349
Proposed Rules:
295 12037
404 ....12923, 14409
416 12923

21 CFR
111 13123
510 14384
522 ....12634, 14177, 14384, 14926
526 12262
558 14385
600 12262
1308 14177
Proposed Rules:
516 14411

22 CFR
41 14926
42 14926
126 15409
310 14687

23 CFR
771 13368
774 13368
Proposed Rules:
630 12038

24 CFR
17 13722
180 13722
Proposed Rules:
203 14030
3500 14030

25 CFR
224 12808

26 CFR
1 ....12263, 12265, 12268, 13124, 14386, 14687, 14934, 15063, 15410
31 15410
301 ....13440, 15064
Proposed Rules:
1 ....12041, 12312, 12313, 12838, 14417, 15101
54 15101
301 15107

27 CFR
9 ....12870, 12875, 12878

28 CFR
2 12635

29 CFR
1910 13753
4006 15065
4007 15065
4022 13754
4044 13754
Proposed Rules:
403 11754
4001 14735
4211 14735
4219 14735

30 CFR
943 14179

31 CFR
356 14937
800 15078
901 12272

32 CFR
240 12011
700 12274

33 CFR
3 15079
100 12881
110 13125
117 ....12884, 12886, 12888, 12889, 13127, 13128, 13756
165 ....11814, 12637, 12891, 13129, 13756, 13759, 14181
Proposed Rules:
100 ....12669, 15108
110 12925
117 ....12315, 13160
165 12318
181 14193

34 CFR
Proposed Rules:
99 15574
668 15336
673 15336
674 15336
675 15336
676 15336
682 15336
685 15336
686 15336
690 15336

36 CFR
242 13761

37 CFR
2 13780
258 14183
Proposed Rules:
1 12679

39 CFR
20 12274
956 ....12893, 13131
Proposed Rules:
111 ....11564, 12321, 13812

40 CFR
51 15604
52 ....11553, 11554, 11557, 11560, 12011, 12639, 12893, 12895, 13440, 14387, 14389, 14687, 15081, 15083, 15411, 15416
59 ....15421, 15604
63 12275
80 13132
81 ....11557, 11560, 12013, 14391, 14687, 15083, 15087
86 13441
180 ....11816, 11820, 11826, 11831, 13136, 14713, 14714, 15425
268 12017
271 ....12277, 13141
300 14719
Proposed Rules:
51 11375
52 ....11564, 11565, 11845, 11846, 12041, 13813, 14426, 15111, 15470
55 13822
59 15470
63 14126
80 13163
86 13518
93 11375
122 12321
158 11848
161 11848
268 12043
271 ....12340, 13167
300 14742
372 12045
761 12053

41 CFR
301-10 13784
Proposed Rules:
301-10 11576

42 CFR
447 13785
Proposed Rules:
423 14342

44 CFR
64 14185
65 ....12640, 12644
67 12647
Proposed Rules:
67 ....12684, 12691, 12695, 12697

45 CFR
670 14939
Proposed Rules:
95 12341
1160 11577

46 CFR
401 15092

47 CFR
0 11561
6 14941
15 15431
27 15431
54 ....11837, 15431
64 ....13144, 14941
73 ....11353, 13452, 15284, 15431
76 ....12279, 15431
Proposed Rules:
32 ....11580, 11587
36 ....11580, 11587
54 ....11580, 11587, 11591
63 ....11587, 11591
73 ....12061, 12928

48 CFR
225 11354
232 11356
252 ....11354, 11356
2152 14727
Proposed Rules:
13 12699
19 12699
1537 11602
1552 11602

49 CFR
1 14727
541 13150
622 13368
1572 13155
Proposed Rules:
39 14427

192.....13167
380.....15471
383.....15471
384.....15471
571.....12354, 13825
Ch. X.....13523

50 CFR

92.....13788
100.....13761
224.....12024
229.....11837, 14396
300.....12280
622.....14942
648.....13463, 14187
679 .....11562, 11840, 12031, 12297, 12663, 12897, 12898, 13156, 13464, 14728, 15096, 15458
697.....11563

Proposed Rules:

17 .....12065, 12067, 12929, 14950
223 .....11849, 12941, 13185, 14195
224 .....11849, 12941, 13185, 14195
226.....12068
600.....14428
648 .....11376, 11606, 12941, 14748, 15111
660.....14765
679.....11851, 12357
680.....14766, 15118

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 24, 2008

DEFENSE DEPARTMENT

Air Force Department

Air Force Academy Preparatory School; published 2-21-08

ENVIRONMENTAL PROTECTION AGENCY

Finding of Failure to Submit State Implementation Plans Required for the 1997 8-hour Ozone NAAQS; published 3-24-08

National Volatile Organic Compound Emission Standards for Aerosol Coatings; published 3-24-08

Pesticide Tolerance; Pyraclostrobin; published 3-24-08

FEDERAL COMMUNICATIONS COMMISSION

2006 Quadrennial Regulatory Review:

Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; published 2-21-08

IP-Enabled Services, Telephone Number Portability, Numbering Resource; published 2-21-08

GOVERNMENT ETHICS OFFICE

Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations; Technical Amendments; published 3-24-08

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare Program:

Medicare Secondary Payer (MSP) Amendments; published 2-22-08

Prior Determination for Certain Items and Services; published 2-22-08

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Petitions Filed on Behalf of Temporary Workers Subject to or Exempt From Annual Numerical Limitation; published 3-24-08

STATE DEPARTMENT

International Arms Traffic in Arms Regulations, Sri Lanka; Amendment; published 3-24-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 3-31-08; published 1-29-08 [FR E8-01529]

Brucellosis in Cattle; State and Area Classifications; Texas; comments due by 4-1-08; published 2-1-08 [FR E8-01853]

Change in Disease Status of Surrey County, England, Because of Foot-and-Mouth Disease; comments due by 3-31-08; published 1-30-08 [FR E8-01653]

Importation of Cattle from Mexico:

Addition of Port at San Luis, AZ; comments due by 3-31-08; published 1-29-08 [FR E8-01533]

Removal of Quarantined Area:

Mexican Fruit Fly; comments due by 3-31-08; published 1-29-08 [FR E8-01531]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

United States Standards for Beans; comments due by 4-1-08; published 2-1-08 [FR E8-01819]

United States Standards for Whole Dry Peas, Split Peas, and Lentils; comments due by 4-1-08; published 2-1-08 [FR E8-01820]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Exclusive Economic Zone Off Alaska:

Individual Fishing Quota Program; Community Development Quota Program; comments due by 4-4-08; published 3-5-08 [FR E8-04247]

Magnuson-Stevens Act Provisions; Experimental Permitting Process, Exempted Fishing Permits, and Scientific Research Activity; comments due by 4-4-08; published 3-18-08 [FR E8-05425]

Marine Mammals: Advanced Notice of Proposed Rulemaking; comments due by 3-31-08; published 1-31-08 [FR E8-01666]

DEFENSE DEPARTMENT

Federal Acquisition Regulation:

Limiting Length of Noncompetitive Contracts in Unusual and Compelling Urgency Circumstances; comments due by 3-31-08; published 1-31-08 [FR E8-01681]

ENERGY DEPARTMENT

Defense Priorities and Allocations System; comments due by 3-31-08; published 2-29-08 [FR E8-03773]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 3-31-08; published 1-30-08 [FR E8-01594]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Stationary Generator Emissions; comments due by 4-4-08; published 3-5-08 [FR E8-04256]

Approval and Promulgation of Implementation Plans:

Illinois; comments due by 4-3-08; published 3-4-08 [FR E8-04154]

Iowa; comments due by 4-3-08; published 3-4-08 [FR E8-04046]

Motor Vehicle Emissions Budgets; New Jersey; comments due by 4-4-08; published 3-5-08 [FR E8-04233]

State of Iowa; comments due by 4-3-08; published 3-4-08 [FR E8-04042]

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]

Fluopicolide; Pesticide Tolerance; comments due by 3-31-08; published 1-30-08 [FR E8-01525]

FARM CREDIT ADMINISTRATION

Farm credit system:

Funding and fiscal affairs, loan policies and operations, and funding operations—

Capital adequacy; Basel Accord; comments due by 3-31-08; published 10-31-07 [FR E7-21422]

FEDERAL COMMUNICATIONS COMMISSION

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; comments due by 4-3-08; published 3-4-08 [FR E8-04148]

Leased Commercial Access; comments due by 3-31-08; published 2-28-08 [FR 08-00871]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation:

Limiting Length of Noncompetitive Contracts in Unusual and Compelling Urgency Circumstances; comments due by 3-31-08; published 1-31-08 [FR E8-01681]

Federal Travel Regulation:

Fly America Act; United States and European Union Open Skies Air Transport Agreement; comments due by 4-3-08; published 3-4-08 [FR E8-03970]

HOMELAND SECURITY DEPARTMENT

Changes to Requirements Affecting H-2A Nonimmigrants; comments due by 3-31-08; published 2-13-08 [FR E8-02532]

INTERIOR DEPARTMENT

Minerals Management Service

Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida; comments due by 4-1-08; published 2-1-08 [FR E8-01860]

INTERNATIONAL TRADE COMMISSION

Rules of General Application and Adjudication and Enforcement; comments due by 3-31-08; published 2-15-08 [FR E8-02871]

JUSTICE DEPARTMENT

Application Procedures and Criteria for Approval of Nonprofit Budget and Credit

Counseling Agencies by United States Trustees; comments due by 4-1-08; published 2-1-08 [FR E8-01451]

Procedures for Completing Uniform Forms of Trustee Final Reports:

Cases Filed Under Chapters 7, 12, and 13 of Title 11; comments due by 4-4-08; published 2-4-08 [FR E8-01450]

LABOR DEPARTMENT

Labor Statistics Bureau

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 4-1-08; published 2-1-08 [FR E8-01803]

LABOR DEPARTMENT

Employment Standards Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 3-31-08; published 1-30-08 [FR E8-01616]

LABOR DEPARTMENT

Employment and Training Administration

Temporary Agricultural Employment of H-2A Aliens in the United States:

Modernizing the Labor Certification Process and Enforcement; comments due by 3-31-08; published 2-13-08 [FR E8-02525]

LABOR DEPARTMENT

Wage and Hour Division

Temporary Agricultural Employment of H-2A Aliens in the United States:

Modernizing the Labor Certification Process and Enforcement; comments due by 3-31-08; published 2-13-08 [FR E8-02525]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation:

Limiting Length of Noncompetitive Contracts in Unusual and Compelling Urgency Circumstances; comments due by 3-31-08; published 1-31-08 [FR E8-01681]

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Technical Amendments to Reflect the New Authorization for a Domestic Indemnity Program; comments due by 4-3-08; published 3-4-08 [FR E8-04065]

POSTAL REGULATORY COMMISSION

Administrative Practice and Procedure, Postal Service; comments due by 4-1-08; published 2-1-08 [FR E8-01893]

SMALL BUSINESS ADMINISTRATION

Women-Owned Small Business Federal Contract Assistance Procedures; comments due by 3-31-08; published 2-28-08 [FR E8-03889]

STATE DEPARTMENT

Consular Services Fee Schedule; State Department, Overseas Embassies, and Consulates; comments due by 3-31-08; published 1-29-08 [FR E8-01343]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A300 and A300-600 Series Airplanes; comments due by 3-31-08; published 2-29-08 [FR E8-03823]

Airbus Model A330-200 and A340-300 Series Airplanes; comments due by 4-2-08; published 3-3-08 [FR E8-03969]

Boeing Model 737 600, 700, 700C, 800 and 900 Series Airplanes; comments due by 3-31-08; published 2-15-08 [FR E8-02887]

Boeing Model 747 100, et al. Series Airplanes; comments due by 3-31-08; published 2-13-08 [FR E8-02588]

Cameron Balloons Ltd. Models AX5-42 (S.1), et al.; comments due by 4-4-08; published 3-5-08 [FR 08-00786]

Dornier Luftfahrt GmbH Models 228-200, 228-201, 228-202, and 228-212 Airplanes; comments due by 4-4-08; published 3-5-08 [FR 08-00929]

Airworthiness directives:

Eurocopter Deutschland GmbH Model EC135 Helicopters; comments due by 4-1-08; published 2-1-08 [FR E8-01702]

Airworthiness Directives:

Lockheed Model 382, 382B, 382E, 382F, and 382G Series Airplanes; comments due by 3-31-08; published 2-13-08 [FR E8-02742]

McDonnell Douglas Model DC-10-10 et al. Airplanes; comments due by 4-1-08; published 3-7-08 [FR E8-04475]

Amendment of Class E Airspace:

Gettysburg, PA.; comments due by 3-31-08; published 2-14-08 [FR 08-00615]

Establishment of Class E Airspace:

Cranberry Township, PA.; comments due by 3-31-08; published 2-14-08 [FR 08-00616]

Seneca, PA.; comments due by 3-31-08; published 2-14-08 [FR 08-00614]

Establishment of Class E Airspace; Huntsville, AR; comments due by 3-31-08; published 2-15-08 [FR 08-00663]

Establishment of Class E Airspace; Lexington, OK; comments due by 3-31-08; published 2-15-08 [FR 08-00662]

Low Altitude Area Navigation Routes (T-Routes) Proposed Establishment; Southwest Oregon; comments due by 3-31-08; published 2-14-08 [FR E8-02759]

Proposed Establishment of Class E Airspace; White Hills, AK; comments due by 4-4-08; published 2-19-08 [FR E8-02976]

Proposed Establishment of Low Altitude Area Navigation Routes (T-Routes):

Sacramento and San Francisco, CA; comments due by 4-4-08; published 2-19-08 [FR E8-02978]

Proposed Revision of Class E Airspace; Allakaket, AK; comments due by 4-4-08; published 2-19-08 [FR E8-02967]

Proposed Revision of Class E Airspace; St. Mary's, AK; comments due by 4-4-08; published 2-19-08 [FR E8-02977]

TREASURY DEPARTMENT

Internal Revenue Service

Diversification Requirements for Certain Defined Contribution Plans; comments due by 4-2-08; published 1-3-08 [FR E7-25533]

Income taxes:

Nuclear decommissioning funds; comments due by 3-31-08; published 12-31-07 [FR E7-25222]

Pension funding; assets and liabilities measurement; comments due by 3-31-08; published 12-31-07 [FR E7-25125]

Procedure and administration:

Census Bureau; disclosure of return information; comments due by 3-31-08; published 12-31-07 [FR E7-25127]

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. 2745/P.L. 110–196

To extend agricultural programs beyond March 15, 2008, to suspend permanent price support authorities beyond that date, and for other purposes. (Mar. 14, 2008; 122 Stat. 653)

S.J. Res. 25/P.L. 110–197

Providing for the appointment of John W. McCarter as a citizen regent of the Board of Regents of the Smithsonian Institution. (Mar. 14, 2008; 122 Stat. 655)

Last List March 13, 2008

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CFR CHECKLIST

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
***4**	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
*1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
*1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
*500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
*500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–062–00056–1)	61.00	Apr. 1, 2007
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–062–00067–7)	47.00	Apr. 1, 2007
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
1300–End	(869–062–00070–7)	25.00	Apr. 1, 2007
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–062–00074–0)	60.00	Apr. 1, 2007
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–062–00085–5)	58.00	Apr. 1, 2007
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–062–00087–1)	61.00	Apr. 1, 2007
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–062–00091–0)	58.00	Apr. 1, 2007
§§ 1.1551–End	(869–062–00092–8)	50.00	Apr. 1, 2007
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[7] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[9] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[9] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	[8] July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[11] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
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186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
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300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
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17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[10] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
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Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.

[11] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.