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Contents

Federal Register

Vol. 73, No. 65

Thursday, April 3, 2008

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18283–18286

Agriculture Department
See Food Safety and Inspection Service

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18286–18287
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel—
Division of HIV/AIDS Prevention Laboratory Branch Intramural Research Programs, 18287

Centers for Medicare & Medicaid Services
RULES
Medicare Program:
Modification to the Weighting Methodology Used to Calculate the Low-income Benchmark Amount, 18176–18182
NOTICES
Hearing:
Reconsideration of Disapproval of Montana State Plan Amendment (07-004), 18287–18289

Coast Guard
PROPOSED RULES
Safety Zone:
Red Bull Air Race; San Diego Bay, San Diego, CA, 18222–18224
Safety Zones:
Annual Events requiring safety zones in the Captain of the Port Buffalo Zone, 18225–18229
NOTICES
Meetings:
National Boating Safety Advisory Council, 18295

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department

Employee Benefits Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18301–18302

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18302–18303

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18263–18264

Environmental Protection Agency
RULES
Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; NV, 18169–18172
Delegation of New Source Performance Standards:
National Emission Standards for Hazardous Air Pollutants for the States of Arizona and Nevada, 18162–18169
Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan:
Quinault Indian Nation, 18161–18162
Final Authorization of State Hazardous Waste Management Program Revision; Virginia, 18172–18176
PROPOSED RULES
Authorization of State Hazardous Waste Management Program Revisions:
Virginia, 18229–18230
Delegation of National Emission Standards for Hazardous Air Pollutants, NV, 18229
National Emission Standards for Hazardous Air Pollutants:
Area Source Standards for Nine Metal Fabrication and Finishing Source Categories, 18334–18381
NOTICES
Meetings:
Mobile Sources Technical Review Subcommittee, 18271
Proposed Determination to Prohibit, Restrict, or Deny Specification, or Use for Specification, of Area as a Disposal Site:
Yazoo River Basin, Issaquena County, MS; Correction, 18332

Executive Office of the President
See Presidential Documents

Federal Accounting Standards Advisory Board
NOTICES
Concepts Statement Exposure Draft, etc., 18271–18272

Federal Aviation Administration
RULES
Class E Airspace:
Kobuk, AK, 18151–18152
Standard Instrument Approach Procedures, etc., 18152–18154
PROPOSED RULES
Airworthiness Directives:
Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700-715A1-30, etc., 18220–18222
Proposed Revocation of Area Navigation Jet Routes J-888R and J-996R; Alaska, 18222

Federal Communications Commission
PROPOSED RULES
Radio Broadcasting Services:
Evart, Ludington, Pentwater, and Manistee, Michigan, 18252–18253
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18272–18276
Closed Auction of Licenses for Cellular Unserved Service Areas, 18276–18278

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 18189–18215
National Flood Insurance Program; Assistance to Private Sector Property Insurers; Write-Your-Own Arrangement, 18182–18188
Suspension of Community Eligibility, 18188–18189
PROPOSED RULES
Proposed Flood Elevation Determinations, 18230–18252

Federal Energy Regulatory Commission
NOTICES
Application:
Northern Natural Gas Co., 18264–18265
Transcontinental Gas Pipe Line Corp., 18265–18266
Filing:
Cedar Creek Wind Energy, LLC, 18266
GEN-SYS Energy, 18266
Issuance Of Order:
Plum Point Energy Associates, LLC, 18266–18267
Wells Fargo Energy Markets, LLC, 18267
Order on Technical Conference, 18267–18270
TransCanada Maine Wind Development Inc.:
Notice Of Filing, 18270–18271

Federal Maritime Commission
NOTICES
Request for Additional Information; Los Angeles/Long Beach Port Terminal Operator Administration and Implementation Agreement, 18278

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 18278
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 18278–18279
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction, 18279

Federal Trade Commission
NOTICES
Analysis of Proposed Consent Order to Aid Public Comment:
Reed Elsevier Inc. and Seisint, Inc., 18279–18281
The TJX Companies, Inc., 18281–18283

Food Safety and Inspection Service
NOTICES
Meetings:
Shiga Toxin-Producing E. coli, 18257–18258

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection
NOTICES
Designation of an Enhanced Driver's License and Identity Document Issued by the State of Washington as a Travel Document under the Western Hemisphere Travel, 18421–18422
Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended; Hildalgo waiver, 18293–18294

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18297

Indian Affairs Bureau
NOTICES
Indian Gaming:
Approved Tribal - State Gaming Amendment, 18297
Land Acquisitions; Skokomish Indian Tribe, Washington, 18297–18298

Interior Department
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
RULES
Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock; Correction, 18159–18160

International Trade Administration
NOTICES
Applications for Duty-Free Entry of Scientific Instruments, 18258–18259
Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order:
Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea, 18259–18260

International Trade Commission
NOTICES
Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players, etc:
Commission Decision Not To Review An Initial Determination, 18300

Justice Department
NOTICES
Consent Decree:
Atlanta Gas Light Company, et al., 18301

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Veterans Employment and Training Service

Land Management Bureau
NOTICES
Intent to name a geographic location the Craig Thomas Little Mountain Special Management Area:
Big Horn County, Wyoming, 18299–18300
Intent to prepare a Resource Management Plan:
Four Rivers Field Office (Idaho), 18298–18299
Meetings:
Northwest California Resource Advisory Council, 18300

Merit Systems Protection Board
RULES
Streamlining Regulations, 18149–18151

National Archives and Records Administration
RULES
Locations and Hours; Changes in NARA Research Room Hours, 18160–18161

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18320–18321

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18289–18290
Government-Owned Inventions; Availability for Licensing, 18290–18291
Meetings:
AIDS Research Advisory Committee, 18291
Center for Scientific Review Emphasis Panel, 18292
National Heart, Lung, and Blood Institute Special Emphasis Panel, 18292–18293

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by American Fisheries Act Catcher Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area, 18219
Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; etc., 18215–18219
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Atlantic Coast Red Drum Fishery off the Atlantic States; Transfer of Management Authority, 18253–18256
NOTICES
Atlantic Coastal Fisheries Cooperative Management Act Provisions:
Tautog Fishery, 18260–18261
Meetings:
Fisheries of the South Atlantic; South Atlantic Fishery Management Council, 18261
North Pacific Fishery Management Council, 18261–18262

Navy Department
NOTICES
Availability for Final Environmental Impact Statement:
Activities to Implement 2005 Base Realignment and Closure Actions at National Naval Medical Center, Bethesda, MD, 18262–18263

Peace Corps
RULES
Debt Collection, 18154–18159

Pipeline and Hazardous Materials Safety Administration
NOTICES
Meetings:
Hazardous Materials; Transport of Lithium Batteries, 18321–18322

Presidential Documents
PROCLAMATIONS
Special observances:
Cancer Control Month (Proc. 8229), 18423–18426
National Child Abuse Prevention Month (Proc. 8230), 18427–18428
National Donate Life Month (Proc. 8231), 18429–18430
National Fair Housing Month (Proc. 8232), 18431–18432

Securities and Exchange Commission
NOTICES
Applications:
Deregistration under Section 8(f) of the Investment Company Act, 18303–18304
Kohlberg Capital Corp., 18304–18306
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 18306–18307
Financial Industry Regulatory Authority, Inc., 18308–18310
Philadelphia Stock Exchange, Inc., 18310–18311

Small Business Administration
NOTICES
Disaster Declarations:
Arkansas, 18311–18312
Missouri, 18312
Meetings:
National Small Business Development Center Advisory Board, 18312

Social Security Administration
NOTICES
Retirement Research Consortium Request for Applications, 18313–18320

State Department
RULES
Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere, 18384–18420

Surface Transportation Board
NOTICES
Acquisition and Operation Exemption:
Burlington Shortline Railroad, Inc., 18322
CSX Transportation, Inc.; Abandonment Exemption; Greenbrier and Fayette Counties, WV, 18322–18323
Petition for Exemption:
Alaska Railroad Corp., 18323–18330

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Proposed Renewal without Change; Comment Request; Imposition of Special Measures, 18331

U.S. Customs and Border Protection
RULES
Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere, 18384–18420
NOTICES
Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties, 18295–18297

Veterans Employment and Training Service
NOTICES
Meetings:
Advisory Committee on Veterans' Employment, Training and Employer Outreach, 18303

Separate Parts In This Issue

Part II
Environmental Protection Agency, 18334–18381

Part III
Homeland Security Department, 18421–18422

Part III
Homeland Security Department, U.S. Customs and Border Protection; State Department, 18384–18420

Part IV
Presidential Documents, 18423–18432

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.

3 CFR

Proclamations:

8229 18425
8230 18427
8231 18429
8232 18431

5 CFR

1201 18149

8 CFR

212 18384
235 18384

14 CFR

71 18151
97 18152

Proposed Rules:

39 18220
71 18222

22 CFR

41 18384
53 18384
309 18154

26 CFR

1 (2 documents) 18159, 18160

33 CFR

Proposed Rules:

165 (2 documents) 18222, 18225

36 CFR

1253 18160

40 CFR

49 18161
60 18162
61 18162
63 18169
271 18172

Proposed Rules:

63 (2 documents) 18229, 18334
271 18229

42 CFR

422 18176
423 18176

44 CFR

62 18182
64 18188
67 (2 documents) 18189, 18197

Proposed Rules:

67 (3 documents) 18230, 18243, 18246

47 CFR

Proposed Rules:

73 18252

50 CFR

648 18215
679 18219

Proposed Rules:

622 18253
697 18253

Rules and Regulations

Federal Register

Vol. 73, No. 65

Thursday, April 3, 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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Streamlining Regulations

AGENCY: Merit Systems Protection Board.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Merit Systems Protection Board (''MSPB'') is issuing a revised interim rule amending several provisions of its practices and procedures regulations to improve the agency's service to its customers by facilitating the expeditious adjudication of appeals. This revised interim rule is intended to streamline MSPB case adjudication. It revises and adds to the regulatory changes undertaken in an interim rule issued by the MSPB on September 18, 2003. (68 FR 54651) This revised interim rule reflects the comments received from MSPB adjudicators and practitioners based on their experiences with the implementation of the current interim rule. The MSPB is soliciting comments concerning this revised interim rule, as well as additional comments concerning the September 18, 2003 interim rule. The MSPB will issue a final rule following the end of the comment period for this revised interim rule. All comments received during the comment period will be taken into consideration in drafting the final rule.

DATES: *Effective date:* April 3, 2008. Submit written comments on or before June 2, 2008.

ADDRESSES: Send comments to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200, phone; (202) 653–7130, fax; or e-mail: *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200, phone; (202) 653–7130, fax; or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 18, 2003, the MSPB issued an interim rule amending several provisions of its practices and procedures regulations to improve the agency's service to its customers by facilitating the expeditious adjudication of appeals. These changes in the MSPB's rules of practice and procedure were, in part, a response to the directives contained in the President's Management Agenda (2002). The President's management reform initiative directs agencies to ''reshape their organizations to meet a standard of excellence in attaining the outcomes important to the nation.'' Among other actions, agencies are directed to reduce the time they take to make decisions. In addition, appellants and agencies had also expressed concern about the amount of time it took to adjudicate or otherwise process a case through the MSPB. As a result, the MSPB reviewed its practice and procedure regulations and determined that aspects of the regulations could be modified to improve its efficiency and effectiveness while maintaining the rights of the parties to a fair and impartial adjudication of appeals before the MSPB.

II. Changes Contained in the September 18, 2003 Interim Rule

The September 18, 2003 interim rule amended 5 CFR 1201.28 to allow the judge to grant a joint or unilateral request for suspension of a case for only one 30-day period rather than two 30-day periods. Moreover, the amended regulation provided that such requests would only be granted for good cause shown at the discretion of the judge, rather than automatically. Finally, the amendment specified a 30-day limit on the amount of time the judge could grant for a unilateral request.

The September 18, 2003 interim rule also added two new subsections to the MSPB's regulations governing discovery procedures. These subsections, 5 CFR 1201.72(d) and 1201.73(e), permitted the administrative judge to impose limits on the frequency or extent of the use of discovery methods and the number of discovery requests. The MSPB noted at that time that it had decided to follow the guidance of the Federal Rules of Civil Procedure (Fed. R. Civ. P.) in adopting these changes to its discovery procedures. The September 18, 2003 interim rule also amended 1201.73(d)(2) to reduce the number of days for filing subsequent discovery requests from 10 days to 7 days.

III. Summary of Changes in This Revised Interim Rule

This revised interim rule makes several changes to the MSPB's regulations as follows:

5 CFR 1201.28(g) is added to provide that the date on which a case returns to the adjudication process following a suspension is the 31st day after the suspension went into effect, but that if that date falls on a day when the MSPB is not open for business, such as a weekend or Federal holiday, then the first business day after that date is substituted. The MSPB's regulations were previously silent on this point and it is anticipated that this amendment will serve its and the parties' interests by assuring that deadlines restart and parties are held responsible for meeting processing requirements only on days that the MSPB is open to conduct official business.

5 CFR 1201.72(c) is clarified by adding the words ''to parties'' after ''interrogatories'' in response to a comment received from a practitioner suggesting that there may be some confusion about whether interrogatories may be served on nonparties.

5 CFR 1201.72(d) is clarified by moving the words ''the discovery sought is'' from the introduction to the beginning of paragraph (1) of that section.

5 CFR 1201.73 is amended by adding a new section (a) concerning initial disclosures required of the parties. This new provision, which is similar to Fed. R. Civ. P. Rule 26, requires the parties to make certain specific initial disclosures to each other within 10 days of the date of the Acknowledgment Order, so as to jump start the discovery process.

5 CFR 1201.73(e)(1) and 74(a) are amended to add an express requirement that the parties attempt to resolve a discovery dispute before filing a motion to compel with the MSPB. Parties often file a motion to compel discovery when

interrogatories are only one day late or there is a minor disagreement over the scope of discovery, before they make any reasonable effort to discuss the issue with the opposing party. At a minimum, the MSPB believes that this amendment will cause the parties to narrow the discovery issues in dispute, saving time and effort.

IV. Request for Additional Comment

The MSPB received 8 comments from appellants' representatives and agency representatives in response to the September 18, 2003 interim rule. The MSPB is considering these comments and will respond to them when a final rule is issued. However, as agency and appellant representatives have now had a significant period of time operating under the amendments effected by the September 18, 2003 interim rule, the MSPB is interested in receiving additional comments based upon such actual experience prior to issuing a final rule. The MSPB also invites comments concerning other changes to its regulations discussed herein that could facilitate the expeditious adjudication of appeals without adversely affecting the rights of the parties.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

■ Accordingly, the MSPB amends 5 CFR Part 1201 as follows:

PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Add § 1201.28(g) as follows:

§ 1201.28 Case suspension procedures.

* * * * *

(g) *Termination after 30 days.* If the final day of the 30-day suspension period falls on a day on which the MSPB is closed for business, adjudication shall resume as of the first business day following the expiration of the 30-day period.

■ 3. Revise § 1201.72 by revising paragraphs (c) and (d) to read as follows:

§ 1201.72 Explanation and scope of discovery.

* * * * *

(c) Methods. Parties may use one or more of the methods provided under the Federal Rules of Civil Procedure. These methods include written interrogatories to parties, depositions, requests for production of documents or things for inspection or copying, and requests for admission.

(d) Limitations. The judge may limit the frequency or extent of use of the discovery methods permitted by these regulations. Such limitations may be imposed if the judge finds that:

(1) The discovery sought is cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had sufficient opportunity by discovery in the action to obtain the information sought; or

(3) The burden or expense of the proposed discovery outweighs its likely b

■ 5. Revise § 1201.73 to read as follows:

§ 1201.73 Initial disclosures and discovery procedures.

(a) Initial disclosures. Except to the extent otherwise directed by order, each party must, without awaiting a discovery request and within 10 days following the date of the MSPB's acknowledgment order, provide the following information to the other party:

(1) The agency must provide:

(i) A copy of, or a description by category or location of all documents in the possession, custody, or control of the agency that the agency may use in support of its claims or defenses, and

(ii) The name and, if known, the address, telephone number, and e-mail address of each individual likely to have discoverable information that the agency may use in support of its claims or defenses, identifying the subjects of such information.

(2) The appellant must provide:

(i) A copy of, or a description by category or location of all documents in the possession, custody, or control of the appellant that the appellant may use in support of his or her claims or defenses, and

(ii) The name and, if known, the address, telephone number, and e-mail address of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of such information.

(3) Each party must make its initial disclosure based upon the information then reasonably available to the party. A party is not excused from making its disclosures because it has not fully completed its investigation of its case, because it challenges the sufficiency of the other party's disclosures, or because the other party has not made its disclosures.

(b) *Discovery from a party.* A party seeking discovery from another party must start the process by serving a request for discovery on the representative of the other party or the party if there is no representative. The request for discovery must state the time limit for responding, as prescribed in § 1201.73(f), and must specify the time and place of the taking of the deposition, if applicable. When a party directs a request for discovery to an officer or employee of a Federal agency that is a party, the agency must make the officer or employee available on official time to respond to the request, and must assist the officer or employee as necessary in providing relevant information that is available to the agency.

(c) *Discovery from a nonparty, including a nonparty Federal agency.* Parties should try to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty Federal agency or employee must start the process by serving a request for discovery on the nonparty Federal agency or employee. A party may begin discovery from other nonparties by serving a request for discovery on the nonparty directly. If the party seeking the information does not make that request, or if it does so but fails to obtain voluntary cooperation, it may obtain discovery from a nonparty by filing a written motion with the judge, showing the relevance, scope, and materiality of the particular information sought. If the party seeks to take a deposition, it should state in the motion the date, time, and place of the proposed deposition. An authorized official of the MSPB will issue a ruling on the motion, and will serve the ruling on the moving party. That official also will provide that party with a subpoena, if approved, that is directed to the individual or entity from which discovery is sought. The subpoena will specify the manner in which the party may seek compliance with it, and it will specify the time limit for seeking compliance. The party seeking the information is responsible for serving any MSPB-approved discovery request and subpoena on the individual or entity, or for arranging for its service.

(d) *Responses to discovery requests.* A party, or a Federal agency that is not a party, must answer a discovery request within the time provided under paragraph (f)(2) of this section, either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for the objection. Parties and non-parties may

respond to discovery requests by electronic mail if authorized by the requesting party.

(e) *Motions to compel discovery.* (1) If a party fails or refuses to respond in full to a discovery request, or if a nonparty fails or refuses to respond in full to a MSPB-approved discovery order, the requesting party may file a motion to compel discovery. The requesting party must file the motion with the judge, and must serve a copy of the motion on the other party and on any nonparty entity or person from whom the discovery was sought. Before filing any motion to compel discovery, the moving party shall discuss the anticipated motion with the opposing party either in person or by telephone and the parties shall make a good faith effort to resolve the discovery dispute and narrow the areas of disagreement. The motion shall include:

(i) A copy of the original request and a statement showing that the information sought is relevant and material; and

(ii) A copy of the response to the request (including the objections to discovery) or, where appropriate, a statement that no response has been received, along with an affidavit or sworn statement under 28 U.S.C. 1746 supporting the statement (See appendix IV to part 1201.); and

(iii) A statement that the parties have discussed the anticipated motion and have made a good faith effort to resolve the discovery dispute and narrow the areas of disagreement.

(2) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel discovery within the time limits stated in paragraph (f)(4) of this section.

(f) *Time limits.* (1) Parties who wish to make discovery requests or motions must serve their initial requests or motions within 25 days after the date on which the judge issues an order to the respondent agency to produce the agency file and response.

(2) A party or nonparty must file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the judge. Any discovery requests following the initial request must be served within 10 days of the date of service of the prior response, unless the parties are otherwise directed. Deposition witnesses must give their testimony at the time and place stated in the request for deposition or in the subpoena, unless the parties agree on another time or place.

(3) Any motion to depose a nonparty (along with a request for a subpoena) must be submitted to the judge within the time limits stated in paragraph (f)(1) of this section or as the judge otherwise directs.

(4) Any motion for an order to compel discovery must be filed with the judge within 10 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired. Any pleading in opposition to a motion to compel discovery must be filed with the judge within 10 days of the date of service of the motion.

(5) Discovery must be completed within the time the judge designates.

(g) *Limits on the number of discovery requests.* (1) Absent prior approval by the judge, interrogatories served by parties upon another party or a nonparty may not exceed 25 in number, including all discrete subparts.

(2) Absent prior approval by the judge or agreement by the parties, each party may not take more than 10 depositions.

(3) Requests to exceed the limitations set forth in paragraphs (g)(1) and (g)(2) of this section may be granted at the discretion of the judge. In considering such requests, the judge shall consider the factors identified in § 1201.72(d) of this part.

■ 6. Revise § 1201.74(a) to read as follows:

§ 1201.74 Orders for discovery

(a) Motion for an order compelling discovery. Motions for orders compelling discovery and motions for the appearance of nonparties must be filed with the judge in accordance with § 1201.73(e)(1) and (f)(4). An administrative judge may deny a motion to compel discovery if a party fails to comply with the requirements of 5 CFR § 1201.73(e)(1) and (f)(4).

* * * * *

William D. Spencer,

Clerk of the Board.

[FR Doc. E8–6934 Filed 4–2–08; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0341; Airspace Docket No. 07–AAL–19]

Establishment of Class E Airspace; Kobuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action establishes Class E airspace at Kobuk, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two new SIAPs and a textual departure procedure (DP) are being developed for the Kobuk Airport. This action establishes existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kobuk Airport, Kobuk, AK.

DATES: *Effective Date:* 0901 UTC, June 5, 2008. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Friday, February 1, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Kobuk, AK (73 FR 6056). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Kobuk Airport. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the Kobuk Airport area is established by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at the Kobuk Airport, Alaska. This Class E airspace is established to accommodate aircraft executing new DP and SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Kobuk Airport, Kobuk, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Kobuk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Kobuk, AK [New]

Kobuk, Kobuk Airport, AK
(Lat. 66°54′44″ N., long. 156°53′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Kobuk Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kobuk Airport.

* * * * *

Issued in Anchorage, AK, on March 24, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–6931 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30601; Amdt. No. 3263]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective April 3, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Directory of the **Federal Register** as of April 3, 2008.

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

For Examination—

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR part 97:

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

Issued in Washington, DC on March 21, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
09/06/07	GA	ATHENS	ATHENS/BEN EPPS	7/5144	TAKE-OFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCS AMDT 1.
01/28/07	MA	WESTFIELD/SPRINGFIELD.	BARNES MUNI	8/2537	VOR OR TACAN RWY 2, AMDT 4A.
03/03/08	ID	POCATELLO	POCATELLO REGIONAL	8/6887	NOTAM PREVIOUSLY PUBLISHED IN TL 08–8 IS RESCINDED.
03/06/08	NY	ALBANY	ALBANY INTL	8/7360	ILS OR LOC RWY 1, AMDT 10.
03/06/08	TX	LUBBOCK	LUBBOCK PRESTON SMITH INTL	8/7580	ILS OR LOC RWY 26, AMDT 3A.
03/10/08	CO	GREELEY	GREELEY-WELD COUNTY	8/7780	NDB RWY 34, ORIG.
03/10/08	LA	LAKE CHARLES	LAKE CHARLES REGIONAL	8/7796	ILS RWY 15, AMDT 20.
03/10/08	AK	ALLAKAKET	ALLAKAKET	8/7800	RNAV (GPS) RWY 23, ORIG.
03/10/08	AK	ALLAKAKET	ALLAKAKET	8/7801	RNAV (GPS) RWY 5, ORIG.
03/10/08	AK	KALTAG	KALTAG	8/7818	RNAV (GPS) RWY 3, ORIG.
03/10/08	AK	KALTAG	KALTAG	8/7820	RNAV (GPS) RWY 21, ORIG.
03/10/08	NY	NEW YORK	JOHN F. KENNEDY INTL	8/7827	ILS RWY 22L, AMDT 24.
03/11/08	OH	AKRON	AKRON-CANTON REGIONAL	8/7924	ILS OR LOC RWY 19, AMDT 7A.
03/11/08	OH	COLUMBUS	PORT COLUMBUS INTL	8/7925	ILS OR LOC RWY 10R, AMDT 8A.
03/11/08	OH	AKRON	AKRON-CANTON REGIONAL	8/7926	ILS OR LOC RWY 1, AMDT 37A.

FDC date	State	City	Airport	FDC No.	Subject
03/11/08	WY	CHEYENNE	CHEYENNE RGNL/JERRY OLSON FIELD.	8/7938	RADAR–1, AMDT 1A.
03/13/08	IN	ELKHART	ELKHART MUNI	8/8186	ILS OR LOC RWY 27, AMDT 2.
03/13/08	IL	SPRINGFIELD	ABRAHAM LINCOLN CAPITAL	8/8187	ILS OR LOC RWY 4, AMDT 25B.
03/13/08	NE	OMAHA	EPPLEY AIRFIELD	8/8189	ILS OR LOC/DME RWY 14L, AMDT 1.
03/13/08	NE	OMAHA	EPPLEY AIRFIELD	8/8190	ILS OR LOC RWY 32L, AMDT 1.
03/13/08	OH	CINCINNATI	CINCINNATTI MUNI AIRPORT-LUNKEN FIELD.	8/8191	ILS RWY 21L, AMDT 17.
03/13/08	SD	RAPID CITY	RAPID CITY REGIONAL	8/8192	ILS OR LOC RWY 32, AMDT 17C.
03/13/08	OH	DAYTON	JAMES M COX DAYTON INTL	8/8193	ILS OR LOC RWY 18, AMDT 9A.
03/13/08	OH	DAYTON	JAMES M COX DAYTON INTL	8/8194	ILS OR LOC RWY 24L, AMDT 8B.
03/13/08	OH	DAYTON	JAMES M COX DAYTON INTL	8/8195	ILS OR LOC RWY 24R, AMDT 7.
03/13/08	WI	WAUKESHA	WAUKESHA COUNTY	8/8196	ILS OR LOC RWY 10, AMDT 1.
03/13/08	WI	MADISON	DANE COUNTY REGIONAL-TRUAX FIELD.	8/8197	ILS OR LOC/DME RWY 18, ORIG–A.
03/13/08	WI	MADISON	DANE COUNTY REGIONAL-TRUAX FIELD.	8/8198	ILS OR LOC/DME RWY 36, ORIG–B.
03/13/08	WI	MILWAUKEE	GENERAL MITCHELL INTL	8/8199	ILS RWY 7R, AMDT 15.
03/13/08	WI	MILWAUKEE	GENERAL MITCHELL INTL	8/8200	ILS RWY 19R, AMDT 10.
03/13/08	MI	MUSKEGON	MUSKEGON COUNTY	8/8202	ILS RWY 32, AMDT 17.
03/13/08	MO	COLUMBIA	COLUMBIA REGIONAL	8/8203	ILS RWY 2, AMDT 13B.
03/13/08	MO	KANSAS CITY	KANSAS CITY INTL	8/8204	ILS RWY 27, AMDT 1.
03/13/08	WI	OSHKOSH	WITTMAN RGNL	8/8205	ILS OR LOC RWY 36, AMDT 6C.
03/13/08	OH	FREMONT	SANDUSKY COUNTY REGIONAL	8/8211	GPS RWY 6, ORIG–A.
03/13/08	OH	FREMONT	SANDUSKY COUNTY REGIONAL	8/8212	GPS RWY 24, ORIG–A.
03/13/08	MI	KALAMAZOO	KALAMAZOO/BATTLE CREEK INTL	8/8214	ILS OR LOC RWY 35, AMDT 22.
03/14/08	CA	ONTARIO	ONTARIO INTL	8/8493	ILS OR LOC RWY 8L, AMDT 8A.
03/17/08	CO	DENVER	DENVER INTL	8/8734	ILS OR LOC RWY 25, AMDT 2A.

[FR Doc. E8–6602 Filed 4–2–08; 8:45 am]
BILLING CODE 4910–13–P

PEACE CORPS

22 CFR Part 309

RIN 0420–AA22

Debt Collection

AGENCY: Peace Corps.

ACTION: Final Rule.

SUMMARY: The Peace Corps has revised its rules regarding debt collection. This final rule clarifies and simplifies Peace Corps' debt collection procedures and practices. It eliminates the tax refund offset provisions of the previous regulation, and consolidates the administrative and tax refund offset provisions into one section.

DATES: *Effective Date:* This final rule is effective May 5, 2008.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, Associate General Counsel, Office of the General Counsel, 202–692–2157.

SUPPLEMENTARY INFORMATION: The Peace Corps published a proposed rule on February 22, 2008 (Volume 73, Number 36) for public review and comment. The Peace Corps did not receive any public comments and the Agency has not made any further revisions. Therefore, this rule is final and will be effective on the date stated above.

Section-by-Section Analysis

Subpart A—General Provisions

The subpart announces the general purpose and scope of the regulation, provides definitions and terms used in this regulation, and this regulation's interaction with other regulations and procedures. Charges for interest, penalties and administrative expenses are addressed. Procedures for installment payments are provided. Authority to carry out the necessary duties for debt collection is delegated to the Chief Financial Officer.

Subpart B—Collection Actions

The subpart provides for aggressive collection efforts by the Peace Corps, and the timely turnover of past due collections to the Department of the Treasury. Procedures for written demand of payment and debtor review of the debt are provided. Methods of debt collection are listed.

Subpart C—Salary Offset

The subpart provides for salary offset collection procedures. Coordination of salary offset of another Federal Agency is addressed. Notice requirements prior to salary offset are listed. Outside hearings prior to salary offset is addressed.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The Peace Corps Director, in accordance with the Regulatory Flexibility Act, (5 U.S.C. 605) has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation pertains to the administrative collection of individual debts owed to the Peace Corps, and does

not affect acquisition, inter-Agency, or foreign claims.

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 $100,000,000 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.

List of Subjects in 22 CFR Part 309

Claims.

■ For the reasons stated in the preamble, Peace Corps has revised 22 CFR Part 309, as set forth below.

PART 309—DEBT COLLECTION

Subpart A—General Provisions

Sec.
309.1 General purpose.
309.2 Scope.
309.3 Definitions.
309.4 Other procedures or actions.
309.5 Interest, penalties, and administrative costs.
309.6 Collection in installments.
309.7 Designation.

Subpart B—Collection Actions

309.8 Application.
309.9 Notice—written demand for payment.
309.10 Review requirements.
309.11 Collection.

Subpart C—Salary Offset

309.12 Purpose.
309.13 Scope.
309.14 Coordinating offset with another Federal agency.
309.15 Notice requirements before offset.
309.16 Review.
309.17 Procedures for salary offset.
309.18 Voluntary repayment agreements as an alternative to salary offset.
309.19 Waiver.
309.20 Compromise.
309.21 Suspension of collection.
309.22 Termination of collection.
309.23 Discharge.
309.24 Bankruptcy.

Authority: 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 22 U.S.C. 2503(b); 31 U.S.C. 3720A; 31 CFR part 285; 5 CFR 550, subpart K.

Subpart A—General Provisions

§ 309.1 General purpose.

This part prescribes the procedures to be used by the United States Peace Corps (Peace Corps) in the collection and/or disposal of non-tax debts owed to Peace Corps and to the United States.

§ 309.2 Scope.

(a) Applicability of Federal Claims Collection Standards (FCCS). Peace Corps hereby adopts the provisions of the Federal Claims Collections Standards (31 CFR parts 900–904) and, except as set forth in this part or otherwise provided by law, Peace Corps will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the FCCS.

(b) This part is not applicable to:

(1) Peace Corps claims against another Federal agency, any foreign country or any political subdivision thereof, or any public international organization.

(2) Debts arising out of acquisitions contracts subject to the Federal Acquisition Regulation (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 49 CFR part 32).

(3) Claims where the Peace Corps Director (or designee) determines that the achievement of the purposes of the Peace Corps Act, as amended, 22 U.S.C. 2501 *et seq.*, or any other provision of law administered by the Peace Corps require a different course of action.

§ 309.3 Definitions.

As used in this part (except where the context clearly indicates, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the person to the United States.

(b) *Administrative wage garnishment* means the process by which a Federal agency orders a non-Federal employer to withhold amounts from an employee's wages to satisfy a debt the employee owes to the United States.

(c) *Compromise* means that the creditor agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(d) *Debt* or *claim* means an amount of money which has been determined by an appropriate agency official to be owed to the United States from any person. As used in this part, the terms debt and claim are synonymous.

(e) *Debtor* means a person who owes the Federal Government money.

(f) *Delinquent debt* means any debt, which has not been paid by the date specified in an agency's initial written notification or in an applicable agreement, unless other satisfactory payment arrangements have been made.

(g) *Discharge* means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(h) *Disposable pay* has the same meaning as that term is defined in 5 CFR § 550.1103.

(i) Employee means a current employee of the Peace Corps or other Federal agency, including a member of the Armed Forces or Reserve of the Armed Forces of the United States.

(j) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of the Treasury and the Department of Justice at 31 CFR parts 900–904.

(k) *Person* means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency, foreign government, or public international organization.

(l) *Salary offset* means the withholding of amounts from the current pay account of a Federal employee to satisfy a debt owed by that employee to the United States.

(m) *Suspension* means the temporary cessation of an active debt collection pending the occurrence of an anticipated event.

(n) *Termination* means the cessation of all active debt collection action for the foreseeable future.

(o) *Waiver* means the decision to forgo collection of a debt owed to the United States as permitted or required by law.

§ 309.4 Other procedures or actions.

(a) Nothing contained in this regulation is intended to require Peace Corps to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this regulation is intended to deter Peace Corps from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of Peace Corps to comply with any provision in this regulation shall not serve as a defense to the debt.

§ 309.5 Interest, penalties, and administrative costs.

(a) Except as otherwise provided by statute, contract or excluded in accordance with FCCS, Peace Corps will assess:

(1) Interest on unpaid debts in accordance with 31 CFR 901.9.

(2) Penalty charges at a rate of 6 percent a year or such other rate as authorized by law on any portion of a claim that is delinquent for more than 90 days.

(3) Administrative charges to cover the costs of processing and handling delinquent debts.

(4) Late payment charges that shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(b) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(c) Waiver. Peace Corps will consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 31 CFR 901.9(g).

§ 309.6 Collection in installments.

Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset, including salary offset, or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. If Peace Corps agrees to accept payment in installments, it may require a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability of the debtor to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim within three years.

§ 309.7 Designation.

The Chief Financial Officer is delegated authority and designated to perform all the duties for which the Director is responsible under the forgoing statutes and joint regulations.

Subpart B—Collection Actions

§ 309.8 Application.

(a) Peace Corps shall aggressively collect claims and debts in accordance with these regulations and applicable law.

(b) Peace Corps will transfer to the Department of the Treasury, Financial Management Service (FMS) any past due, legally enforceable non-tax debt that has been delinquent for 180 days or more so that FMS may take appropriate action to collect the debt or take other appropriate action in accordance with applicable law and regulation.

(c) Peace Corps may transfer any past due, legally enforceable debt that has been delinquent for fewer than 180 days to FMS for collection in accordance with applicable law and regulation. (See 31 CFR part 285.)

§ 309.9 Notice—written demand for payment.

(a) Upon determination that a debt is owed to Peace Corps or the United States, Peace Corps shall promptly hand deliver or send by first-class mail (to the debtor's most current address in the records of Peace Corps) at least one written notice (e.g. Bill of Collection or demand letter) informing the debtor of the consequences of failing to pay or otherwise resolve a Peace Corps debt, subject to paragraph (c) of this section. Written demand under this subpart may be preceded by other appropriate actions under this part and or the FCCS, including but not limited to actions taken under the procedures applicable to administrative offset, including salary offset.

(b) The written notice shall inform the debtor of:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) The date by which payment should be made to avoid the imposition of interest, penalties, and administrative costs, and the enforced collection actions described in § 309.5 of this part;

(3) The applicable standards for imposing interest, penalties and administrative costs to delinquent debts;

(4) Peace Corps' willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to Peace Corps;

(5) The name, address, and telephone number of a contact person or office within Peace Corps;

(6) Peace Corps' intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Offset from Federal payments otherwise due to the debtor, including income tax refunds, salary, certain benefit payments, retirement, vendor payments, travel reimbursement and advances, and other Federal payments;

(ii) Referral to private collection agency;

(iii) Report to credit bureaus;

(iv) Administrative wage garnishment;

(v) Referral to Department of Justice for litigation action;

(vi) Referral to Financial Management Service of the Department of the Treasury for collection;

(vii) Other actions as permitted by the FCCS and applicable law.

(7) How the debtor may inspect and copy records related to the debt;

(8) The debtor's opportunity for an internal review of Peace Corps' determination that the debtor owes a debt or the amount of the debt;

(9) The debtor's right, if any, to request waiver of collection of certain debts, as applicable;

(10) Requirement that the debtor advise Peace Corps of any bankruptcy proceeding of the debtor.

(c) Peace Corps may omit from a notice to a debtor one or more of the provisions contained in paragraphs (b)(6) through (10) of this section if Peace Corps determines that any provision is not legally required given the collection remedies to be applied to a particular debt, or which have already been provided by prior notice, applicable agreement, or contract.

§ 309.10 Review requirements.

(a) For purposes of this section, whenever Peace Corps is required to afford a debtor a review within the agency, Peace Corps shall provide the debtor with an opportunity for an internal review of the existence or the amount of the debt. For offset of current Federal salary under 5 U.S.C. 5514 for certain debts, debtors may also request an outside hearing. (See subpart C of this part)

(b) Any request for a review must be in writing to the contact office by the payment due date stated in the initial notice sent under § 309.9(b) or other applicable provision. The debtor's request shall state the basis for the dispute and include any relevant documentation in support.

(1) Peace Corps will provide for an internal review of the debt by an appropriate agency official. The review may include examination of documents, internal discussions with relevant officials and discussion by letter or orally with the debtor, at Peace Corps' discretion.

(2) An oral hearing is not required when, in Peace Corps' determination, the matter can be decided on the documentary record. Peace Corps will provide a ''paper hearing'', that is, a determination based upon a review of the written record unless Peace Corps makes a determination that a debt involves issues of credibility or veracity, at which point an oral hearing may be required. Unless otherwise required by law, such oral hearing shall not be a formal evidentiary hearing.

§ 309.11 Collection.

Upon final determination of the existence and amount of a debt, unless other acceptable payment arrangement have been made or procedures under a specific statute apply, Peace Corps shall collect the debt by one or more of the methods described in § 309.9(b) (6) (i-vii) or as otherwise authorized by law and regulation.

(a) Administrative offset—(1) Payments otherwise due the debtor from the United States shall be offset from the debt in accordance with 31 CFR 901.3. These may be funds under the control of Peace Corps or other Federal agencies. Collection may be through centralized offset by the Financial Management Service (FMS) of the Department of the Treasury.

(2) Such payments include but are not limited to vendor payments, salary, retirement, lump sum payments due upon Federal employment separation, travel reimbursements, tax refunds, loans or other assistance. Offset of Federal salary payments will be in accordance with 5 U.S.C. 5514.

(3) Before administrative offset is instituted by another Federal agency or the FMS, Peace Corps shall certify in writing to that entity that the debt is past due and legally enforceable and that Peace Corps has complied with all applicable due process and other requirements as described in this part and other Federal law and regulations.

(b) Any other method authorized by law or regulation.

Subpart C—Salary Offset

§ 309.12 Purpose.

This subpart provides Peace Corps' policies and procedures for the collection by salary offset of a Federal employee's pay to satisfy certain past due debts owed the United States Government.

§ 309.13 Scope.

(a) The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed to Peace Corps and debts owed to other Federal agencies by Peace Corps' employees. Peace Corps will make reasonable and lawful efforts to administratively collect amounts owed by employees prior to initiating salary offset action. This section does not apply to debts where collection by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances).

(b) References. The following statutes and regulations apply to Peace Corps' recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR part 550, subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 31 CFR parts 900 through 904, the Federal Claims Collections Standards.

(c) Nothing in this subpart precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Standards.

§ 309.14 Coordinating offset with another Federal agency.

(a) When Peace Corps is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until Peace Corps provides the agency with a written certification that the debtor owes Peace Corps a debt (including the amount and basis of the debt and the due date of payment) and that Peace Corps has complied with these regulations.

(b) When another agency is owed the debt, Peace Corps may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 309.15 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency first provides the employee with written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When Peace Corps is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available. The written notice will state:

(1) That Peace Corps has reviewed the records relating to the claim and has determined that a debt is owed, its origin and nature, and the amount of the debt;

(2) The intention of Peace Corps to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the Peace Corps' policy concerning interest, penalties and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS (See § 309.5);

(5) The employee's right to inspect and copy all records of the Peace Corps pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) The right to a hearing conducted by a hearing official (an administrative law judge, or alternatively, an individual not under the supervision or control of the Peace Corps) with respect to the existence and amount of the debt claimed, or the repayment schedule, so long as a petition is filed by the employee as prescribed;

(7) If not previously provided, the opportunity (under terms agreeable to the Peace Corps) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency, and documented in the creditor agency's files;

(8) The name, address and telephone number of an officer or employee of the Peace Corps who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for a hearing as prescribed will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Peace Corps will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 calendar days from the date of delivery of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under the Peace Corps Act or the Foreign Service Act, Peace Corps regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§ 3729–3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. sections 286, 287, 1001, and 1002 or any other applicable authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) Peace Corps is not required to provide prior notice to an employee when the following adjustments are made by Peace Corps to a Peace Corps employee's pay:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting the adjustment; or

(3) Any adjustment to collect a debt of $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature of the amount of the adjustment and a point of contact for contesting the adjustment.

§ 309.16 Review.

(a) *Request for outside hearing.* Except as provided in paragraph (b) of this section, an employee who desires an outside hearing concerning the existence or amount of the debt or the proposed offset schedule must send a request to the office designated in the notice of intent. See § 309.15(a) (8). The request must be received by the designated office not later than 20 calendar days after the date of delivery of the notice as provided in § 309.15(a). The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it. The employee must also specify whether an oral hearing or a review of the documentary evidence is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to submit timely.* (1) If the employee files a petition for a review after the expiration of the 20 calendar day period provided for in paragraph (a) of this section, the designated office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control, or because of a failure to receive the notice of the filing deadline (unless the employee has actual knowledge of the filing deadline).

(2) An employee waives the right to a review, and will have his or her disposable pay offset in accordance with Peace Corps' offset schedule, if the employee fails to file a request for a hearing unless such failure is excused as provided in paragraph (b) (1) of this section.

(3) If the employee fails to appear at an oral hearing of which he or she was notified, unless the hearing official determines failure to appear was due to circumstances beyond the employee's control, his or her appeal will be decided on the basis of the documents then available to the hearing official.

(c) *Representation at the hearing.* The creditor agency may be represented by a representative of its choice. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Peace Corps records related to the debt.* (1) An employee who intends to inspect or copy creditor agency records related to the debt in accordance with § 309.15(a) (5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be sent within 20 calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, copies of such records shall be sent to the employee.

(e) *Oral Hearing.* (1) If an employee timely files a request for an oral hearing under § 309.16(a), the matter will be conducted by a hearing official not under the supervision or control of Peace Corps.

(2) Procedure. (i) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(ii) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.* when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing.

(iii) If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(iv) The hearing official must maintain a summary record of any hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(3) Decision. The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(4) Failure to appear. In the absence of good cause shown (*e.g.* excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing upon the request of the creditor agency representative when good cause is shown.

(5) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary

offset under 5 U.S.C. 5514 only. It does not supersede the finding by Peace Corps that a debt is owed and does not affect the Government's ability to recoup the debt through alternative collection methods under other appropriate methods.

§ 309.17 Procedures for salary offset.

Unless otherwise provided by statute or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.* (1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to greater amount.

(ii) Installment payments of less than $25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

§ 309.18 Voluntary repayment agreements as an alternative to salary offset.

(a) In response to a notice of intent, an employee may propose a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this paragraph must be received by the official designated in that notice within 20 calendar days after receipt of the notice of intent.

(b) When the Peace Corps is the creditor agency, in response to a timely proposal by the debtor the agency will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Peace Corps decides that the proposed repayment agreement is unacceptable, the employee will have 15 calendar days from the date he or she received notice of the decision to file a petition for a review.

(d) If the Peace Corps decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and a designated agency official.

§ 309.19 Waiver.

(a) Under certain circumstances, employees may have a statutory right to request a waiver of indebtedness. When an employee makes a request under a statutory right, further collection will be stayed pending an administrative determination on the request.

(b) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration. The burden is on the employee to demonstrate that the applicable waiver standard has been met.

§ 309.20 Compromise.

Peace Corps may attempt to effect compromise in accordance with the standards set forth in the FCCS (31 CFR part 902).

§ 309.21 Suspension of collection.

Suspension of collection action shall be made in accordance with the standards set forth in the FCCS (31 CFR 903.1–903.2).

§ 309.22 Termination of collection.

Termination of collection action shall be made in accordance with the standards set forth in the FCCS (31 CFR 903.1 and 903.3–903.4).

§ 309.23 Discharge.

Once a debt has been closed out for accounting purposes and collection has been terminated, the debt is discharged. Peace Corps will report discharged debt as income to the debtor to the Internal Revenue Service per 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

§ 309.24 Bankruptcy.

Peace Corps generally terminates collection activity on debts that have been discharged in bankruptcy unless otherwise provided for by bankruptcy law. The CFO will seek legal advice by the General Counsel's office if there is the belief that any claims or offset may have survived the discharge of a debtor.

Dated: March 31, 2008.

Tyler S. Posey,

General Counsel.

[FR Doc. E8–6917 Filed 4–2–08; 8:45 am]

BILLING CODE 6015–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9383]

RIN 1545–BH21

Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; Correction.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9383) that were published in the **Federal Register** on Friday, March 7, 2008 (73 FR 12265).

Concerning the treatment of certain intercompany gain with respect to consolidated group member stock. These amendments provide for the redetermination of an intercompany gain as excluded from gross income in certain member stock transactions. These regulations affect corporations filing consolidated returns.

DATES: This correction is effective April 3, 2008.

FOR FURTHER INFORMATION CONTACT: John F. Tarrant or Ross E. Poulsen, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9383) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9383), which were the subject of FR Doc. E8–4573, is corrected as follows:

On page 12266, column 1, in the preamble, under the paragraph heading

''Background'', lines 3 through 5 from the bottom of the column, the language ''extent ''the Commissioner determines that treating S's intercompany item as excluded from gross income is consistent with the purposes of § 1.1502–13 and other provisions of the'' is corrected to read ''extent ''[t]he Commissioner determines that treating S's intercompany item as excluded from gross income is consistent with the purposes of [§ 1.1502–13] and other provisions of the''.

LaNita Van Dyke,

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

[FR Doc. E8–6879 Filed 4–2–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9383]

RIN 1545–BH21

Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9383) that were published in the **Federal Register** on Friday, March 7, 2008 (73 FR 12265). Concerning the treatment of certain intercompany gain with respect to consolidated group member stock. These amendments provide for the redetermination of an intercompany gain as excluded from gross income in certain member stock transactions. These regulations affect corporations filing consolidated returns.

DATES: This correction is effective April 3, 2008.

FOR FURTHER INFORMATION CONTACT: John F. Tarrant or Ross E. Poulsen, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9383) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1502–13T is amended by revising the introductory text of paragraph (c)(6)(ii)(C)(1) to read as follows:

§ 1.1502–13T Intercompany transactions (temporary).

* * * * *

(c) * * *

(6) * * *

(ii) * * *

(C) * * *

(*1*) *In general.* Notwithstanding paragraph (c)(6)(ii)(A)(*1*), intercompany gain with respect to member stock is redetermined to be excluded from gross income to the extent that—

* * * * *

LaNita Van Dyke,

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

[FR Doc. E8–6883 Filed 4–2–08; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB57

[Docket NARA–08–0001]

Locations and Hours; Changes in NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; confirmation of interim rule.

SUMMARY: NARA is revising its regulations to increase the number of hours its archival research rooms are open in the Washington, DC, area. In response to an interim final rule published on February 1, 2008, we received 53 comments, which are discussed in the **SUPPLEMENTARY INFORMATION** section of this preamble. This final rule document confirms without change to the rule the effective date of the regulation.

DATES: *Effective Date:* The interim rule amending published on February 1, 2008 (73 FR 6030), is adopted as a final rule, effective April 14, 2008.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–837–1477 or Jennifer Davis Heaps at 301–837–1801 or via fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: NARA published an interim final rule on February 1, 2008 (73 FR 6030) to restore extended evening and Saturday research room hours in its Washington, DC, area archival research rooms, effective April 14, 2008. The research rooms will be open from 9 a.m. to 5 p.m. on Monday, Tuesday, and Saturday. On Wednesday, Thursday, and Friday they will be open from 9 a.m. to 9 p.m.

We received 53 comments on the interim final rule from individuals and representatives of organizations, all supportive of the increased hours. While one comment expressed disappointment with the choice of evenings because the extended hours overlap with the Library of Congress, a number of comments specifically endorsed having three consecutive evenings and Saturday to maximize the cost-effectiveness of research room use by out-of-town researchers.

Seven comments requested that NARA provide additional ''record pull times'' for retrieving records from the stacks for use in the research rooms on Saturdays and, in one case, weekdays. As we noted in the interim final rule, we are restoring the late afternoon time for pulling records from the stacks on the three weekdays that we are open in the evening, but we have never had Saturday ''pull'' service. We recognize that this would be a useful service to researchers who only use the research rooms on Saturdays, but we are unable to adopt the suggestion. The FY 2008 appropriation that is permitting us to restore extended hours does not cover adding staff to provide this additional new service. As a result, the finding aids room is open but there is no archival consultation. It is these archival professionals who would be needed to ensure successful records pulls. Every records request slip submitted is checked for accurate pull information by an archivist or specialist. We also do not have the pull and refile manager or pull and refile technicians available on Saturdays.

Regulatory Impact

This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1253

Archives and records.

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

■ Accordingly, the interim rule amending 36 CFR part 1253 which was published on February 1, 2008 (73 FR 6030), is adopted as a final rule without change.

Dated: March 31, 2008.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E8–6984 Filed 4–2–08; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R10–OAR–2008–0130; FRL–8549–2]

Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Quinault Reservation to the Quinault Indian Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority; technical amendment.

SUMMARY: This action announces that on October 4, 2007, EPA Region 10, and the Quinault Indian Nation, entered into a Partial Delegation of Administrative Authority to carry out certain day-to-day activities associated with implementation of the Federal Implementation Plan for the Quinault Reservation (Quinault FIP). A note of this partial delegation is being added to the Quinault FIP.

DATES: The technical amendment to 49 CFR 49.10590 is effective April 3, 2008. The partial delegation of administrative authority was effective October 4, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2008–0130. The delegation agreement and other docket materials are available electronically at EPA's electronic public docket and comment system, found at *www.regulations.gov* or in hard copy from Steve Body, Office of Air Waste and Toxics, AWT–107, EPA Region 10, Suite 900, 1200 Sixth Avenue, Seattle, WA 98101, or via e-mail at *body.steve@epa.gov*. Additional information may also be obtained from the Quinault Tribe by contacting Lisa Riener, Ouinault Indian Nation, 1214 Aslis St. Taholah, WA 98569 or via e-mail at *LRIENER@quinault.org*.

All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number (206) 553–0782, e-mail address: *body.steve@epa.gov*, or the EPA Region 10 address.

SUPPLEMENTARY INFORMATION: The purpose of this action is to announce that on October 4, 2007, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Quinault FIP to the Quinault Indian Nation. See 40 CFR part 49, subpart M, sections 10581 through 10590, as authorized by 40 CFR 49.122 of the Federal Air Rules for Reservations (FARR), 40 CFR part 49, subpart C.

I. Authority to Delegate

Federal regulation 40 CFR 49.122 provides EPA authority to delegate to Indian Tribes partial administrative authority to implement provisions of the Federal Air Rules for Reservations (FARR), 40 CFR part 49, subpart C. Tribes must submit a request to the Regional Administrator that meets the requirements of 40 CFR 49.122.

II. Request for Delegation

On July 25, 2006, the President of the Quinault Indian Nation submitted to the Regional Administrator a request for delegation of certain provision of the Quinault FIP. That request included all the information and demonstrations required by the FARR for delegation. A copy of all documentation is on file at EPA Region 10, Seattle, Washington (see **ADDRESSES** above).

The Quinault Indian Nation requested delegation for the following provisions; 40 CFR 49.10590 (a) General provisions, 40 CFR 49.10586 (b) Rule for limiting visible emissions, 40 CFR 49.10586 (g) General rule for open burning, and 40 CFR 49.10586 (i) Rule for air pollution episodes.

III. EPA Response to the Request for Delegation

EPA and the Quinault Indian Nation signed the Delegation Agreement that specifies the provisions and authorities delegated. The Quinault Indian Nation is delegated the following provisions; 40 CFR 49.10590 (a) General provisions, 40 CFR 49.10586 (b) Rule for limiting visible emissions, 40 CFR 49.10586 (g) General rule for open burning, and 40 CFR 49.10586 (i) Rule for air pollution episodes. In addition, the agreement delegates to the Tribe authority to investigate complaints and assist EPA in inspections. The Agreement also includes terms and conditions applicable to the delegation. A copy of the Agreement is kept at EPA Region 10 at the address above.

EPA solicited by letter, advice and insight from the State of Washington, Grays Harbor County, Jefferson County Olympic National Park, and the Olympic National Forest on the Quinault request for delegation. One comment supporting delegation was received.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely informing the public of partial delegation of administrative authority to the Quinault Indian Nation and making a technical amendment to the Code of Federal Regulations (CFR) by adding a note announcing the partial delegation. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since today's action does not create any new regulatory requirements, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

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 makes a technical amendment and gives notice of a partial delegation of administrative authority. 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.*). This rule 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).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. EPA has concluded that this rule may have tribal implications. EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the Quinault Indian Nation and noting the partial delegation in the CFR. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

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 technical amendment merely notes that partial delegation of administrative authority to the Quinault Indian Nation is in effect. 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.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 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 49

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

Dated: March 14, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49—[AMENDED]

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart M—[Amended]

■ 2. Section 49.10590 is amended by adding a note to the end of the section to read as follows:

§ 49.10590 Federally-promulgated regulations and Federal implementation plans.

* * * * *

Note to § 49.10590: EPA entered into a Partial Delegation of Administrative Authority with the Quinault Indian Nation on October 4, 2007 for the rules listed in paragraphs (b), (g), and (i) of this section.

[FR Doc. E8–6669 Filed 4–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AZ and NV–EPA–R09–OAR–2006–1014; FRL–8551–1]

Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the States of Arizona and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is updating the Code of Federal Regulations (CFR) delegation tables to reflect the current delegation status of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) in Arizona and Nevada. These updates were proposed in the **Federal Register** on June 21, 2007.

DATES: *Effective Date:* This rule is effective on *May 5, 2008.*

ADDRESSES: EPA established docket number EPA–R09–OAR–2006–1014 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA, Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in

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

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

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

Table of Contents

I. Background
II. Public Comment and EPA Response
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Background

On June 21, 2007, EPA proposed to update the delegation tables in the Code of Federal Regulations, Title 40 (40 CFR) Parts 60 and 61, to allow easier access by the public to the status of delegations in Arizona and Nevada jurisdictions (see 72 FR 34209). The updated delegation tables include the delegations approved in response to recent requests, as well as those previously granted. The tables are shown at the end of this document.

II. Public Comment and EPA Response

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the State of Nevada's Division of Environmental Protection (NDEP). NDEP noted that it requested delegation of Appendix B, Performance Specifications, of 40 CFR Part 60 (Appendix B), and that EPA approved this request by letter dated January 12, 2007. However, EPA's proposed rulemaking did not include Appendix B in the ''Delegation Status for NSPS for Nevada'' table. NDEP requested that EPA add Appendix B to Nevada's NSPS delegation status table.

Appendix B was included in our approval letter of January 12, 2007 in error. Appendices to 40 CFR Parts 60 and 61 are not performance standards and are not delegable under Clean Air Act Sections 111(c)(1) or 112(l)(1). However, all applicable test methods and other requirements in the Appendices must be followed as required by the delegated subparts (see EPA's proposed rule published on January 14, 2002 (67 FR 1676) and subsequent final rule published on April 26, 2002 (67 FR 20652)).

III. EPA Action

No comments were submitted that change our assessment of the delegations as described in our proposed action. Therefore, as authorized in Sections 111(c)(1) and 112(l)(1) of the Clean Air Act, EPA is updating the CFR tables for Arizona and Nevada as proposed in the **Federal Register** on June 21, 2007.

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 updates the list of approved delegations in the Code of Federal Regulations and imposes no additional requirements. 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 does not impose any additional enforceable duty beyond that required by state or local 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 updates the list of already-approved delegations, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state or local rule implementing a federal standard.

In reviewing state or local delegation submissions, our role is to approve state or local 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 or local government to use voluntary consensus standards (VCS), EPA has no authority to disapprove state or local submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state or local submission, to use VCS in place of a state or local submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 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)) of the Clean Air Act.

List of Subjects in 40 CFR Parts 60 and 61

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous

substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: March 19, 2008.

Andrew Steckel,

Acting Director, Air Division, Region IX.

■ For the reasons set out in the preamble, Title 40, Chapter I, Parts 60 and 61 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for Part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 60.4 is amended by revising paragraphs (d)(1) and (d)(4) to read as follows:

§ 60.4 Address.

* * * * *

(d) * * *

(1) Arizona. The following table identifies delegations as of May 18, 2006:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X	X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial Steam Generating Units	X	X	X	X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X	X	X	X
Eb	Municipal Waste Combustors Constructed After September 20, 1994	X	X	X	.....
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	.....	X	X	.....
F	Portland Cement Plants	X	X	X	X
G	Nitric Acid Plants	X	X	X	X
H	Sulfuric Acid Plant	X	X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X	X	X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	X	X	X
Q	Primary Zinc Smelters	X	X	X	X
R	Primary Lead Smelters	X	X	X	X
S	Primary Aluminum Reduction Plants	X	X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X	X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X	X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X	X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X	X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y	Coal Preparation Plants	X	X	X	X
Z	Ferroalloy Production Facilities	X	X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB	Kraft Pulp Mills	X	X	X	X
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	X
FF	(Reserved)	.....	.....	.....	.....
GG	Stationary Gas Turbines	X	X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
HH	Lime Manufacturing Plants	X	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X	X
NN	Phosphate Rock Plants	X	X	X	X
PP	Ammonium Sulfate Manufacture	X	X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X	X	X	X
SS	Industrial Surface Coating: Large Appliances	X	X	X	X
TT	Metal Coil Surface Coating	X	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X	X	X	X
WW	Beverage Can Surface Coating Industry	X	X	X	X
XX	Bulk Gasoline Terminals	X	X	X	X
AAA	New Residential Wool Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	X	X	X
HHH	Synthetic Fiber Production Facilities	X	X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X	X	X
JJJ	Petroleum Dry Cleaners	X	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	X	X	X	X
LLL	Onshore Natural Gas Processing: SO2 Emissions	X	X	X	X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X	X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	X	
SSS	Magnetic Tape Coating Facilities	X	X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commended After June 6, 2001.	X	X		
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X	X		
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.				
KKKK	Stationary Combustion Turbines				
GGGG	(Reserved)				

* * * * *

(4) Nevada. The following table identifies delegations as of January 12, 2007:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
A	General Provisions	X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X		
Db	Industrial-Commercial-Institutional Steam Generating Units	X		
Dc	Small Industrial Steam Generating Units	X		
E	Incinerators	X	X	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X		
Eb	Municipal Waste Combustors Constructed After September 20, 1994	X		
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X		
F	Portland Cement Plants	X	X	X
G	Nitric Acid Plants	X		X
H	Sulfuric Acid Plants	X		X
I	Hot Mix Asphalt Facilities	X	X	X
J	Petroleum Refineries	X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X		
L	Secondary Lead Smelters	X	X	X
M	Secondary Brass and Bronze Production Plants	X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		
O	Sewage Treatment Plants	X	X	X
P	Primary Copper Smelters	X	X	X
Q	Primary Zinc Smelters	X	X	X
R	Primary Lead Smelters	X	X	X
S	Primary Aluminum Reduction Plants	X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	X		X
Y	Coal Preparation Plants	X	X	X
Z	Ferroalloy Production Facilities	X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		
BB	Kraft pulp Mills	X		X
CC	Glass Manufacturing Plants	X		X
DD	Grain Elevators	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X
FF	(Reserved)			
GG	Stationary Gas Turbines	X	X	X
HH	Lime Manufacturing Plants	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X
NN	Phosphate Rock Plants	X	X	X
PP	Ammonium Sulfate Manufacture	X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X
SS	Industrial Surface Coating: Large Appliances	X	X	X
TT	Metal Coil Surface Coating	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X	X	X
WW	Beverage Can Surface Coating Industry	X		X
XX	Bulk Gasoline Terminals	X		X
AAA	New Residential Wool Heaters			
BBB	Rubber Tire Manufacturing Industry	X		
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry	X		
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X
HHH	Synthetic Fiber Production Facilities	X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X		
JJJ	Petroleum Dry Cleaners	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	X		
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X		
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X		
OOO	Nonmetallic Mineral Processing Plants	X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X		
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.			
SSS	Magnetic Tape Coating Facilities	X		
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	X		
UUU	Calciners and Dryers in Mineral Industries	X		
VVV	Polymeric Coating of Supporting Substrates Facilities	X		
WWW	Municipal Solid Waste Landfills	X		
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commended After June 6, 2001.	X		
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X		
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	X		
KKKK	Stationary Combustion Turbines	X		
GGGG	(Reserved)			

* * * * *

PART 61—[AMENDED]

■ 3. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 4. Section 61.04 is amended by revising paragraphs (c)(9)(i) and (c)(9)(iv) to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

(9) * * *

(i) Arizona. The following table identifies delegations as of June 14, 2006:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ARIZONA

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium				
C	Beryllium	X	X	X	X
D	Beryllium Rocket Motor Firing	X	X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride	X	X	X	X
G	(Reserved)				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants				
L	Benzene Emissions from Coke By-Product Recovery Plants	X	X	X	X
M	Asbestos	X	X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X			
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X			
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X	X		
Q	Radon Emissions From Department of Energy Facilities				

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ARIZONA—Continued

	Subpart	Air pollution control agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
R	Radon Emissions From Phosphogypsum Stacks				
S	(Reserved)				
T	Radon Emissions From the Disposal of Uranium Mill Tailings				
U	(Reserved)				
V	Equipment Leaks (Fugitive Emission Sources)	X	X	X	X
W	Radon Emissions From Operating Mill Tailings				
X	(Reserved)				
Y	Benzene Emissions From Benzene Storage Vessels	X	X	X	X
Z–AA	(Reserved)				
BB	Benzene Emissions From Benzene Transfer Operations	X	X	X	X
CC–EE	(Reserved)				
FF	Benzene Waste Operations	X	X	X	X

* * * * *

(iv) Nevada. The following table identifies delegations as of September 21, 2005:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR NEVADA

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
A	General Provisions	X	X	
B	Radon Emissions From Underground Uranium			
C	Beryllium	X	X	X
D	Beryllium Rocket Motor Firing	X	X	
E	Mercury	X	X	
F	Vinyl Chloride	X	X	
G	(Reserved)			
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	X		
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	X		
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X		
K	Radionuclide Emissions From Elemental Phosphorus Plants	X		
L	Benzene Emissions from Coke By-Product Recovery Plants	X		
M	Asbestos		X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X		
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X		
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X		
Q	Radon Emissions From Department of Energy Facilities			
R	Radon Emissions From Phosphogypsum Stacks			
S	(Reserved)			
T	Radon Emissions From the Disposal of Uranium Mill Tailings			
U	(Reserved)			
V	Equipment Leaks (Fugitive Emission Sources)	X		
W	Radon Emissions From Operating Mill Tailings			
X	(Reserved)			
Y	Benzene Emissions from Benzene Storage Vessels	X		
Z–AA	(Reserved)			
BB	Benzene Emissions From Benzene Transfer Operations	X		
CC–EE	(Reserved)			
FF	Benzene Waste Operations	X		

* * * * *

[FR Doc. E8–6915 Filed 4–2–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2008–0229; FRL–8550–9]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada, Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants (NESHAP) in Nevada. Several NESHAP were delegated to the Nevada Division of Environmental Protection on December 4, 2007. The purpose of this action is to update the listing in the Code of Federal Regulations.

DATES: This rule is effective on June 2, 2008 without further notice, unless EPA receives adverse comments by May 5, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0229, by one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

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

Table of Contents

I. Background
A. Delegation of NESHAP
B. NDEP delegations
II. EPA Action
III. Statutory and Executive Order Reviews

I. Background

A. Delegation of NESHAP

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, Subpart E (hereinafter referred to as ''Subpart E''), establishing procedures for EPA's approval of state rules or programs under section 112(l) (see 58 FR 62262). Subpart E was later amended on September 14, 2000 (see 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and Subpart E. To streamline the approval process for future applications, a state or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. NDEP Delegations

On May 27, 1998, EPA published a direct final action delegating to the Nevada Division of Environmental Protection (NDEP) several NESHAP and approving NDEP's delegation mechanism for future standards (see 63 FR 28906). That action explained the procedure for EPA to grant delegations to NDEP by letter, with periodic **Federal Register** listings of standards that have been delegated. On November 1, 2007, NDEP requested delegation of the following NESHAP contained in 40 CFR part 63:

- Subpart IIII—NESHAP: Surface Coating of Automobiles and Light-Duty Trucks
- Subpart PPPP—NESHAP for Surface Coating of Plastic Parts and Products
- Subpart GGGGG—NESHAP: Site Remediation
- Subpart HHHHH—NESHAP: Miscellaneous Coating Manufacturing
- Subpart DDDDDD—NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources
- Subpart EEEEEE—NESHAP for Primary Copper Smelting Area Sources
- Subpart FFFFFF—NESHAP for Secondary Copper Smelting Area Sources
- Subpart GGGGGG—NESHAP for Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium

On December 4, 2007, EPA granted delegation to NDEP for these NESHAP, along with any amendments to previously-delegated NESHAP, as of July 1, 2007. Today's action is serving to notify the public of the December 4, 2007, delegations and to codify these delegations into the Code of Federal Regulations.

II. EPA Action

Today's document serves to notify the public of the delegation of NESHAP to NDEP on December 4, 2007. Today's action will codify these delegations into the Code of Federal Regulations.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and

therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely updates the list of approved delegations in the Code of Federal Regulations and imposes no additional requirements. 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 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 updates the list of already-approved delegations, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a federal standard.

In reviewing state delegation submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 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 63

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

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: March 19, 2008.

Andrew Steckel,

Acting Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraph (a)(28)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(28) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
A	General Provisions	X	X	
F	Synthetic Organic Chemical Manufacturing Industry	X		
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		
J	Polyvinyl Chloride and Copolymers Production	X		
L	Coke Oven Batteries	X		
M	Perchloroethylene Dry Cleaning	X	X	
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	X	X	
O	Ethylene Oxide Sterilization Facilities	X	X	
Q	Industrial Process Cooling Towers	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
R	Gasoline Distribution Facilities	X	X	
S	Pulp and Paper	X		
T	Halogenated Solvent Cleaning	X	X	
U	Group I Polymers and Resins	X		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		
X	Secondary Lead Smelting	X		
Y	Marine Tank Vessel Loading Operations	X		
AA	Phosphoric Acid Manufacturing Plants	X		
BB	Phosphate Fertilizers Production Plants	X		
CC	Petroleum Refineries	X		
DD	Off-Site Waste and Recovery Operations	X		
EE	Magnetic Tape Manufacturing Operations	X		
GG	Aerospace Manufacturing and Rework Facilities	X		
HH	Oil and Natural Gas Production Facilities	X		
II	Shipbuilding and Ship Repair (Surface Coating)	X		
JJ	Wood Furniture Manufacturing Operations	X		
KK	Printing and Publishing Industry	X	X	
LL	Primary Aluminum Reduction Plants	X		
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X		
OO	Tanks—Level 1	X		
PP	Containers	X		
QQ	Surface Impoundments	X		
RR	Individual Drain Systems	X		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		
TT	Equipment Leaks—Control Level 1	X		
UU	Equipment Leaks—Control Level 2	X		
VV	Oil-Water Separators and Organic-Water Separators	X		
WW	Storage Vessels (Tanks)—Control Level 2	X		
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X		
YY	Generic MACT Standards	X		
CCC	Steel Pickling	X		
DDD	Mineral Wool Production	X		
EEE	Hazardous Waste Combustors	X		
GGG	Pharmaceuticals Production	X		
HHH	Natural Gas Transmission and Storage Facilities	X		
III	Flexible Polyurethane Foam Production	X		
JJJ	Group IV Polymers and Resins	X		
LLL	Portland Cement Manufacturing Industry	X		
MMM	Pesticide Active Ingredient Production	X		
NNN	Wool Fiberglass Manufacturing	X		
OOO	Manufacture of Amino/Phenolic Resins	X		
PPP	Polyether Polyols Production	X		
QQQ	Primary Copper Smelting	X		
RRR	Secondary Aluminum Production	X		
TTT	Primary Lead Smelting	X		
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X		
VVV	Publicly Owned Treatment Works	X		
XXX	Ferroalloys Production	X		
AAAA	Municipal Solid Waste Landfills	X		
CCCC	Manufacturing of Nutritional Yeast	X		
DDDD	Plywood and Composite Wood Products	X		
EEEE	Organic Liquids Distribution (non-gasoline)	X		
FFFF	Miscellaneous Organic Chemical Manufacturing	X		
GGGG	Solvent Extraction for Vegetable Oil Production	X		
HHHH	Wet-Formed Fiberglass Mat Production	X		
IIII	Surface Coating of Automobiles and Light-Duty Trucks	X		
JJJJ	Paper and Other Web Coating	X		
KKKK	Surface Coating of Metal Cans	X		
MMMM	Miscellaneous Metal Parts and Products	X		
NNNN	Large Appliances	X		
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X		
PPPP	Surface Coating of Plastic Parts and Products	X		
QQQQ	Wood Building Products	X		
IRRRR	Surface Coating of Metal Furniture	X		
SSSS	Surface Coating of Metal Coil	X		
TTTT	Leather Finishing Operations	X		
UUUU	Cellulose Products Manufacturing	X		
VVVV	Boat Manufacturing	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
WWWW	Reinforced Plastics Composites Production	X		
XXXX	Tire Manufacturing	X		
YYYY	Stationary Combustion Turbines	X		
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X		
AAAAA	Lime Manufacturing Plants	X		
BBBBB	Semiconductor Manufacturing	X		
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X		
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters	X		
EEEEE	Iron and Steel Foundries	X		
FFFFF	Integrated Iron and Steel	X		
GGGGG	Site Remediation	X		
HHHHH	Miscellaneous Coating Manufacturing	X		
JJJJJ	Brick and Structural Clay Products Manufacturing	X		
KKKKK	Clay Ceramics Manufacturing	X		
LLLLL	Asphalt Roofing and Processing	X		
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X		
NNNNN	Hydrochloric Acid Production	X		
PPPPP	Engine Test Cells/Stands	X		
QQQQQ	Friction Products Manufacturing	X		
SSSSS	Refractory Products Manufacturing	X		
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X		
EEEEEE	Primary Copper Smelting Area Sources	X		
FFFFFF	Secondary Copper Smelting Area Sources	X		
GGGGGG	Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium	X		

[1] Nevada Division of Environmental Protection.
[2] Washoe County Air Quality Management Division.
[3] Clark County Department of Air Quality Management.

* * * * *

[FR Doc. E8–6919 Filed 4–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–RO3–RCRA–2008–0256; FRL–8548–9]

Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Virginia has applied to EPA for Final authorization of the revisions of its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's revisions through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Virginia's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on June 2, 2008, unless EPA receives adverse written comment by May 5, 2008. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: Thomas UyBarreta, *uybarreta.thomas@epa.gov*.
3. First Class or Overnight Mail: Thomas UyBarreta, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
4. Hand Delivery or Courier. Deliver your comments to Thomas UyBarreta, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

Instructions: We must receive your comments by May 5, 2008. Please refer to Docket Number EPA–R03–RCRA–2008–0256. Do not submit information that you consider to be Confidential Business Information (CBI) or otherwise protected through regulations.gov, or e-mail. Such comments should be sent via First Class or overnight mail. The Federal 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 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, even if you sent an e-mail comment directly to EPA, 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.

You can view and copy Virginia's application and associated publicly available materials from 8:15 a.m. to 4:30 p.m., Monday through Friday at the following locations: Virginia Department of Environmental Quality,

Waste Division, 629 East Main Street, Richmond, VA 23219, Phone number: (804) 698–4213, attn: Robert Wickline; and Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, Phone number: (540) 562–6872, attn: Aziz Farahmand; and EPA Region Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254. Interested persons wanting to examine these documents should make an appointment with the office at least five business days in advance.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Telephone 215–814–2953.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in This Rule?

We conclude that Virginia's program revision application of October 10, 2007, to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Virginia Final authorization to operate its hazardous waste program with the revisions described in the authorization application, except as described in Sections H. 1, 3, and 4 of this immediate final rule. Virginia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States even before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Virginia, including issuing permits, until the State is granted authorization to do so.

C. What is the Effect of This Authorization Decision?

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

- Take enforcement actions regardless of whether the State has taken its own actions;
- enforce RCRA requirements and suspend or revoke permits; and
- perform inspections, and require monitoring, tests, analyses or reports.

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

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the revised State program on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular revision to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Virginia Previously Been Authorized For?

Initially, Virginia received final authorization to implement its hazardous waste management program effective December 18, 1984 (49 FR 47391). EPA granted authorization for revisions to Virginia's regulatory program effective August 13, 1993 (58 FR 32855); September 29, 2000 (65 FR 46607); June 20, 2003 (68 FR 36925); and July 10, 2006 (71 FR 27216).

G. What Revisions Are We Authorizing With This Action?

On October 10, 2007, Virginia submitted a program revision application, seeking authorization of revisions to its program in accordance with 40 CFR 271.21. Virginia's revision application includes various regulations that are equivalent to, and no less stringent than, revisions to the Federal hazardous waste program, as published in the **Federal Register** from July 1, 2004 through July 19, 2006, as well as miscellaneous changes to its previously authorized program. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Virginia's hazardous waste program revisions set forth in its October 10, 2007 application satisfy all of the requirements necessary to qualify for final authorization except as described in sections H. 1, 3, and 4 of this immediate final rule. Therefore, EPA grants Virginia final authorization for the following program revisions.

Virginia seeks authority to administer the Federal requirements that are listed in Table 1. Virginia incorporates by reference these Federal provisions, in accordance with the dates specified in Title 9, Virginia Administrative Code (9 VAC 20–60–18). Table 1 also lists Virginia's requirements that are being recognized as no less stringent than the analogous Federal requirements. The Virginia Waste Management Act (VWMA), enacted by the 1986 session of Virginia's General Assembly and recodified in 1988 as Chapter 14, Title 10.1, Code of Virginia, forms the basis

of the Virginia program. The regulatory references are to Title 9, Virginia Administrative Code (9 VAC) effective May 22, 2006.

TABLE 1.—VIRGINIA'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of federal requirement (revision checklists[1])	**Federal Register**	Analogous Virginia authority
RCRA Cluster XV,[2] Non-HSWA		
National Environmental Performance Track Program; Corrections, Checklist 204.	69 FR 62217, 10/25/04	Title 9, Virginia Code (9 VAC) §§ 20–60–18 and 20–60–262 A.
RCRA Cluster XV, HSWA		
Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards, Checklist 206.	70 FR 9138, 2/24/05	9 VAC §§ 20–60–18, 20–60–261 A, and 20–60–268 A.
RCRA Cluster XV, HSWA/Non-HSWA		
Modification of the Hazardous Waste Manifest System, Checklist 207.	70 FR 10776, 3/4/05	9 VAC §§ 20–60–18, 20–60–260 A, 20–60–261 A, 20–60–262 A, 20–60–263 A, 20–60–264 A, and 20–60–265 A.
Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB, Checklist 208.	70 FR 34538, 6/14/05	9 VAC §§ 20–60–18, 20–60–260 A, 20–60–261 A, 20–60–264 A, 20–60–265 A, 20–60–266 A, 20–60–268 A, 20–60–270 A, and 20–60–279 A.
Modification of the Hazardous Waste Manifest System, Checklist 207.	70 FR 35034, 6/16/05	9 VAC §§ 20–60–18, 20–60–262 A, 20–60–264 A, and 20–60–265 A.
Methods Innovation Rule and SW–846 Update, Checklist 208.	70 FR 44150, 8/1/05	9 VAC §§ 20–60–18, 20–60–261 A, and 20–60–264 A.
RCRA Cluster XVI, Non-HSWA		
Universal Waste Rule: Specific Provisions for Mercury Containing Equipment, Checklist 209.	70 FR 45508, 8/5/05	9 VAC §§ 20–60–18, 20–60–260 A, 20–60–261 A, 20–60–264 A, 20–60–265 A, 20–60–270 A, and 20–60–273 A.
Standardized Permit for RCRA Hazardous Waste Management Facilities, Checklist 210.	70 FR 53420, 9/8/05	9 VAC §§ 20–60–18, 20–124 A, 20–260 A, 20–261 A, 20–267 A, and 20–270 A.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures, Checklist 211.	70 FR 57769, 10/4/05	9 VAC §§ 20–60–18, and 20–60–261 A.
RCRA Cluster XVI, HSWA/Non-HSWA		
National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Checklist 212.	70 FR 59402, 10/12/05	9 VAC §§ 20–60–18, 20–60–260 A, 20–60–264 A, 20–60–265 A, 20–60–266 A, and 20–60–270 A.
RCRA Burden Reduction Initiative, Checklist 213	71 FR 16862, 4/4/06	9 VAC §§ 20–60–18, 9 VAC 20–60–260 A, 9 VAC 20–60–261 A, 9 VAC 20–60–264 A, 9 VAC 20–60–265 A, 9 VAC 20–60–266 A, 9 VAC 20–60–268 A, 9 VAC 20–60–270 A.
Other		
Identification and Listing of Hazardous Waste Final Exclusion.	70 FR 21153, 4/25/05	9 VAC §§ 20–60–18, and 20–60–261 A.
Identification and Listing of Hazardous Waste	69 FR 56357, 9/21/04	9 VAC §§ 20–60–18, and 20–60–261 A.
Identification and Listing of Hazardous Waste	69 FR 60557, 10/12/04	9 VAC §§ 20–60–18 and 20–60–261 A.
Nonwaste waters from Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants.	70 FR 35032,6/16/05	9 VAC §§ 20–60–18, 20–60–261 A, and 20–60–268 A.
Identification and Listing of Hazardous Waste; Final Exclusion.	70 FR 42499, 7/25/05	9 VAC §§ 20–60–18, and 20–60–261 A.
Final Exclusion for Identification and Listing Hazardous Waste.	70 FR 44496, 8/3/05	9 VAC §§ 20–60–18, and 20–60–261 A.
Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management, Chemical Services, Inc.	70 FR 44505, 8/3/05	9 VAC §§ 20–60–18, and 20–60–268 A.
Final Exclusion for Identification and Listing Hazardous Waste.	70 FR 49187, 8/23/05	9 VAC §§ 20–60–18, and 20–60–261 A.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment.	70 FR 51638, 8/31/05	9 VAC §§ 20–60–18, and 20–60–261 A.

TABLE 1.—VIRGINIA'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of federal requirement (revision checklists[1])	Federal Register	Analogous Virginia authority
Identification and Listing of Hazardous Waste	70 FR 60217, 10/17/05	9 VAC §§ 20–60–18, and 20–60–261 A.
Identification and Listing of Hazardous Waste; Amendment.	70 FR 71002, 11/25/05	9 VAC §§ 20–60–18 and 20–60–261 A.
Identification and Listing of Hazardous Waste; Final Exclusion.	70 FR 71002, 11/25/05	9 VAC §§ 20–60–18 and 20–60–261 A.
Identification and Listing of Hazardous Waste; Final Exclusion.	70 FR 76168, 12/23/05	9 VAC §§ 20–60–18 and 20–60–261 A.
Site-Specific Variance From the Land Disposal Restrictions Treatment Standard for 1,3-Phenylenediamine (1,3–PDA).	71 FR 6209, 2/7/06	9 VAC §§ 20–60–18 and 20–60–268 A.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment.	71 FR 9723, 2/27/06	9 VAC §§ 20–60–18 and 20–60–261 A.

[1] A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the FEDERAL REGISTER. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization web page at *http://www.epa.gov/epaoswer/hazwaste/state.*

[2] A RCRA ''Cluster'' is a set of Revision Checklists for Federal rules, typically promulgated over a 12-month period starting on July 1 and ending on June 30 of the following year.

H. Where Are the Revised Virginia Rules Different From the Federal Rules?

1. Virginia Requirements That Are Broader in Scope Than the Federal Program

The Virginia hazardous waste program contains certain provisions that are beyond the scope of the Federal program. Virginia's statutory provision § 10.1–1426 F, which is related to the Federal Regulations at 40 CFR 261.5 and 261.4(b)(1), explains the requirements allowing local or state agencies to collect hazardous waste from exempt small quantity generators. The Virginia code is broader in scope because there is not a corresponding part of the Federal program that has such a restriction. These broader in scope provisions are not part of the program being authorized by today's action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Virginia law.

2. Virginia Requirements That Are More Stringent Than the Federal Program

The Virginia hazardous waste program contains no new provisions that are more stringent than those required by the RCRA program as codified in the July 1, 2006 edition of title 40 of the Code of Federal Regulations (CFR).

3. Virginia's Adoption of EPA's Site-Specific Delisting and Variance Decisions

In its regulations, Virginia has adopted EPA's decisions relative to the site-specific delistings published between September 21, 2004 and February 27, 2006 (69 FR 56357, 69 FR 60557, 70 FR 21153, 70 FR 42499, 70 FR 44496, 70 FR 49187, 70 FR 51638, 70 FR 71002, 70 FR 71002, 70 FR 76168, 71 FR 9723), as well as the site specific treatment variances from the Land Disposal Restrictions (LDR) treatment standards published on August 3, 2005 (70 FR 44505) and February 7, 2006 (71 FR 6209). EPA today is not authorizing Virginia to delist wastes or to grant treatment variances. With regard to waste delisted as a hazardous waste by EPA, the authority of the Department of Environmental Quality is limited to recognition of the waste as a delisted waste in Virginia, and the supervision of waste management activities for the delisted waste when the activities occur within the Commonwealth of Virginia. Virginia is not authorized to delist wastes on behalf of the EPA, or to otherwise administer any case decision to issue, revoke, or continue a delisting of a waste by EPA. Similarly, while Virginia is recognizing EPA's decision regarding the site-specific treatment variances, the authority to grant such variances remains with the EPA.

4. EPA Is Not Authorizing Portions of the Uniform Hazardous Waste Manifest Rule (70 FR 10776)

Virginia has adopted the Uniform Hazardous Waste Manifest Rule (70 FR 10776, March 4, 2005) without exception; however, there are non-delegable Federal functions addressed in that Rule. Specifically, authority must be left with the federal government as set forth in 40 CFR 262.21, 262.60(e), 263.20(g)(4), 264.71(a)(3), and 265.71(a)(3). In its incorporation by reference of 40 CFR Part 263, Virginia appropriately does not substitute the term ''U.S. Customs Official'' that appears in 40 CFR 263.20(g)(4). As a result, this provision is herein included in Virginia's authorized program. However, Virginia must make the following modifications to its incorporation by reference of 40 CFR parts 262, 264, and 265 in order to clarify that the enforcement authority for the non-delegable provisions in those parts remains with EPA:

- 9 VAC 20–60–262 B must state that, at 40 CFR 262.21 and 262.60(e), ''EPA'' means the United States Environmental Protection Agency, in order to maintain the Federal authority for the EPA Manifest Registry functions and the notification requirements for imports of hazardous waste;
- 9 VAC 20–60–264 B must state that, at 40 CFR 264.71(a)(3), ''U.S. Environmental Protection Agency'' means the United States Environmental Protection Agency, in order to maintain Federal authority for the notification requirements for imports of hazardous waste;
- 9 VAC 20–60–265 B must state that, at 40 CFR 265.71(a)(3), the term ''U.S. Environmental Protection Agency'' means the United States Environmental Protection Agency, in order to maintain the Federal Authority for the notification requirements for imports of hazardous waste.

Because these provisions have not yet been amended, EPA is not authorizing them at this time. EPA will authorize Virginia to administer the above regulations after they are modified accordingly.

I. Who Handles Permits After the Authorization Takes Effect?

After authorization, Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the

effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. EPA and Virginia agree to coordinate the administration of permits in order to maintain consistency.

EPA will not issue any more new permits or new portions of permits for the provisions included in this revised authorization after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Virginia is not yet authorized.

J. How Does This Action Affect Indian Country (18 U.S.C. 115) in Virginia?

Virginia is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian lands in Virginia.

K. What is Codification and Is EPA Codifying Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart VV for this authorization of Virginia's revised program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action would not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Region 3.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks that may disproportionately affect children. 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.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. Although this action is not a ''major rule'' as defined by 5 U.S.C. 804(2), this action will be effective June 2, 2008.

List of Subjects in 40 CFR Part 271

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

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

Dated: March 18, 2008.

William T. Wisniewski,

Acting Regional Administrator, EPA Region III.

[FR Doc. E8–6724 Filed 4–2–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4133–F]

RIN 0938–AP25

Medicare Program; Modification to the Weighting Methodology Used To Calculate the Low-Income Benchmark Amount

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule changes the weighting methodology used to calculate the low-income benchmark premium amount (benchmark) for 2009 and thereafter. Under this final rule, the benchmark weighting methodology is adjusted so that the relative weights of the Medicare Advantage Prescription Drug (MA–PD) plan premiums and Prescription Drug Plan (PDP) plan premiums in the low-income benchmark premium amount reflect the

distribution of enrollment of beneficiaries eligible for the low-income subsidy in each plan.

DATES: *Effective Dates:* These regulations are effective on May 31, 2008.

FOR FURTHER INFORMATION CONTACT: Deondra Moseley, (410) 786–4577. Meghan Elrington, (410) 786–8675.

SUPPLEMENTARY INFORMATION:

I. Background

The beneficiary premiums for Prescription Drug Plans (PDPs) are based on an annual bidding process. Each year the beneficiary premium for a Part D plan can change as a result of this bidding process. In addition, each year, as required by statute, CMS recalculates the Federal Part D premium low-income subsidy (LIS) available to low-income beneficiaries based on the new premiums for plans in each region. As a result of these premium and subsidy changes, the premium for a Part D plan can be fully covered by the LIS in one year and not the following year.

The amount of the premium subsidy available to LIS-eligible individuals cannot be calculated until after bids are submitted for the calendar year in question, because the subsidy amount is based on the bids that are submitted. Therefore, a PDP sponsor whose premium for LIS-eligible enrollees is currently zero does not know at the time its bid is submitted whether the premium that would result from its bid will be higher or lower than the premium subsidy amount.

LIS-eligible individuals enrolled in a PDP that does not charge them a premium are faced with the possibility that the plan they are enrolled in will impose a premium during the next calendar year that would require them to make monthly payments. Section 1860D–1(b)(1)(C) of the Social Security Act (the Act) mandates the initial enrollment of full-benefit dual eligible individuals not choosing a plan into a PDP where they would not pay a premium. It does not, however, require that individuals be reassigned to a plan that would not charge them a premium, if they would be required to pay a premium in their plan the following calendar year. Using our authority under Section 1860D–1(b)(1)(A) of the Act to, ''establish a process for the enrollment, disenrollment, termination, and change of enrollment of Part D eligible individuals in prescription drug plans,'' we have specified that LIS-eligible individuals facing the above situation may ''elect'' a PDP with no premium (to which they would be randomly assigned) by taking no action. We have referred to this process as our reassignment process. Beneficiaries eligible for the full low-income premium subsidy who have not chosen a plan on their own, including beneficiaries dually eligible for benefits under Titles XVIII and XIX of the Act, are subject to reassignment. Beneficiaries eligible for a partial premium subsidy are not subject to reassignment.

For 2008, the number of beneficiaries reassigned to a different organization under this process varied widely by region, ranging from as few as 17 beneficiaries to approximately 402,322 beneficiaries. The average number of beneficiaries reassigned to an organization other than the one with which they were enrolled was 34,044 per region. Alternatively, LIS beneficiaries can affirmatively elect to stay in their plan and begin paying a premium, or choose another plan with or without a premium.

While the reassignment policy prevents an LIS-eligible individual who did not choose to elect a plan from being charged a premium, it disrupts continuity and stability in coverage. Individuals who are reassigned may have to change their pharmacy, get new copies of their prescription from their doctor, and determine whether they need a change in medications because the formulary might be different.

Currently, under the demonstration project entitled, ''Medicare Demonstration to Transition Enrollment of Low-Income Subsidy Beneficiaries'' (established in 2007 and extended to 2008), if the premium amount for a LIS-eligible individual in the above situation is lower than a specified ''de minimis'' amount, the individual would not be charged this de minimis amount, and could remain in his or her current plan without paying a premium. This demonstration also transitions the calculation of the low-income benchmark premium amount for a region from a method that weights the standardized Part D bids for PDPs equally to the statutory method required under the current regulation, which calculates the benchmarks by weighting the bids for PDPs and Medicare Advantage Prescription Drug (MA–PD) plans in that region based on each plan's share of total Part D enrollment. While the evaluation for this demonstration project is still underway, we believe it has demonstrated the advantages of continuity of care and stability.

In the proposed rule published on January 8, 2008, ''Option for Prescription Drug Plans to Lower their Premiums for Low-income Subsidy Beneficiaries'' (73 FR 1301), we proposed an approach to reducing the disruption caused by the re-assignment process. In that proposed rule, we proposed an approach that focused on the premiums that would be charged to LIS-eligible individuals in cases in which they would be subject to paying a premium if they stayed in the plan they were in. Specifically, we proposed, under certain circumstances, to give PDP Sponsors the option of setting a separate premium amount for such LIS-eligible individuals at the low-income benchmark amount. We expected this policy to reduce the number of beneficiaries who would have to be re-assigned, and would ensure a choice of at least five no-premium plans for full LIS-eligible individuals in each region.

Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule responds to comments we received on provisions set forth in the January 8, 2008 proposed rule. In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

II. Analysis of the Proposed Rule and Responses to Public Comments

We received 32 timely items of correspondence in response to the January 8, 2008 proposed rule. We received comments from a broad spectrum of commenters, including consumer groups, health plans and industry trade associations, and States. Approximately 13 comments were from consumer groups, 9 comments were from health plans and industry associations, 5 comments were from States, 3 comments were from pharmacists/providers, and 2 comments were from students. With a few exceptions, the commenters were

concerned that the proposed rule would not adequately address the reassignment issue, and suggested alternative approaches. Virtually all of these commenters recommended that, rather than adopting the proposed approach, we consider alternative methods for calculating the low-income benchmark premium amounts. The following is a summary of the public comments and our responses.

Comment: Two commenters proposed that the low-income benchmark premium amounts be calculated by weighting each plan's premium by its share of total LIS enrollment, rather than its share of total Part D enrollment.

Response: Because section 1860D–14(b)(2) of the Act requires only that the premium calculation be ''weighted'', we believe that the statute could reasonably be interpreted to permit this proposed weighting methodology, and in response to these comments we have determined that this approach more effectively addresses the LIS reassignment issue that the proposed rule was intended to address. Therefore, we are adopting this approach in our final rule instead of our originally proposed option for PDPs to reduce their premiums for full-subsidy eligible beneficiaries.

Specifically, the benchmark amounts for each Part D region will be calculated as a weighted average of the Part D premium amounts for basic Part D coverage with the weight for each PDP and MA–PD plan equal to a percentage in which the numerator is equal to the number of LIS eligible beneficiaries enrolled in the Part D plan in the reference month and the denominator is equal to the total number of LIS eligible beneficiaries enrolled in PDP and MA–PD plans (not including PACE, private fee-for-services plans or 1876 cost plans) in the reference month.

Currently, CMS calculates the weighted portion of the low-income benchmark premium amount using a weighted average of the MA and PDP premiums that is based on total Part D enrollment. MA–PD sponsors can lower their Part D premiums through the application of Part C rebates. As a result, the Part D premiums for MA–PD plans tend to be lower than PDP premiums. In addition, the benchmark amounts tend to be significantly lower in regions with high MA–PD penetration than in other Part D regions.

The lower benchmarks have contributed to large-scale reassignments of LIS beneficiaries in many of these regions. This is because the relatively low benchmarks result in many PDPs having a basic Part D premium that is not fully covered by the Federal premium subsidy. As noted above, CMS has reassigned full-subsidy beneficiaries in these PDPs to different, lower-premium PDPs in order to avoid a financial hardship for these beneficiaries.

The conclusion of the ''Medicare Demonstration to Transition Enrollment of Low-Income Subsidy Beneficiaries,'' will put increased downward pressure on the benchmarks in these regions with high MA–PD enrollment and upward pressure on the number of reassignments. Calculating the benchmark amounts using a weighted average based on LIS enrollment, however, will help stabilize the benchmarks in these regions. As noted above, Part D beneficiary premiums for PDPs tend to be higher than for MA–PDs. In addition, PDPs tend to have a greater share of LIS enrollment because of auto and facilitated enrollment. As a result, weighting Part D plan premiums by total LIS enrollment gives greater weight to PDP premiums and tends to increase the benchmarks. As compared to the current regulatory formula, we estimate that this change in the methodology for calculating the benchmarks would have reduced the number of 2008 reassignments by approximately 850,000 LIS beneficiaries. This is significantly greater than the 200,000 reassignment reduction estimated for the policy proposed in the proposed rule.

Comment: Many commenters expressed concerns about various features of the proposed policy and suggested clarifications or changes. Commenters asked CMS to describe the methodology for selecting participating sponsors and any contingencies. Commenters asked CMS to make the checkbox in the bid pricing tool (BPT) where PDP Sponsors were to indicate whether the plan will participate in the second premium visible and unambiguous. Commenters also asked whether certification and attestation requirements should be amended. In addition, commenters suggested changes including limiting plans' financial losses by placing a cap on the amount by which the premium could be reduced for LIS beneficiaries and commented on the complexity of explaining the rule to beneficiaries.

Response: We agree that the various features of the proposed rule would have needed clarification in the final rule. This final rule does not incorporate the option for PDP Sponsors to offer a reduced premium to full subsidy eligible individuals. The final rule takes a different approach and changes the weighting methodology used to calculate the low-income benchmark premium amount. This approach is relatively simple and transparent and does not raise the complexities of the dual premium policy in the proposed rule about which these commenters are concerned.

Comment: Many commenters suggested that we continue with our de minimis policy, rather than adopt the policy in the proposed rule.

Response: We believe that the methodology established in this final rule is a better approach to reducing reassignments than continuing with the de minimis policy as it directly addresses the benchmark disparities across regions. As stated in the proposed rule, we were concerned about an approach that permanently would employ a fixed dollar figure, and decided that a methodology under which the number is not known in advance would better preserve incentives for plans to submit a low bid.

Comment: Many commenters suggested calculating the benchmark before applying Part C rebates to MA–PD premiums. CMS currently calculates the low-income benchmark premium amount using MA–PD premiums after Part C rebates have been applied. Calculating the benchmarks using MA–PD premiums before the application of rebates would increase the benchmark amounts in areas with high MA–PD penetration and in turn decrease the number of reassignments in these Part D regions, compared to the current regulation. Commenters argued that this is a better representation of the true drug cost for MA–PDs. Commenters believed that such an approach is permissible under the statute.

Response: Section 1860D–14(b)(2) of the Act describes the calculation of the benchmark. The statute provides that for an MA–PD plan, CMS must use the weighted averages of the ''portion of the MA monthly prescription drug beneficiary premium that is attributable to basic prescription drug benefits'' to calculate the benchmark for each region. The Act states that the term ''MA monthly prescription drug beneficiary premium'' means, ''the base beneficiary premium * * * as adjusted * * *, less the amount of rebate credited toward such amount * * *'' CMS interprets the phrase ''portion of the MA monthly prescription drug beneficiary premium that is attributable to basic prescription drug benefits'' for an MA–PD plan to mean the base beneficiary premium adjusted for the difference between the bid and benchmark less the rebates. Therefore, we do not believe it is permissible under the statute to calculate the benchmarks with MA–PD premiums before the application of rebates. However, this regulation will

have a comparable effect on LIS reassignments to calculating the benchmarks using the MA–PD premiums that have not been reduced by rebates, and hence produces the outcome recommended by the commenters.

Comment: Some commenters supported our alternative of allowing PDPs to waive the difference between the premium and the benchmark for full subsidy eligible beneficiaries. Commenters believed that CMS overestimated the impact this would have on bids as plans would be motivated to keep bids low in order to receive new auto-assignments.

Response: We continue to believe that this option would have a negative impact on bid competition and bid integrity. As stated in the proposed rule, we did not choose this approach for two reasons. First, if the difference between the two amounts were too great, this would produce a significant disparity between the revenue needs assumed in the bid, and the revenue that would be received under the reduced premium, and undermine the integrity of the bid process. More importantly, if a PDP sponsor knew that it could be assured of reducing its premium for LIS-eligible individuals to the LIS amount no matter how much the premium produced by its bid exceeded this amount, this would greatly reduce existing incentives to bid as low as possible. In response to the commenters' argument, we do not believe new auto-assignees would be enough incentive to keep bids low.

Comment: Many commenters did not support the alternative in which CMS would change the current reassignment process so that beneficiaries would be informed of plans that offer a zero premium for full-subsidy eligible beneficiaries but would have to take action to change to such a plan. Commenters believed that based on their experience, placing the burden on beneficiaries to make the change would result in beneficiaries remaining in plans they cannot afford and would increase premium collection problems. Two commenters believed that CMS should implement this alternative, because it would be easier to address non-payment of premium issues than the issues with continuity of care that come with reassignment.

Response: We agree with the commenters who opposed the alternative for the reasons stated in our proposed rule. We are concerned about charging beneficiaries a premium without them electing to pay it and the potential financial hardship for individual beneficiaries.

Comment: Several commenters suggested changes to the reassignment process, such as reassigning on other than a random basis, extending reassignment to people who have elected a plan with no premium and improvements to the premium information provided to choosers. One commenter asked CMS to review formularies to ensure they do not discourage access for vulnerable beneficiaries.

Response: We do not believe these changes would be appropriate. Congress has favored random assignment by specifying it in the case of initial assignment. We believe that it is appropriate to extend this to re-assignment. It is not clear what the commenter means by reassigning people who have elected a plan with no premium, since they would have made an affirmative choice that we believe should be respected. We also believe that the information currently provided to beneficiaries on their choices is appropriate. Finally, we believe that beneficiaries are in the best position to make plan choices based on plan formularies.

Comment: One commenter was concerned that the regulation would not come out in time for plans to use the information to model their bids.

Response: We agree that Part D sponsors need to know how the LIS benchmarks will be calculated in order to prepare their Part D bids. Therefore, we are releasing this final rule before April 7, 2008, which is the beginning of the formal bid preparation period for 2009. On April 7, 2008, CMS will release all other final Part D payment policy information for 2009 as part of the Announcement of CY 2009 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies. This document is released annually by statute on the first Monday in April. With the release of the Rate Announcement and the publication of this final rule, Part D sponsors will have all the information on Part D payment policies that is needed from CMS to prepare their 2009 bids.

III. Provisions of the Final Regulations

As noted above, we believe that the statute can reasonably be interpreted to permit us to weight the premiums used for the benchmark calculation by total LIS enrollment for each plan. The calculation of the benchmarks is described in section 1860–14(b)(2) of the Act. The statute provides that we must take the ''weighted average'' of the premium amounts described to calculate the benchmarks. The term ''weighted average,'' however, is not definitively defined. The statutory language reads as follows:

(2) LOW-INCOME BENCHMARK PREMIUM AMOUNT DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term ''low-income benchmark premium amount'' means, with respect to a PDP region in which—

(i) All prescription drug plans are offered by the same PDP sponsor, the weighted average of the amounts described in (B)(i) for such plans; or

(ii) There are prescription drug plans offered by more than one PDP sponsor, the weighted average of amounts described in subparagraph (B) for prescription drug plans and MA–PD plans described in section 1851(a)(2)(A)(i) offered in such region.

(B) PREMIUM AMOUNTS DESCRIBED.—The premium amounts described in this subparagraph are, in the case of—

(i) A prescription drug plan that is a basic prescription drug plan, the monthly beneficiary premium for such plan;

(ii) A prescription drug plan that provides alternative prescription drug coverage the actuarial value of which is greater than that of standard prescription drug coverage, the portion of the monthly beneficiary premium that is attributable to basic prescription drug coverage; and

(iii) An MA–PD plan, the portion of the MA monthly prescription drug beneficiary premium that is attributable to basic prescription drug benefits (described in section 1854(b)(2)(B)) * * *

We historically have interpreted ''weighted average'' to mean an average based on the plan's share of total Part D enrollment. We believe that ''weighted average'' could also reasonably be interpreted to mean weighted based on the plan's share of LIS enrollment, particularly given that the benchmarks are applicable to LIS beneficiaries only.

The revised interpretation requires a change in the regulation. Therefore, we are revising § 423.780(b)(2) to provide for the low-income benchmark premium amount for a PDP region to be a weighted average of the premium amounts described in § 423.780(b)(2)(ii). The weight for each PDP and MA–PD plan will be equal to a percentage. The numerator will be the number of Part D LIS eligible individuals enrolled in the plan in a reference month (as defined in § 422.258(c)(1)). The denominator will be equal to the total number of Part D LIS eligible individuals enrolled in all PDP and MA–PD plans (but not including PACE, private fee-for-service plans, or 1876 cost plans) in a PDP region in the reference month. We will include both partial and full-subsidy individuals in the weighting calculation.

VI. Collection of Information Requirements

This document does not impose information collection and

recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule allows CMS to calculate the low-income premium benchmark amounts by weighting the premium amounts by total LIS enrollment for each plan in order to reduce the number of reassignments compared to the current regulatory framework. We believe this final rule will lead to additional Federal costs of approximately $90 million for calendar year (CY) 2009. The CY 2009 cost of $90 million represents our best estimate of the cost of the final rule. Generally, our best estimates reflect an equal likelihood of being too high or too low. The estimated cost over the next 10 fiscal years (2009 through 2018) is $1.68 billion. The year-by-year impacts in millions of dollars are shown in Table 1 below. The $90 million estimate above is for CY 2009. The table below summarizes the fiscal year (FY) costs. Yearly growth is due to an estimated increase in the number of enrollees in future years and increasing drug trends that cause higher estimated bids in future years.

TABLE 1.—FEDERAL COSTS FOR FY 2009 THROUGH FY 2018

	Fiscal Year										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009–2018
Estimated Costs (in millions)	$60	$100	$120	$140	$150	$170	$190	$220	$250	$280	$1,680

This rule does reach the economic threshold of $100 million in the out-years and thus is considered a major rule, as outlined by Executive Order 12866.

This cost is due to increased Federal premium subsidy payments, which are the result of generally increasing the low-income benchmarks. The higher benchmarks allow a greater number of low-income beneficiaries to remain in their current plan, rather than reassigning them to a lower cost plan.

In each region, the low-income benchmark essentially functions as a ceiling for the Federal premium subsidy for low-income beneficiaries. That is, the Federal premium subsidy covers the full cost of the plan's basic Part D premium for a full-subsidy beneficiary, up to the low-income benchmark amount.

Weighting based on each plan's share of LIS enrollment generally is expected to increase the low-income benchmarks. We estimated that, in 2008, if the low-income benchmarks had been calculated based on LIS enrollment weighting (rather than based on total Part D enrollment weighting), the benchmarks would have been higher in 27 of the 34 PDP regions. Generally, the higher the low-income benchmarks, the lower the number of LIS reassignments. This is because, under the higher benchmarks, more PDPs are likely to have premiums that are equal to or less than the low-income benchmark and, as a result, will be fully covered by the premium subsidy. Low-income subsidy beneficiaries are able to remain in these PDPs and are not reassigned to other lower-premium PDPs.

We expect this rule will reduce the administrative costs for plan sponsors associated with the reassignment of LIS beneficiaries. These costs include the production of new member informational materials by the new plan, increased staffing of call centers to field beneficiary questions, and costs associated with implementing transition benefits for new enrollees.

Although there is no quantifiable monetary value to CMS to reducing reassignments, we feel this benefit is important, as it will increase program stability and continuity of care. The rule supports pharmacy and formulary consistency for the beneficiary. Particularly in regions with high MA–PD penetration, this rule will reduce the year-to-year volatility in reassignments of LIS beneficiaries and will help avoid the disruption that is inherent anytime a beneficiary is switched from one plan to another.

Based on the most recent bid results, we estimated that if the 2008 benchmarks had been calculated using LIS enrollment weighting, there would have been approximately 850,000 fewer reassignments than if the benchmarks had been calculated using total Part D enrollment weighting. Then we determined the impact of the revised benchmarks and reassignments on program payments throughout the projection period. We do not explicitly project reassignments in future years. The expectation is that the net effect of future reassignments will result in projected cost levels comparable to the results of the reassignments modeled on the most recent bid results.

The cost estimate assumes full enrollment weighting based on LIS enrollment for the calculations of the low-income benchmark premium amounts. The estimate was developed by applying this rule against the 2008 bids and this impact was projected throughout the forecast period. The estimate does not anticipate any change in bidding strategies or outcomes but does include the effect on the level of administrative costs plan sponsors will include in their bids to account for their expected number of LIS beneficiary reassignments.

The proposed rule estimated Federal savings of approximately $20 million per calendar year. However, the final rule estimates an additional $90 million in Federal costs for CY 2009. There are two reasons that the cost estimate has changed. First, the budget baseline has been updated since the issuance of the proposed rule. The Mid-Session Review baseline assumed the continuation of the $1 de minimis policy; the President's 2009 Budget baseline does not. Because of the change in assumptions about the de minimis

policy, even if we had stayed with the five zero-premium organization policy in the proposed rule, the cost of the final rule would have changed from savings of approximately $20 million per year to costs of approximately $10 million per year. Second, this final rule changes the weighting methodology used to calculate the low-income benchmark premium amount. As discussed in the rationale, CMS has changed the method for calculating the Federal premium subsidy for LIS beneficiaries so that the subsidy amount better reflects the premiums of plans in which LIS beneficiaries are enrolled. The final rule uses each plan's share of LIS enrollment, rather than each plan's share of total Part D enrollment, to weight each plan's premium. This change results in fewer reassignments than the proposed rule (approximately 670,000) and greater low-income premium subsidy costs. The relationship between reassignments and the premium subsidy is described above.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this regulation will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This rule will have no consequential effect on State, local, or tribal governments in the aggregate, or by the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

B. Anticipated Effects

We have estimated the effect this regulation will have on the number of reassignments, the number of zero-premium plans available to full-subsidy eligible individuals in each region, and bid incentives.

This rule will reduce the number of reassignments compared to the current regulatory framework. In 2008, under the provisions of the ''Medicare Demonstration to Transition Enrollment of Low-Income Subsidy Beneficiaries'', approximately 1.19 million LIS beneficiaries were reassigned to new Part D organizations. We estimated that if the 2008 benchmarks had been calculated under the current regulation (that is, full enrollment weighted using all enrollees), the number of LIS reassignments would have been 2.18 million. Under the policy in the proposed rule, the number of reassignments would have declined by approximately 200,000 (compared to the current regulation) to 2.0 million. We estimate that, if the 2008 benchmarks had been calculated using the LIS weighting methodology in this final rule, the benchmarks would have been higher in 27 of the 34 regions and the number of reassignments would have been 1.33 million—approximately 850,000 lower than under the current regulation.

We estimate that this final rule, if implemented in 2008, would have reduced the benchmarks slightly in seven regions as compared to the current regulation. These regions tend to have low MA–PD penetration and a concentration of LIS beneficiaries in PDPs with relatively low premiums. The amount of the benchmark reduction was typically less than $0.50. In 2008, these benchmark reductions would have increased reassignments in total by less than 50,000. The 1.33 million estimate noted above is net of these increased reassignments.

We estimate that this final rule, if implemented in 2008, would have increased the number of zero premium organizations available to beneficiaries in 20 of the 34 PDP regions. This is somewhat lower than the number of regions where the benchmarks would have been higher (27), because some regions did not have any new plans that landed under the benchmark with the new calculation. In addition, in 2008, this regulation would have resulted in at least five zero-premium organizations in every Part D region with the exception of one region, which would have had four zero-premium organizations.

This approach maintains a strong incentive to bid low to keep and possibly add LIS beneficiaries. Absent the rule, there may be a ''winner take all'' outcome in certain regions with one organization acquiring all of the LIS beneficiaries in the region. It is difficult to predict what will happen in the absence of this rule, but we expect some organizations will be induced to bid even lower while other organizations will give up on this population and bid higher.

C. Alternatives Considered

As stated in the ''Background'' section of this final rule, we considered allowing PDP Sponsors to reduce their premium to the subsidy amount after it was established for LIS-eligible individuals without regard to the amount of their premium. We also considered allowing plans with premiums under a fixed dollar amount to reduce their low-income premiums to the premium subsidy amount (de minimis). We determined, however, that these options would undermine the integrity and competitiveness of the bidding process.

We also considered changing our approach to reassignment to an approach that would allow LIS-eligible individuals to be informed of zero-premium PDP options for full-subsidy eligibles, but would remain in their current plan, regardless of the premium, if they take no action. Beneficiary advocacy groups were concerned about beneficiaries being charged a premium without electing to pay it.

We also considered changing the regulation to calculate the benchmarks using MA–PD premiums before they have been reduced by Part C rebates. That approach, however, is not permitted under the statute.

Finally, we considered the policy in the proposed rule itself, which was an option for PDP Sponsors in regions with less than five zero-premium PDPs to

offer a separate prescription drug premium amount for full subsidy eligible individuals subject to certain conditions. In response to comments received on the proposed rule, we determined that this approach did not address the reassignment issue as effectively as the LIS benchmark weighting approach recommended by commenters.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the cost associated due to increased Federal low-income premium subsidy payments, which are primarily the result of allowing a greater number of low-income beneficiaries to remain in their current plan, rather than reassigning them to a lower cost plan. All expenditures are classified as costs to the Federal Government.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE MODIFICATION TO THE WEIGHTING METHODOLOGY USED TO CALCULATE THE LOW-INCOME BENCHMARK AMOUNT, FINAL RULE

[$ Millions]

Category: Monetized costs	Costs
Single Year CY 2009	$90
Annualized Monetized Costs Using 7% Discount Rate FY 2009–FY 2018	155.6
Annualized Monetized Costs Using 3% Discount Rate FY 2009–FY 2018	162.6
Undiscounted Cumulative Costs—FY 2009–FY 2018	1,680

Costs reflect transfers from the Federal Government to Health Plans.

E. Conclusion

This rule is estimated to result in an increased Federal cost of $90 million in CY 2009 and $1.68 billion over the next 10 fiscal years (2009 through 2018). As explained above, these costs are primarily due to an increase in low-income premium subsidy payments. This rule will not have a significant economic impact on a substantial number of small entities, so we are not preparing an analysis for the RFA. In addition, the regulation will not have a significant impact on the operations of a substantial number of small rural hospitals, so we are not preparing an analysis for section 1102(b) of the Act. The analysis above, together with the preamble, provides a Regulatory Impact Analysis as it qualifies as a major rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart P—Premium and Cost-Sharing Subsidies for Low-Income Individuals

■ 2. Amend § 423.780 by revising paragraph (b)(2)(i) to read as follows:

§ 423.780 Premium subsidy.

* * * * *

(b) * * *

(2) * * *

(i) The low-income benchmark premium amount for a PDP region is a weighted average of the premium amounts described in paragraph (b)(2)(ii) of this section, with the weight for each PDP and MA–PD plan equal to a percentage, the numerator being equal to the number of Part D low-income subsidy eligible individuals enrolled in the plan in the reference month (as defined in § 422.258(c)(1) of this chapter) and the denominator equal to the total number of Part D low-income subsidy eligible individuals enrolled in all PDP and MA–PD plans (but not including PACE, private fee-for-service plans or 1876 cost plans) in a PDP region in the reference month.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 20, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

March 27, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. 08–1088 Filed 3–31–08; 4 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

[Docket ID FEMA–2008–0001]

RIN 1660–AA58

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Write-Your-Own Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim Rule.

SUMMARY: This rule amends portions of the Federal Emergency Management Agency (FEMA), Federal Insurance Administration, Financial Assistance/Subsidy Arrangement (Arrangement) between Write-Your-Own Companies (WYO Companies) and FEMA. The rule makes technical changes intended to assist WYO Companies by recognizing each party's duties under the Arrangement and amends the way FEMA communicates changes to the Unallocated Loss Adjustment Expenses

(ULAE) compensation rate to WYO Companies.

DATES: *Effective Date:* May 5, 2008.

Comment Date: Submit comments on or before June 2, 2008.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2008–0001, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FEMA-RULES@dhs.gov. Include Docket ID FEMA–2008–0001 in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 835, Washington, DC 20472.

Handling of Confidential or Proprietary Information Submitted in Public Comments: Do not submit comments that include trade secrets, confidential commercial or financial information to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail/hand delivery/courier to the FEMA Office of Chief Counsel, 500 C Street, SW., Room 835, Washington, DC 20472.

Upon receipt of such comments, FEMA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. FEMA will hold them in a separate file to which the public does not have access, and place a note in the public docket that FEMA has received such materials from the commenter. If FEMA receives a request to examine or copy this information, FEMA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and FEMA's FOIA regulation on confidential commercial information found at 44 CFR 5.57.

Instructions: All submissions received must include the agency name and Docket ID (FEMA–2008–0001). Unless the comment or material is submitted using the method provided above in ''Handling of Confidential or Proprietary Information Submitted in Public Comments,'' all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

Viewing Comments and Documents: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for Docket ID FEMA–2008–0001. Submitted comments may also be inspected at Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 835, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Deputy Assistant Administrator, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3429 (Phone), (202) 646–3445 (facsimile), or *Edward.Connor@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the authority of sections 1304 and 1345 of the National Flood Insurance Act of 1968, Public Law 90–448, 82 Stat. 476, as amended (42 U.S.C. 4011, 4081), the Federal Emergency Management Agency (FEMA) provides insurance protection against flood damage to homeowners, businesses, and others by means of the National Flood Insurance Program (NFIP). The sale of flood insurance is largely implemented by private insurance companies that participate in the NFIP Write-Your-Own (WYO) program. Through the WYO program, insurance companies enter into agreements with FEMA to sell and service flood insurance policies and adjust claims after flood losses.

Under the WYO program, 88 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on the Financial Assistance/Subsidy Arrangement (Arrangement). The Arrangement is published at 44 CFR part 62, Appendix A and defines the duties and responsibilities of insurers that sell, service and market insurance under the WYO program. The Arrangement also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers. The Arrangement is renewed yearly through written agreement between the WYO Companies and FEMA.

II. Discussion of the Interim Rule

In this rule, FEMA makes three changes to the Arrangement. These changes either clarify existing practices or clarify how FEMA communicates certain information to WYO Companies.

1. Insurance Agent Training

Article II, section G. 3., is being added to address the WYO Companies' cooperation in helping ensure that agents writing flood insurance under the NFIP avail themselves of the training opportunities needed to meet the minimum NFIP training requirements called for in section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264, 118 Stat. 733 (42 U.S.C. 4011 note) (the ''BBB Act''). The new section of the Arrangement will not affect the training and education requirements, which are established by the States, but merely integrates WYO Companies into the effort to ensure agents meet those requirements. The new section commits the WYO Companies to notify their agents of the requirement to comply with State regulations regarding flood insurance agent education, notify them of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs. Although WYO Companies are already undertaking these efforts, they are being added to the Arrangement to formalize the commitment.

2. Payment of Claims

Article III, section D. 1. of the Arrangement provides that loss payments under flood insurance policies are to be made by the WYO Company from Federal funds retained in the bank account(s) established under Article II, section E., and, if such funds are depleted, from Federal funds derived by drawing against the Letter of Credit established pursuant to Article IV. WYO Companies have sought clarification as to what would occur following a large scale flooding event if there are no funds available in the National Flood Insurance Fund (NFIF) to be drawn down through the company letter of credit.

Although the seventh ''Whereas'' clause in Article I already states that the Federal Treasury will back all flood policy claim payments by the Company, FEMA is revising Article VII, section A. to provide additional clarification that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit. As will be discussed in more depth below, in certain heavy loss years, the potential exists for the NFIP to exhaust its authority to borrow funds from the Treasury to pay claims. In such an event, there may be a period of time during which no funds are available in the Treasury until the Congress takes

action to either increase the program's borrowing authority, or appropriate funds to relieve the debt. This interim rule revises Article VII, section A. to provide that in such circumstances, the Federal Insurance Administrator will suspend the NFIP's payment of claims until funds are again available in the Treasury, and that the WYO Companies are not required to pay claims from their own funds in the event of such a suspension.

3. Unallocated Loss Adjustment Expense Schedule

FEMA is revising Article III, section C.1. of the Arrangement which deals with the Unallocated Loss Adjustment Expense (ULAE) for which WYO Companies receive reimbursement under the Arrangement. At present, the ULAE rate is an expense reimbursement of 3.3 percent of the incurred loss (except that it does not include ''incurred but not reported''). The effect of this rule is to remove the ULAE compensation percentage from the Arrangement. Instead, the percentage will now be communicated by FEMA to the WYO Companies through a ULAE Schedule.

As currently written, the ULAE compensation rate is one of only a few compensation rates explicitly spelled out in the Arrangement. The WYO Allocated Loss Adjustment Expense Fee Schedule (also called the Adjuster fee schedule) was at one time also in the Arrangement, but was removed because it changed frequently (61 FR 37687). Similarly, the total WYO Allowance was once contained in the Arrangement. The WYO Allowance was a combination of a 15 percent agency commission rate and an operating expense rate. Because the operating expense portion of that figure changed from year-to-year, the operating expense portion of that figure was removed (64 FR 27705). In the Fiscal Year 2007 Arrangement, the only fixed compensation rates were the agency commission rate of 15 percent, a 2 percent marketing incentive, and the 3.3 percent ULAE.

Until now the ULAE has not changed. Pursuant to this rulemaking, however, the 3.3 percent fixed rate will be removed and, the ULAE compensation rate will be subject to change. Therefore, it makes sense to treat it in the same manner as the Adjuster fee schedule and the WYO Allowance by releasing it in an annual fee schedule. This will allow FEMA to adjust the rate as needed to reflect the actual expenses incurred by the WYO Companies.

In the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005, FEMA became aware that while the ULAE compensation percentage is equitable for most loss years, it exposes the Federal Government to an excessive amount of reimbursement in loss years that reach a catastrophic level of losses. ULAE is intended to cover those claim handling expenses that are not associated with specific claims, such as maintaining the home office claims staff and establishing and running on-site claims field offices. The 3.3 percent rate functioned equitably during most years of the NFIP, under-compensating companies moderately in light loss years, while providing slightly more compensation in heavier loss years, but averaging out to an appropriate level. However, as FEMA experienced after Hurricane Katrina, the 3.3 percent schedule greatly exceeds the companies' actual ULAE out-of-pocket expenses in catastrophic loss years.

In an ''average'' loss year, the NFIP pays out approximately $16.8 million in ULAE ($302,775,669/18 years), while a single catastrophic event (Hurricane Katrina) resulted in over $613 million in ULAE payments. The data from 1987 to 2007 used to generate these figures is available in the public docket for this rulemaking. Generally, ULAE is expected to increase as claims payout increases. That is, ULAE expenses for the WYO Companies should be larger during heavy loss years. However, the ratio of ULAE to losses (either paid losses or incurred losses) is not constant.

For example, if paid losses increase ten-fold, the increase in ULAE expenditures (the administrative expense associated with processing each claim) will not also increase ten-fold. However, under the Arrangement, the ULAE reimbursement was a set 3.3 percent of the incurred loss. In an average year, claims tend to range between $15,000 and $30,000. So, for an average $30,000 insurance claim the ULAE reimbursement of 3.3 percent would be $990 per claim. However, claims from Hurricane Katrina, averaged around $90,000, so the ULAE reimbursement of 3.3 percent jumped to $2,970 per claim. When entering the realm of certain catastrophic flooding events like Hurricane Katrina, WYO Companies could benefit somewhat from the economy of scale.

To confirm this, FEMA sought data from the Institute for Business and Home Safety (IBHS), a nonprofit organization of insurers and reinsurers that conduct business in the United States or reinsure risks located in the United States. IBHS submitted a voluntary data call for unallocated loss figures related to Hurricane Katrina to the insurance companies on its flood subcommittee. FEMA received consolidated data from five of the companies.

COMPANIES A THRU E

	2005	2006	2005–2006
Direct Incurred Losses	$12,130,920,519	$304,991,844	$12,435,912,362
Direct ULAE Incurred	$328,235,999	$(17,947,595)	$310,288,405
Percentage	2.71	−5.88	2.50

The figures above reflect the amount of Direct Incurred Losses that were paid out to policyholders for flood loss. The Direct ULAE Incurred is the actual amount of cost that the WYO Companies incurred to process the claims. In 2005, the companies expended $328,235,999 which was 2.71 percent of the overall amount paid out. In contrast, in 2006, the companies actually saved $17,947,595, which is a negative 5.88 percent of the amount paid to insureds. The FY2006 cost savings was a result of efficiencies in scale resulting from the realization of the cost in FY2005. Because the losses in both years are attributed to Hurricane Katrina, FEMA has aggregated the figures which show an overall actual cost to the WYO Companies for their ULAE to be 2.5 percent of the incurred losses for a catastrophic event. This is in contrast to the 3.3 percent that the WYO Companies were actually paid under the terms of the Arrangement.

FEMA has considered four primary alternatives to the fixed 3.3 percent rate:

A. Status quo. This is an unacceptable position due to the inflated ULAE payments to the WYO Companies that occur after catastrophic events like Hurricane Katrina.

B. Straight reduction to the ULAE formula from the current 3.3 percent to

a number that is more equitable for catastrophic years. While this would solve the problem for catastrophic years, it would greatly under-compensate the WYO Companies for the great preponderance of ''routine'' loss years. This would cause the companies to question their continued participation in the program and could greatly impact the long-term effectiveness of the program.

C. A blend of A and B that would maintain the current ULAE schedule of 3.3 percent of incurred losses for non-catastrophic loss years, while providing a lower ULAE rate for losses in excess of a specified threshold. While this approach has a certain appeal, as FEMA explored this option the formula quickly became very complicated as FEMA tried to adapt the formula so that it could be applied at the individual company level, taking into account the difference in what a catastrophic loss year would look like for a large company versus smaller geographically concentrated companies. It also had to be flexible enough to appropriately limit ULAE compensation for catastrophes where the loss payments span fiscal years. In short, the formula quickly grew so complicated that it would be difficult to administer.

D. Providing the ULAE reimbursement for companies to be based on a combination of a percentage of written premiums and a percentage of incurred loss. Shifting a portion of the ULAE compensation to be based on written premium would allow the companies a more equitable vehicle to cover their fixed expenses—such as home office claims staff—that are incurred every year whether a light loss year or a catastrophic loss year. However, under such an approach the appropriate percentage of written premium would probably vary over time depending upon the policy base and the premium adequacy of the NFIP. For example, as the current discounted premium (commonly referred to as ''subsidized premiums'') is addressed through aggressive rate increases, the NFIP's written premium would increase without an associated increase in the WYO Companies' fixed expenses.

FEMA currently favors splitting the ULAE compensation between premium and incurred loss as described in alternative D. However, to assure that the ULAE Fee Schedule can be easily adjusted to reflect needed readjustments over time, the ULAE percentage should be removed from the Arrangement and handled similarly to the Adjuster Fee Schedule and WYO Allowance.

Transmitting the ULAE rate through a Fee Schedule will align it with the method that FEMA uses to transmit most of the other rates in the Agreement to WYO Companies and will allow FEMA to revise the rate more rapidly than through the formal rulemaking process. However, FEMA will not revise the rate during the Arrangement year. Pursuant to the terms of 44 CFR 62.23(i)(3), an established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year.

FEMA has extended the FY2007 Arrangement until such time that the FY2008 Arrangement and Schedules are finalized. Concurrent with the release of the FY2008 Arrangement, FEMA will release the FY2008 ULAE Schedule. In the new schedule, FEMA intends to move from a fixed rate system to a formula. FEMA used the data above to generate the new ULAE formula which is expected to be 1 percent of the Written Premium plus 1.5 percent of the Incurred Loss. FEMA used data from 1985 to 2007 to compare ULAE payments under the 3.3 percent framework versus this new formula and found the difference to be negligible in routine loss years. From 1985 to 2007, excluding 2005 and 2006, the total (not annual) difference is an increase of approximately $14 million. Using data from 2005–2006, which are the catastrophic Katrina years, the difference is a total reduction of approximately $300 million. A chart depicting this data is available in the public docket for this rulemaking.

Although this rulemaking is focused on the manner in which the ULAE formula is communicated to the WYO Companies, and not the actual ULAE rate itself, FEMA seeks data to use in its efforts to revise the formula, and suggestions for ways to tailor the formula to ensure that it will accurately reimburse WYO Companies for their actual loss. WYO Companies are encouraged to submit actual ULAE data during the comment period of this rule to assist FEMA in continuing to refine the formula. Comments that include trade secrets, confidential commercial or financial information should be submitted using the methods described above in the ''Handling of Confidential or Proprietary Information Submitted in Public Comments'' portion of the **ADDRESSES** caption of this preamble.

III. Regulatory Requirements

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 553, and 44 CFR 1.12, provides an exception from the standard notice and comment rulemaking procedures where the agency for good cause finds the procedures for comment and response contrary to public interest. The rapid implementation of this rule is in the best interest of the public, as delay could overwhelm the NFIP should a catastrophic disaster occur.

Although catastrophic loss events like Katrina are relatively infrequent events, the probability of another storm of similar magnitude remains the same for this year. Research has shown that there has been a significant increase in high-latitude cyclone frequency, with an increase in storm intensity. (''Trends in Northern Hemisphere Surface Cyclone Frequency and Intensity'', Gregory J. McCabe, Martyn P. Clark and Mark C. Serreze, American Meterological Society, June 15, 2001.) There has also been an increase of more than 30 percent in the modeled frequency of major hurricanes making landfall in the United States, which accounts for current elevated levels of hurricane activity in the Atlantic basin that are expected to persist for at least the next five years. Although experts hold different climatological perspectives on the underlying causes of elevated hurricane activity, warmer temperatures are expected to result in high activity in the Atlantic basin, leading to a greater potential for hurricanes to make landfall at higher intensities. (''Insurance Risk Models Rise with Elevated Storm Frequency, Severity'' Environment News Service, April 13, 2006.)

Furthermore, hurricanes are not the only cause of floods. Catastrophic flooding can occur at anytime of the year. If a catastrophic event occurs before FEMA is able to revise the ULAE figure it could cause a financial hardship to the American taxpayer as there would be a drain on the NFIP funds that would not have occurred if the change in the ULAE was in place at the time of the event. After Hurricane Katrina, the NFIP was forced to borrow $17.31 billion from the Federal Treasury. If an event were to occur, the program's debt to the Treasury would only increase. Since a catastrophic flooding event has the possibility of happening at any time, any delay in implementing this rule puts the risk of financial hardship in the realm of possibility.

The program has been fortunate to have had two years in a row (2006 and 2007), in which the United States has not been hit with a large disaster; however, it is foolish to expect that such calm years will continue. Spurred by the constant threat of flood hazards, FEMA has been reviewing the NFIP to evaluate areas in which the program is inefficient. One area addressed is the ULAE rate. As discussed above, the

fixed 3.3 percent ULAE rate established in the Arrangement is not aligned with the actual expenses incurred by WYO Companies in processing claims. If a catastrophic disaster or any disaster resulting in more than $3 million in losses hits before this rule goes into effect, it could overwhelm the NFIP. This rule is intended to reduce inefficiency in the NFIP and properly allocate relatively scarce resources to those in need.

FEMA has not considered these changes to the Arrangement in a vacuum. In the summer of 2007 FEMA met with IBHS, a nonprofit organization of insurers and reinsurers that conduct business in the United States or reinsure risks located in the United States. Forty-three of the 88 WYO companies are members of IBHS and those 43 companies write 85 percent of the WYO policies. The purpose of that meeting was to discuss the possibility of removing the fixed ULAE rate and methods that could be used in its place to more appropriately reimburse the actual expenses incurred by WYO Companies. IBHS provided helpful ideas, many of which are discussed above in the ''Discussion of the Interim Rule'' section. In those discussions, IBHS did not oppose the removal of the ULAE percentage from the text of the Arrangement or the revision of the ULAE formula.

FEMA believes it is contrary to the public interest to delay the benefits of this rule. In accordance with the APA, 5 U.S.C. 553(b)(B), for the reasons cited above FEMA finds that there is good cause for the interim final rule to be published without prior public comment FEMA, however, values public input to the regulatory process, and for this reason we are inviting post-effective-date comments on this interim rule. We may change this rule as a result of the comments we receive.

Congressional Review of Agency Rulemaking

FEMA has sent this interim final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801–808. As discussed in depth below in the Executive Order 12866 analysis, this rule is not a ''major rule'' within the meaning of that Act and will not result in an annual effect on the economy of $100,000,000 or more. Moreover, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor does FEMA expect that it will have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This rule is intended to revise the Arrangement between the WYO Companies and FEMA to encourage agents writing flood insurance under the NFIP to avail themselves of the training opportunities needed to meet the minimum NFIP training requirements, to clarify that there is no requirement that WYO Companies use their own funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit, and to change the method in which FEMA communicates the ULAE rate to the WYO Companies. These changes are intended to improve the Arrangement and allow FEMA to run the NFIP in a more efficient and reasonable manner.

Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866 (58 FR 51735, Oct. 4, 1993). This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866; therefore, OMB has not reviewed it under that Order.

As explained in this preamble, the first change to the Arrangement involves adding section G.3. to Article II. Section G.3. clarifies a WYO Company's cooperation in helping market the NFIP flood insurance policy, including ensuring that property insurance agents writing flood insurance under the NFIP avail themselves of the training opportunities needed to meet the minimum NFIP training requirements called for in section 207 of the Flood Insurance Reform Act of 2004. As insurance companies, these entities are expected to ensure that agents who provide insurance to the public understand the policies they provide. Training agents in the content of policies they provide is a necessary and typical part of marketing any insurance policy. These are efforts WYO Companies are already undertaking.

Next, in Article VII of the Arrangement, FEMA revises section A. to clarify for WYO Companies that, as has always been the case, WYO Companies do not have to use company funds to pay NFIP claims when there are no funds available in the NFIF to be drawn down through the company letter of credit. In certain heavy loss years, the potential exists for the NFIF to exhaust its authority to borrow funds from the Treasury to pay claims. In such an event, there may be a period of time during which no funds are available in the Treasury until the Congress either takes action to increase the program's borrowing authority, or appropriates funds to relieve the debt. The change made to the Arrangement in this rule is consistent with past practices of the NFIP, clarifies that the practice will continue in the future, and has no monetary impact.

Finally, this rule revises section C.1. of Article III, to remove explicit reference to the 3.3 percent ULAE compensation percentage in the Arrangement to allow FEMA added flexibility in adjusting the rate as needed to best align it to the actual expenses incurred by the WYO Companies. Instead, the ULAE rate will be communicated by FEMA to the WYO Companies through a Fee Schedule. The ULAE compensation rate will be communicated to the WYO Companies in the same manner that other forms of its compensation have been communicated. This rule does not change the ULAE rate, only the way it is communicated; therefore, there is no monetary effect from this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) mandates that an agency conduct a RFA analysis when an agency is ''required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule * * *'' 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). Good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

National Environmental Policy Act

FEMA's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. The changes made in this regulation constitute action to enforce Federal, State or local codes, standards or regulations. This rulemaking will not have a significant effect on the human environment and, therefore, neither an environmental assessment nor an

environmental impact statement are required.

Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. The changes in this rule affect the contractual relationship between FEMA and WYO Companies. Participation as a WYO Company is voluntary and does not affect State policymaking discretion. In accordance with Section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. This rule does not impose any new reporting or recordkeeping requirements, nor does it revise information collection requirements currently approved under the Paperwork Reduction Act of 1995.

Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Though this rule will not result in such an expenditure, FEMA does discuss the effects of this rule elsewhere in this preamble.

Moreover, because this rule addresses a pre-existing Arrangement between FEMA, FIA, and WYO Companies it does not impose any additional enforceable duty beyond that already agreed to. Participation as a WYO Company is voluntary and does not affect State policymaking discretion. Accordingly, this rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA believes that no action under this rule will have a disproportionately high or adverse effect on human health or the environment. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

Executive Order 13045, Protection of Children

FEMA has analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this rule under Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000). This 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.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988) as supplemented by Executive Order 13406, ''Protecting the Property Rights of the American People'' (71 FR 36973, June 28, 2006). This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, amend 44 CFR part 62, appendix A as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. In Appendix A to part 62, amend Article II to add section G.3. to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal

Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Article II—Undertaking of the Company

* * * * *

G. * * *

3. The Company shall notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

■ 3. In Appendix A to part 62, amend Article III to revise section C.1. to read as follows:

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

C. * * *

1. Unallocated loss adjustment expense shall be reimbursed to the

Company pursuant to a ''ULAE Schedule'' coordinated with the Company and provided by the Federal Insurance Administrator.

* * * * *

■ 4. In Appendix A to part 62, amend Article VII to revise section A. to read as follows:

Article VII—Cash Management and Accounting

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw. In the event that adequate Letter of Credit funding is not available to meet current Company obligations for flood policy claim payments issued, FIA shall direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Companies are not required to pay claims from their own funds in the event of such suspension.

* * * * *

Dated: March 28, 2008.

Harvey E. Johnson Jr.,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. E8–6898 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8019]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community no.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia: Floyd County, Unincorporated Areas.	510199	November 18, 1974, Emerg; September 29, 1989, Reg; April 16, 2008, Susp.	04/16/2008	04/16/2008.
Region IV				
South Carolina:				
Easley, City of, Pickens County	450167	March 4, 1974, Emerg; July 19, 1982, Reg; April 16, 2008, Susp.	.....do*	do.
Liberty, City of, Pickens County	450168	April 16, 1974, Emerg; June 25, 1976, Reg; April 16, 2008, Susp.	.....do	do.
Pickens, City of, Pickens County	450169	October 7, 1974, Emerg; June 25, 1976, Reg; April 16, 2008, Susp.	.....do	do.
Pickens County, Unincorporated Areas	450166	April 2, 1974, Emerg; July 19, 1982, Reg; April 16, 2008, Susp.	.....do	do.
Tennessee:				
Adams, City of, Robertson County	470159	November 26, 2003, Emerg; June 1, 2005, Reg; April 16, 2008, Susp.	.....do	do.
Brownsville, City of, Haywood County ..	470087	July 30, 1974, Emerg; March 4, 1988, Reg; April 16, 2008, Susp.	.....do	do.
Coopertown, Town of, Robertson County.	470423	September 15, 2003, Emerg; September 15, 2003, Reg; April 16, 2008, Susp.	.....do	do.
Haywood County, Unincorporated Areas.	470227	February 28, 1980, Emerg; September 1, 1986, Reg; April 16, 2008, Susp.	.....do	do.
Henderson County, Unincorporated Areas.	470088	May 17, 1990, Emerg; May 17, 1990, Reg; April 16, 2008, Susp.	.....do	do.
Millersville, City of, Robertson County ..	470388	August 30, 1982, Emerg; June 15, 1984, Reg; April 16, 2008, Susp.	.....do	do.
Portland, City of, Robertson County	470187	February 14, 1975, Emerg; August 4, 1987, Reg; April 16, 2008, Susp.	.....do	do.
Robertson County, Unincorporated Areas.	470158	May 28, 1982, Emerg; June 15, 1984, Reg; April 16, 2008, Susp.	.....do	do.
Scotts Hill, Town of, Henderson County	470322	January 17, 1980, Emerg; July 17, 1986, Reg; April 16, 2008, Susp.	.....do	do.
Springfield, City of, Robertson County ..	470163	May 15, 1975, Emerg; September 30, 1983, Reg; April 16, 2008, Susp.	.....do	do.
White House, City of, Robertson County.	470339	May 13, 1975, Emerg; June 1, 1988, Reg; April 16, 2008, Susp.	.....do	do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 26, 2008.

David I. Maurstad,

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

[FR Doc. E8–6908 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Polk County, North Carolina and Incorporated Areas Docket No.: FEMA–D–7802			
Bear Creek	At the confluence with North Pacolet River	+1,395	Unincorporated Areas of Polk County.
	Approximately 870 feet upstream of Charleston Harbor Drive.	+1,564	
Big Fall Creek	At the confluence with North Pacolet River	+1,102	Unincorporated Areas of Polk County.
	Approximately 1,270 feet upstream of railroad	+1,682	
Brights Creek	At the confluence with Green River	+922	Unincorporated Areas of Polk County.
	Approximately 700 feet upstream of the confluence of Rash Creek.	+937	
Britten Creek	At the confluence with Green River	+838	Unincorporated Areas of Polk County.
	Approximately 170 feet upstream of Lake Adger Road (State Road 1138).	+1,108	
Broad River	On the upstream side of Poors Ford Road (State Road 1004).	+732	Unincorporated Areas of Polk County.
	Approximately 0.6 mile upstream of the confluence of Green River.	+739	
Collinsville Creek	At the confluence with Hughes Creek	+858	Unincorporated Areas of Polk County.
	Approximately 1.1 miles upstream of Landrum Road (State Road 1520).	+996	
Collinsville Creek Tributary 4	At the confluence with Collinsville Creek	+962	Unincorporated Areas of Polk County.
	Approximately 0.5 mile upstream of the confluence with Collinsville Creek.	+982	
Green River	At the confluence with Broad River	+736	Unincorporated Areas of Polk County.
	At the Polk/Henderson County boundary	+1,442	
Green River Tributary 17	At the confluence with Green River	+784	Unincorporated Areas of Polk County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 0.5 mile upstream of the confluence with Green River.	+798	
Green River Tributary 29	At the confluence with Green River	+810	Unincorporated Areas of Polk County.
	Approximately 0.6 mile upstream of the confluence with Green River.	+868	
Green River Tributary 30	At the confluence with Green River	+817	Unincorporated Areas of Polk County.
	Approximately 0.8 mile upstream of the confluence with Green River.	+839	
Green River Tributary 36	At the confluence with Green River	+835	Unincorporated Areas of Polk County.
	Approximately 0.4 mile upstream of the confluence with Green River.	+854	
Green River Tributary 38	At the confluence with Green River	+844	Unincorporated Areas of Polk County.
	Approximately 1,220 feet upstream of Katydid Lane	+856	
Green River Tributary of Tributary 30.	At the confluence with Green River Tributary 30	+817	Unincorporated Areas of Polk County.
	Approximately 0.4 mile upstream of the confluence with Green River Tributary 30.	+844	
Greens Creek	At the confluence with White Oak Creek	+745	Unincorporated Areas of Polk County.
	Approximately 350 feet upstream of East Green Creek Drive (State Road 1340).	+772	
Hensons Creek	At the Rutherford/Polk County boundary	+823	Unincorporated Areas of Polk County.
	Approximately 60 feet upstream of the Polk/Rutherford County boundary.	+824	
Hooper Creek	Approximately 500 feet downstream of the most downstream North Carolina/South Carolina State boundary.	+811	Unincorporated Areas of Polk County.
	Approximately 320 feet upstream of Henderson Road (State Road 1525).	+1,034	
Horse Creek	At the confluence with North Pacolet River	+879	Unincorporated Areas of Polk County, Town of Columbus.
	Approximately 70 feet downstream of Three Bridges Drive	+2,594	
Hughes Creek	At the North Carolina/South Carolina State boundary	+803	Unincorporated Areas of Polk County.
	Approximately 270 feet upstream of Landrum Road (State Road 1520).	+894	
Joels Creek	At the confluence with North Pacolet River	+1,675	Unincorporated Areas of Polk County, City of Saluda.
	Approximately 0.7 mile upstream of Pearson Falls Road (State Road 1102).	+1,891	
Little Creek (into North Pacolet River).	At the confluence with North Pacolet River	+893	Unincorporated Areas of Polk County, Town of Tryon.
	Approximately 300 feet upstream of North Trade Street	+1,005	
Little Creek (into Vaughn Creek).	At the confluence with Vaughn Creek	+972	Town of Tryon.
	Approximately 1,020 feet upstream of Jervey Road	+1,022	
Little White Oak Creek	At the confluence with White Oak Creek	+838	Unincorporated Areas of Polk County.
	Approximately 550 feet upstream of NC Highway 9	+974	
Machine Creek	At the confluence with White Oak Creek	+827	Unincorporated Areas of Polk County.
	Approximately 500 feet upstream of U.S. Highway 74	+848	
Mill Creek (into White Oak Creek).	At the confluence with White Oak Creek	+755	Unincorporated Areas of Polk County.
	Approximately, 1,250 feet upstream of Coxe Road (State Road 1005).	+756	
North Pacolet River	At the North Carolina/South Carolina State boundary	+837	Unincorporated Areas of Polk County, Town of Tryon.
	Approximately 0.5 mile upstream of the confluence of Joels Creek.	+1,761	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
North Pacolet River Tributary 18.	At the confluence with North Pacolet River	+917	Unincorporated Areas of Polk County.
	Approximately 120 feet downstream of Howard Gap Road (State Road 1122).	+924	
North Pacolet River Tributary 20.	At the confluence with North Pacolet River	+935	Unincorporated Areas of Polk County.
	Approximately 300 feet upstream of Baker Road (State Road 1124).	+948	
Ostin Creek	At the confluence with Green River	+919	Unincorporated Areas of Polk County.
	Approximately 200 feet upstream of Cow Crossing Lane	+1,022	
Rash Creek	At the confluence with Brights Creek	+935	Unincorporated Areas of Polk County.
	Approximately 750 feet upstream of the confluence with Brights Creek.	+938	
South Branch Little White Oak Creek.	At the confluence with Little White Oak Creek	+876	Unincorporated Areas of Polk County.
	Approximately 2.3 miles upstream of NC Highway 9	+926	
Vaughn Creek	At the confluence with North Pacolet River	+889	Unincorporated Areas of Polk County, Town of Tryon.
	Approximately 630 feet upstream of the confluence of Little Creek (into Vaughn Creek).	+989	
Vaughn Creek Tributary 1	At the confluence with Vaughn Creek	+904	Town of Tryon.
	Approximately 0.8 mile upstream of Vaughn Street	+973	
Vaughn Creek Tributary 2	At the confluence with Vaughn Creek	+972	Town of Tryon.
	Approximately 850 feet upstream of Jervey Road	+997	
Walnut Creek	At the confluence with Green River	+802	Unincorporated Areas of Polk County.
	Approximately 60 feet upstream of NC Highway 9	+1,058	
Wheat Creek	At the confluence with Green River	+768	Unincorporated Areas of Polk County.
	Approximately 500 feet upstream of Ponder Road (State Road 1329).	+817	
White Oak Creek	At the confluence with Green River	+743	Unincorporated Areas of Polk County.
	Approximately 40 feet downstream of Smith Dairy Road (State Road 1528).	+902	
Wolfe Creek	At the confluence with North Pacolet River	+842	Unincorporated Areas of Polk County.
	Approximately 460 feet upstream of Interstate Highway 26	+877	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Saluda
Maps are available for inspection at Saluda City Hall, 6 East Main Street, Saluda, North Carolina.

Town of Columbus
Maps are available for inspection at Columbus Town Hall, 95 Walker Street, Columbus, North Carolina.

Town of Tryon
Maps are available for inspection at Tryon City Hall, 301 North Trade Street, Tryon, North Carolina.

Unincorporated Areas of Polk County
Maps are available for inspection at the Polk County Planning Department, 40 Courthouse Street, Columbus, North Carolina.

Stanly County, North Carolina and Incorporated Areas
Docket Nos.: FEMA–D–7816 and FEMA–B–7733

Big Bear Creek	At the confluence with Long Creek	+295	Unincorporated Areas of Stanly County.
	Approximately 1,350 feet upstream of State Highway 49	+645	
Big Bear Creek Tributary 1	At the confluence with Big Bear Creek	+369	Unincorporated Areas of Stanly County.
	Approximately 0.5 mile upstream of the confluence with Big Bear Creek.	+384	
Big Bear Creek Tributary 2	At the confluence with Big Bear Creek	+395	Unincorporated Areas of Stanly County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 0.6 mile upstream of the confluence with Big Bear Creek.	+426	
Big Bear Creek Tributary 3	At the confluence with Big Bear Creek	+441	Unincorporated Areas of Stanly County.
	Approximately 710 feet upstream of Peaceful Lane	+483	
Big Bear Creek Tributary 4	At the confluence with Big Bear Creek	+580	Unincorporated Areas of Stanly County.
	Approximately 1.0 mile upstream of Ridenhour Road (State Road 1433).	+606	
Big Cedar Creek	At the confluence with Rocky River	+227	Unincorporated Areas of Stanly County.
	Approximately 1,240 feet upstream of West Whitley Street (State Road 1933).	+283	
Big Cedar Creek Tributary 1	At the confluence with Big Cedar Creek	+229	Unincorporated Areas of Stanly County.
	Approximately 0.4 mile upstream of the confluence with Big Cedar Creek.	+241	
Camp Branch	At the confluence with Rocky River	+449	Unincorporated Areas of Stanly County.
	Approximately 60 feet downstream of Tite Road (State Road 1152).	+455	
Cedar Creek	At the confluence with Pee Dee River (Lake Tillery)	+279	Unincorporated Areas of Stanly County, Town of Norwood.
	Approximately 0.6 mile upstream of Railroad	+422	
Coldwater Branch	At the confluence with Rocky River	+327	Unincorporated Areas of Stanly County.
	Approximately 340 feet upstream of Old Sandbar Road (State Road 1100).	+330	
Coopers Creek	At the confluence with Rocky River	+254	Unincorporated Areas of Stanly County.
	Approximately 1.1 miles upstream of Old Davis Road (State Road 1943).	+328	
Curl Tail Creek	At the confluence with Riles Creek	+572	Unincorporated Areas of Stanly County, Town of Richfield, Village of Misenheimer.
	Approximately 510 feet downstream of Merner Terrace	+655	
East Prong Rock Hole Creek	At the confluence with Rock Hole Creek	+488	Unincorporated Areas of Stanly County, Town of Stanfield.
	Approximately 0.5 mile upstream of West Stanly Street	+569	
Hardy Creek	At the confluence with Rocky River	+240	Unincorporated Areas of Stanly County.
	Approximately 150 feet upstream of the confluence of Ugly Creek.	+383	
Island Creek	At the confluence with Rocky River	+354	Unincorporated Areas of Stanly County, City of Locust.
	Approximately 1.1 miles upstream of Pless Mill Road (State Road 1136).	+537	
Island Creek Tributary 1	At the confluence with Island Creek	+368	Unincorporated Areas of Stanly County.
	Approximately 520 feet downstream of Drye-Hill Road (State Road 1120).	+412	
Island Creek Tributary 2	At the confluence with Island Creek	+388	Unincorporated Areas of Stanly County.
	Approximately 0.4 mile upstream of the confluence with Island Creek.	+412	
Jacks Branch	At the confluence with Rocky River	+252	Unincorporated Areas of Stanly County.
	Approximately 1.1 miles upstream of the confluence with Rocky River.	+281	
Jacobs Creek	At the confluence with Pee Dee River (Lake Tillery)	+279	Unincorporated Areas of Stanly County, City of Albemarle.
	Approximately 2.5 miles upstream of Indian Mound Road (State Road 1740).	+379	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Little Bear Creek (North)	At the confluence with Big Bear Creek	+470	Unincorporated Areas of Stanly County.
	Approximately 450 feet upstream of NC 73 Highway	+523	
Little Bear Creek (South)	At the confluence with Long Creek	+334	Unincorporated Areas of Stanly County.
	Approximately 1.7 miles upstream of Canton Road (State Road 1249).	+524	
Little Bear Creek (South) Tributary 1.	At the confluence with Little Bear Creek (South)	+417	Unincorporated Areas of Stanly County.
	Approximately 600 feet upstream of NC 24–27 Highway	+443	
Little Bear Creek (South) Tributary 2.	At the confluence with Little Bear Creek (South)	+452	Unincorporated Areas of Stanly County.
	Approximately 1,170 feet upstream of Canton Road (State Road 1249).	+510	
Little Cedar Creek	At the confluence with Rocky River	+226	Unincorporated Areas of Stanly County, Town of Norwood.
	Approximately 0.4 mile upstream of U.S. Highway 52	+266	
Little Creek (North)	At the confluence with Big Bear Creek	+444	Unincorporated Areas of Stanly County.
	Approximately 1,220 feet upstream of Old Concord Road (State Road 1236).	+551	
Little Creek (South)	At the confluence with Long Creek	+302	Unincorporated Areas of Stanly County.
	Approximately 900 feet upstream of Western Road (State Road 1959).	+425	
Little Long Creek	Approximately 450 feet downstream of Efird Street	+429	Unincorporated Areas of Stanly County, City of Albemarle, Town of New London.
	Approximately 1,480 feet upstream of Railroad	+569	
Little Meadow Creek	Approximately 1.1 miles downstream of State Highway 200.	+551	City of Locust.
	Approximately 1,200 feet downstream of Mauney Road (State Road 2625).	+581	
Little Mountain Creek	At the confluence with Mountain Creek	+384	Unincorporated Areas of Stanly County, Town of Badin.
	Approximately 1.1 miles upstream of Barnhardt Road (State Road 1545).	+588	
Long Creek	At the confluence with Rocky River	+284	Unincorporated Areas of Stanly County, City of Albemarle, Town of Richfield, Village of Misenheimer.
	Approximately 0.7 mile upstream of Matton Grove Church Road (State Road 1454).	+637	
Long Creek Tributary 1	Approximately 500 feet upstream of the confluence with Long Creek.	+484	Unincorporated Areas of Stanly County.
	Approximately 1,170 feet upstream of Pennington Road (State Road 1401).	+509	
Long Creek Tributary 2	Approximately 1,500 feet upstream of the confluence with Long Creek.	+485	Unincorporated Areas of Stanly County.
	Approximately 0.9 mile upstream of the confluence with Long Creek.	+508	
Long Creek Tributary 3	At the confluence with Long Creek	+530	Unincorporated Areas of Stanly County.
	Approximately 650 feet downstream of Sunnybrook Road	+553	
Meadow Creek	At the upstream side of Reed Mine Road (State Road 1100).	+495	City of Locust.
	Approximately 0.9 mile upstream of Reed Mine Road (State Road 1100).	+511	
Melchor Branch	At the confluence with Little Long Creek	+448	City of Albemarle.
	Approximately 480 feet upstream of North Sixth Street	+486	
Melchor Branch Tributary 1	Just upstream of Fox Run Drive	+524	City of Albemarle.
	Approximately 160 feet upstream of Montgomery Avenue	+557	
Melchor Branch Tributary 1A	At the confluence with Melchor Branch Tributary 1	+536	City of Albemarle.
	Approximately 550 feet upstream of Montgomery Avenue	+554	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Mountain Creek	At the confluence with Pee Dee River	+284	Unincorporated Areas of Stanly County, City of Albemarle.
	Approximately 60 feet upstream of State Highway 740	+708	
Mountain Creek Tributary 1	At the confluence with Mountain Creek	+377	Unincorporated Areas of Stanly County.
	Approximately 300 feet upstream of Stony Hill Road (State Road 1729).	+407	
Pee Dee River	At the Anson/Montgomery/Richmond/Stanly County boundary.	+220	Unincorporated Areas of Stanly County, Town of Norwood.
	At the confluence of Yadkin River and Uwharrie River	+287	
Pee Dee River Tributary 6	At the confluence with Pee Dee River	+229	Unincorporated Areas of Stanly County.
	Approximately 150 feet upstream of Railroad	+264	
Pole Bridge Creek	At the confluence with Little Bear Creek (North)	+477	Unincorporated Areas of Stanly County.
	Approximately 0.7 mile upstream of Lambert Road (State Road 1231).	+570	
Poplin Creek	At Aquadale Road	+429	City of Albemarle.
	Approximately 630 feet upstream of Dr. Martin Luther King Jr. Drive.	+501	
Poplin Creek Tributary 1	Approximately 250 feet upstream of the confluence with Poplin Creek.	+428	City of Albemarle.
	Approximately 300 feet upstream of East North Street	+483	
Pumpkin Creek	At the confluence with Rocky River	+426	Unincorporated Areas of Stanly County.
	Approximately 0.5 mile upstream of the confluence with Rocky River.	+444	
Ramsey Creek	At the confluence with Big Bear Creek	+369	Unincorporated Areas of Stanly County.
	Approximately 1,270 feet upstream of Canton Road (State Road 1249).	+543	
Riles Creek	Approximately 500 feet upstream of Rowan/Stanly County boundary.	+572	Unincorporated Areas of Stanly County, Town of Richfield.
	Approximately 1.3 miles upstream of Willie Road	+590	
Rock Creek	At the upstream side of Rock Creek Park Drive	+430	Unincorporated Areas of Stanly County, City of Albemarle.
	Approximately 1,000 feet upstream of Railroad	+446	
Rock Hole Branch	At the confluence with Rock Hole Creek	+458	Unincorporated Areas of Stanly County, Town of Stanfield.
	Approximately 2.3 miles upstream of the confluence with Rock Hole Creek.	+544	
Rock Hole Creek	At the confluence with Rocky River	+367	Unincorporated Areas of Stanly County, Town of Stanfield.
	Approximately 480 feet upstream of Polk Ford Road	+489	
Rocky River	At the confluence with Pee Dee River	+220	Unincorporated Areas of Stanly County.
	Approximately 0.8 mile upstream of the confluence of Muddy Creek.	+481	
Rocky River Tributary 1	At the confluence with Rocky River	+220	Unincorporated Areas of Stanly County.
	Approximately 0.8 mile upstream of the confluence with Rocky River.	+245	
Rocky River Tributary 3	At the confluence with Rocky River	+237	Unincorporated Areas of Stanly County.
	Approximately 710 feet upstream of Loop Road (State Road 1982).	+248	
Rocky River Tributary 8	At the confluence with Rocky River	+350	Unincorporated Areas of Stanly County.
	Approximately 0.5 mile upstream of the confluence with Rocky River.	+364	
Running Creek	At the confluence with Big Bear Creek	+467	Unincorporated Areas of Stanly County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 0.8 mile upstream of Five Point Road (State Road 1206).	+540	
Scaly Bark Creek	At the confluence with Long Creek	+384	Unincorporated Areas of Stanly County.
	Approximately 0.9 mile upstream of St. Martin Road (State Road 1963).	+416	
South Ugly Creek	At the confluence with Hardy Creek	+268	Unincorporated Areas of Stanly County.
	Approximately 1.1 miles upstream of the confluence with Hardy Creek.	+311	
Stony Run	At the confluence with Big Bear Creek	+339	Unincorporated Areas of Stanly County, Town of Oakboro, Town of Red Cross.
	Approximately 140 feet upstream of Running Creek Church Road (State Road 1134).	+636	
Stony Run Tributary 1	At the confluence with Stony Run	+445	Unincorporated Areas of Stanly County.
	Approximately 1,120 feet upstream of Liberty Hill Church Road (State Road 1115).	+469	
Town Creek	At the confluence with Little Long Creek	+448	Unincorporated Areas of Stanly County, City of Albemarle, Town of New London.
	Approximately 1,890 feet upstream of Henderson Road (State Road 1436).	+530	
Town Creek Tributary 1	At the confluence with Town Creek	+516	Unincorporated Areas of Stanly County.
	Approximately 1,060 feet upstream of Burris-Burleson Road (State Road 1437).	+546	
Ugly Creek	At the confluence with Hardy Creek	+380	Unincorporated Areas of Stanly County.
	Approximately 1,200 feet upstream of South Stanly School Road (State Road 1922).	+407	
Yadkin River	At the confluence with Pee Dee River and Uwharrie River	+287	Unincorporated Areas of Stanly County, Town of Badin.
	Approximately 500 feet downstream of State Highway 49/8.	+566	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Albemarle
Maps are available for inspection at City of Albemarle Engineering Department, 157 North Second Street, Albemarle, North Carolina.

City of Locust
Maps are available for inspection at Locust City Hall, 211 Town Centre, Locust, North Carolina.

Town of Badin
Maps are available for inspection at Badin Town Hall, 36 Falls Road, Badin, North Carolina.

Town of Norwood
Maps are available for inspection at Norwood Town Hall, Zoning Department, 116 South Main Street, Norwood, North Carolina.

Town of Oakboro
Maps are available for inspection at Oakboro Town Hall, 109A North Main Street, Oakboro, North Carolina.

Town of Red Cross
Maps are available for inspection at Red Cross Town Clerk's Residence, 680 West Red Cross Road, Oakboro, North Carolina.

Town of Richfield
Maps are available for inspection at Richfield Town Hall, 138 Highway 49 North, Richfield, North Carolina.

Town of Stanfield
Maps are available for inspection at Stanfield Town Hall, 203 West Stanly Street, Stanfield, North Carolina.

Unincorporated Areas of Stanly County
Maps are available for inspection at Stanly County Planning and Zoning Department, 1000 North First Street, Albemarle, North Carolina.

Village of Misenheimer
Maps are available for inspection at Misenheimer Town Hall, 48384 U.S. Highway 52 North, Misenheimer, North Carolina.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Unicoi County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–7731			
Nolichucky River	Approximately 1,400 feet downstream of the confluence of South Indian Creek.	+1638	City of Erwin, Unincorporated Areas of Unicoi County.
	Approximately 2,280 feet upstream of the Chestoa Pike Bridge.	+1690	
North Indian Creek	Approximately 1,170 feet downstream of the Interstate 26 Bridge.	+1832	Town of Unicoi, Unincorporated Areas of Unicoi County.
	Approximately 100 feet downstream of the confluence of Scioto Creek.	+1920	
South Indian Creek	Approximately 440 feet upstream of the confluence with Nolichucky River.	+1641	Unincorporated Areas of Unicoi County, City of Erwin.
	Approximately 290 feet upstream of the Sandy Bottom Road Bridge.	+1680	

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# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Erwin
Maps are available for inspection at Erwin Town Hall, 211 North Main Avenue, Erwin, TN 37650.

Town of Unicoi
Maps are available for inspection at Unicoi Town Hall, 3600 Unicoi Drive, Unicoi, TN 37692.

Unincorporated Areas of Unicoi County
Maps are available for inspection at Post Office Box 169, Erwin, TN 37650–0169.

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

Dated: March 17, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–6909 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
La Paz County, Arizona and Incorporated Areas Docket No.: FEMA–B–7456			
Arroyo La Paz	Approximately 200 feet above confluence with North Levee Channel.	+288	La Paz County (Unincorporated Areas).
	Approximately 75 feet upstream of Parker-Poston Road	+306	
Cinnabar Wash	Approximately 100 feet above confluence with Colorado River.	+264	La Paz County (Unincorporated Areas).
	Approximately 1.00 miles above confluence with Colorado River.	+326	
Colorado River	Approximately 13.5 miles upstream of Adobe Lake	+202	La Paz County (Unincorporated Areas).
	Approximately 0.38 mile downstream of Parker Dam	+379	Parker, Town of Colorado River Indian Reservation.
Ehrenberg Wash	Approximately 300 feet downstream of Parker-Poston Road.	+282	La Paz County (Unincorporated Areas).
	Approximately 0.43 mile upstream of Parker-Poston Road	+332	
Gonzales Wash	Approximately 115 feet above confluence with North Levee Channel.	+280	La Paz County (Unincorporated Areas).
	Approximately 50 feet upstream of Parker-Poston Road	+288	
Unnamed Stream 1	Approximately 125 feet above confluence with South Levee Channel.	+266	La Paz County (Unincorporated Areas).
	Approximately 1,560 feet upstream of Parker-Poston Road.	+302	
Unnamed Stream 2	Approximately 300 feet above confluence with South Levee Channel.	+280	La Paz County (Unincorporated Areas).
	Approximately 0.73 mile above confluence with South Levee Channel.	+340	
Unnamed Stream 3	Approximately 225 feet above confluence with South Levee Channel.	+282	La Paz County (Unincorporated Areas).
	Approximately 0.44 mile upstream of Parker-Poston Road	+334	
Unnamed Stream 4	Approximately 292 feet above confluence with North Levee Channel.	+288	La Paz County (Unincorporated Areas).
	Approximately 856 feet upstream of Parker-Poston Road	+316	
Shallow Flooding	West of Parker-Poston Road to South of Colorado River Indian Tribe.	#2	La Paz County (Unincorporated Areas).

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

La Paz County (Unincorporated Areas)

Maps available for inspection at: La Paz County Community Development Dept., 1112 Joshua Avenue, Parker, Arizona 85344.

Town of Parker

Maps available for inspection at: Parker Town Hall, 1314 11th Street Parker, AZ 85344.

Colorado River Indian Reservation

Yuma County, Arizona and Incorporated Areas Docket No.: FEMA–D–7642			
Colorado River	At the downstream county boundary	+94	Yuma County (Unincorporated Areas), Cities of Yuma and San Luis.
	At the upstream county boundary	+202	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Yuma County (Unincorporated Areas)

Maps available for inspection at the Yuma County Community Department of Development Services, 2351 West 26th Street, Yuma, Arizona.

City of Yuma

Maps available for inspection at the Yuma City Department of Development Services, One City Plaza, Yuma, Arizona.

City of San Luis

Maps available for inspection at the San Luis City Public Works Administration Office, 751 North 4th Avenue, San Luis, Arizona.

Riverside County, California and Incorporated Areas
Docket Nos.: FEMA–B–7742 and FEMA–D–7828

Colorado River	At the downstream corporate limits of Riverside County	+244	Colorado River Indian Tribe, Unincorporated Areas of Riverside County.
	At the upstream corporate limits of Riverside County	+338	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

Colorado River Indian Tribe

Maps available for inspection at the Colorado River Indian Tribal Offices, 26600 Mohave Road, Parker, Arizona.

Unincorporated Areas of Riverside County

Maps available for inspection at the Riverside County Flood Control District Office, 1995 Market Street, Riverside, California.

San Bernardino County, California and Incorporated Areas
Docket Nos.: FEMA–B–7742 and FEMA–D–7828

Colorado River	At the downstream corporate limits of San Bernardino County.	+338	City of Needles, Colorado River Indian Tribe, Fort Mojave Indian Tribe, Unincorporated Areas of San Bernardino County.
	At the upstream corporate limits of San Bernardino County.	+485	
Hooke Creek	At confluence with Fern Canyon	+4,877	Unincorporated Areas of San Bernardino County.
	Approximately 500 feet upstream of Hooke Road	+5,238	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Needles

Maps are available for inspection at Needles City Hall, 817 Third Street, Needles, California.

Colorado River Indian Tribe

Maps are available for inspection at Colorado River Indian Tribal Offices, 26600 Mohave Road, Parker, Arizona.

Fort Mojave Indian Tribe

Maps are available for inspection at Mohave Indian Tribal Offices, 500 Merriman Avenue, Needles, California.

Unincorporated Areas of San Bernardino County

Maps are available for inspection at San Bernardino County Public Works Department, 825 East Third Street, San Bernardino, California.

Middlesex County, Connecticut (All Jurisdictions)
Docket No.: FEMA–B–7746

Carr Brook	To approximately 1,130 feet upstream from Strickland Road.	+25	Town of Portland.
	From confluence with Connecticut River	+25	
Carr Brook Tributary A	From confluence with Carr Brook	+25	Town of Portland.
	To approximately 0.45 mile upstream of Bartlett Street	+25	
Chestnut Brook	From mouth at Mattabesset River	+23	Town of Cromwell.
	To approximately 40 feet upstream of Route 9	+23	
Coginchaug River	At confluence with Mattabesset River	+23	City of Middletown.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 450 feet upstream of State Route 66 (Washington Street).	+23	
Coles Road Brook	From mouth at Mattabesset River	+23	Town of Cromwell.
	To approximately 26 feet downstream of Route 372	+23	
Connecticut River	Approximately 1.17 miles downstream of confluence of Clark Creek.	+11	Town of Cromwell, City of Middletown, Town of East Haddam, Town of East Hampton, Town of Haddam, Town of Portland.
	Approximately 0.59 mile upstream of confluence of Hales Brook.	+25	
Cromwell Creek	From confluence with Connecticut River	+24	Town of Cromwell.
	To approximately 1,300 feet upstream of South Street	+24	
East Swamp Brook	At confluence with Swamp Brook	+23	City of Middletown.
	Approximately 350 feet upstream of Tiger Lane	+23	
Hales Brook	From confluence with Connecticut River	+25	Town of Portland.
	To approximately 0.76 mile upstream of confluence	+25	
Mattabesset River	At confluence with Connecticut River	+23	City of Middletown, Town of Cromwell.
	Approximately 500 feet downstream of Berlin Road	+23	
Mill Creek	At confluence with Connecticut River	+15	Town of Haddam.
	Approximately 1,200 feet upstream of Route 9A	+15	
Miner Brook	At confluence with Mattabesset River	+23	City of Middletown.
Moodus River	At confluence with Salmon River	+14	Town of East Haddam.
	At downstream side of Johnsonville Road	+14	
Ponset Brook	At confluence with Connecticut River	+17	Town of Haddam.
	Approximately 0.40 mile upstream of confluence with Connecticut River.	+17	
Reservoir Brook	From confluence with Connecticut River	+25	Town of Portland.
	To approximately 25 feet downstream of Route 17	+25	
Salmon River	At confluence with Connecticut River	+14	Town of Haddam, Town of East Haddam.
	At downstream side of Leesville Dam	+14	
Sawmill Brook	At confluence with Mattabesset River	+23	City of Middletown.
	Approximately 1,270 feet upstream of confluence with Mattabesset River.	+23	
Shunpike Creek	Mouth at Mattabesset River	+23	Town of Cromwell.
	To approximately 0.26 mile upstream of mouth at Mattabesset River.	+23	
Succor Brook	At confluence with Connecticut River	+12	Town of East Haddam.
	Approximately 125 feet upstream of Lumber Yard Road	+12	
Sumner Brook	At confluence with Connecticut River	+23	City of Middletown.
	At upstream side of State Routes 9 and 17 culvert	+23	
Swamp Brook	At confluence with Mattabesset River	+23	City of Middletown.
	At confluence of East Swamp and West Swamp Brooks	+23	
West Swamp Brook	At upstream side of Kaplan Drive	+23	City of Middletown.
	At confluence with Swamp Brook	+23	
Willow Brook	From mouth at Mattabesset River	+23	Town of Cromwell.
	To East View Drive	+23	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Middletown
Maps are available for inspection at City of Middletown Planner's Office, 245 deKoven Drive, Middletown, Connecticut.

Town of Cromwell
Maps are available for inspection at Town of Cromwell Planner's Office, 41 West Street, Cromwell, Connecticut.

Town of East Haddam
Maps are available for inspection at Town of East Haddam Planner's Office, 7 Main Street, East Haddam, Connecticut.

Town of East Hampton
Maps are available for inspection at Town of East Hampton Planning Administrator's Office, 20 East High Street, East Hampton, Connecticut.

Town of Haddam
Maps are available for inspection at Town of Haddam Engineer's Office, 30 Field Park Drive, Haddam, Connecticut.

Town of Portland
Maps are available for inspection at Town of Portland Planner's Office, 33 East Main Street, Portland, Connecticut.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Hillsborough County, Florida and Incorporated Areas Docket Nos.: FEMA–D–7686 and FEMA–B–7746			
Alderman Creek	At the confluence with Little Manatee River	+82	Hillsborough County (Unincorporated Areas).
	Approximately 2.4 miles upstream of Taylor Grill Road	+123	
Archie Creek	Approximately 200 feet downstream of 78th Street South	+11	Hillsborough County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Interstate 75	+20	
Backwater from Cypress Creek	Approximately 900 feet southwest of the intersection of Clubhouse Drive and Kings Boulevard.	+30	Hillsborough County (Unincorporated Areas).
Baker Canal	At the confluence with Lake Thonotosassa Tributary and Baker Creek.	+44	Hillsborough County (Unincorporated Areas).
	Approximately 150 feet downstream of Acker Road	+84	
Baker Canal Tributary 1	At the confluence with Baker Canal	+44	Hillsborough County (Unincorporated Areas).
	At Taylor Road	+44	
Baker Canal Tributary 2	At the confluence with Baker Canal	+44	Hillsborough County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Gallagher Road	+64	
Baker Canal Tributary 3	At the confluence with Baker Canal	+44	Hillsborough County (Unincorporated Areas).
	Approximately 1,100 feet upstream of U.S. Highway 92	+57	
Baker Canal Tributary 5	At the confluence with Baker Canal	+44	Hillsborough County (Unincorporated Areas).
	At the upstream side of McIntosh Road	+57	
Baker Canal Tributary 6	At the confluence with Baker Canal	+46	Hillsborough County (Unincorporated Areas).
	At the downstream side of McIntosh Road	+57	
Baker Canal Tributary 7	At the confluence with Baker Canal	+73	Hillsborough County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Shady Stream Drive	+83	
Baker Canal Tributary 8	At the confluence with Baker Canal	+76	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Walden Sheffield Road.	+96	
Baker/Pemberton Creek Tributary 1.	At the confluence with Baker Creek and Pemberton Creek	+56	Hillsborough County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Emerald Acres Avenue.	+72	
Baker/Pemberton Creek Tributary 2.	At the confluence with Baker/Pemberton Creek Tributary 1.	+56	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Baker/Pemberton Creek Tributary 1.	+60	
Baker/Pemberton/Mill Creek	At the confluence with Baker Canal and Lake Thonotosassa Tributary.	+44	Hillsborough County (Unincorporated Areas), City of Plant City.
	Approximately 200 feet upstream of North Wheeler Street	+115	
Bassett Branch	At the confluence with Hillsborough River	+37	Hillsborough County (Unincorporated Areas), City of Tampa.
	At the Hillsborough County boundary	+63	
Big Bend	At the confluence with Bullfrog Creek	+31	Hillsborough County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Simmons Loop	+52	
Blackwater Creek	At the confluence with Hillsborough River	+49	Hillsborough County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Canaan Avenue	+109	
Brooker Creek	At the Hillsborough County boundary	+27	Hillsborough County (Unincorporated Areas).
	At Farmer Road	+39	
Brushy Creek	At the confluence with Rocky Creek	+25	Hillsborough County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Dale Marby Highway North.	+54	
Brushy Creek Branch 2	At the confluence with Brushy Creek	+39	Hillsborough County (Unincorporated Areas).
	Approximately 30 feet upstream of Hutchison Road	+51	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Brushy Creek Tributary 1	At the confluence with Brushy Creek	+47	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Country Lake Drive	+51	
Bullfrog Creek	Approximately 1.4 miles upstream of the railroad	+11	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Edina Street	+92	
Bullfrog Creek Tributary 1	At the confluence with Bullfrog Creek	+26	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Lincoln Road	+43	
Bullfrog Creek Tributary 2	At the confluence with Bullfrog Creek	+58	Hillsborough County (Unincorporated Areas).
	Approximately 0.4 mile upstream of West Lake Drive	+67	
Bullfrog Creek Tributary 3	At the confluence with Bullfrog Creek	+64	Hillsborough County (Unincorporated Areas).
	Approximately 40 feet upstream of County Road 672	+130	
Campbell Branch	At the confluence with Flint Creek	+38	Hillsborough County (Unincorporated Areas).
	Approximately 1,500 feet downstream of Branch Forbes Road.	+90	
Campbell Branch Tributary 1	At the confluence with Campbell Branch	+50	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet downstream of Thonotosassa Road	+52	
Carlton Branch	At the confluence with Little Manatee River	+46	Hillsborough County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Huckleberry Road	+118	
Carlton Branch Tributary 1	At the confluence with Carlton Branch	+60	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Leonard Lee Road	+92	
Carlton Branch Tributary 2	At the confluence with Carlton Branch	+69	Hillsborough County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Balm Wimauma Road	+116	
Carlton Branch Tributary 3	At the confluence with Carlton Branch	+88	Hillsborough County (Unincorporated Areas).
	Approximately 25 feet upstream of Sweat Loop Road	+114	
Carlton Branch Tributary 3.1	At the confluence with Carlton Branch Tributary 3	+89	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Balm Wimauma Road	+108	
Clay Gulley East	At the confluence with Hillsborough River	+36	Hillsborough County (Unincorporated Areas).
	At Dormany Road	+75	
Clay Gulley East Tributary 2	At the confluence with Clay Gulley East	+58	Hillsborough County (Unincorporated Areas).
	At Five Acre Road	+60	
Clay Gulley East Tributary 4	At the confluence with Clay Gulley East Tributary 6	+48	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Five Acre Road	+58	
Clay Gulley East Tributary 5	At the confluence with Clay Gulley East	+45	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Brunt Barn Avenue	+68	
Clay Gulley East Tributary 6	At the confluence with Clay Gulley East	+45	+Hillsborough County (Unincorporated Areas).
	Approximately 0.9 miles upstream of the confluence with Clay Gulley East Tributary 4.	+62	
Clay Gulley East Tributary 7	At the confluence with Clay Gulley East	+45	Hillsborough County (Unincorporated Areas).
	Approximately 450 feet upstream of Warren Byrd Lane	+49	
Clay Gulley East Tributary 8	At the confluence with Clay Gulley East	+67	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Clay Gulley East.	+72	
Clay Gulley West	At the confluence with Hillsborough River	+35	Hillsborough County (Unincorporated Areas), City of Tampa.
	At the Hillsborough County Boundary	+59	
Cow House Creek	At the confluence with Hillsborough River	+27	Hillsborough County (Unincorporated Areas), City of Temple Terrace.
	Approximately 2.7 miles upstream of the confluence of Tampa Bypass Canal.	+35	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Curiosity Creek	At the confluence with Little Manatee River	+9	Hillsborough County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Lightfoot Road	+17	
Curiosity Creek (near City of Tampa).	Approximately 100 feet upstream of Fowler Avenue	+32	Hillsborough County (Unincorporated Areas).
	Approximately 500 feet upstream of West Bearss Avenue	+48	
Curiosity Creek Tributary 1	At the confluence with Curiosity Creek	+11	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Pinetree Circle	+16	
Curiosity Creek Tributary 1.1	At the confluence with Curiosity Creek Tributary 1	+15	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Butch Cassidy Trail	+18	
Cypress Creek	At the confluence with Little Manatee River	+14	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of 19th Avenue NE	+39	
Cypress Creek (near City of Tampa).	At the confluence with Hillsborough River	+27	Hillsborough County (Unincorporated Areas), City of Tampa.
	Approximately 0.7 mile downstream of County Line Road	+46	
Delaney Creek	Approximately 1,000 feet downstream of Maydell Drive	+11	Hillsborough County (Unincorporated Areas).
	Approximately 1,500 feet upstream of Lakewood Drive South.	+31	
Delaney Creek Lateral C	At the confluence with Delaney Creek	+19	Hillsborough County (Unincorporated Areas).
	Approximately 20 feet upstream of Rideout Road	+24	
Delaney Creek Lateral D	At the confluence with Delaney Creek	+20	Hillsborough County (Unincorporated Areas).
	Approximately 700 feet upstream of Ridein Road	+23	
Delaney Creek Lateral E	At the confluence with Delaney Creek	+28	Hillsborough County (Unincorporated Areas).
	Approximately 800 feet upstream of Palm River Road	+28	
Delaney Creek Tributary 1	At the upstream side of Causeway Boulevard	+11	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Maydell Drive	+12	
Delaney Creek Tributary 2	At the confluence with Delaney Creek	+17	Hillsborough County (Unincorporated Areas).
	Approximately 900 feet upstream of Robindale Road	+20	
Dug Creek	At the confluence with Little Manatee River	+18	Hillsborough County (Unincorporated Areas).
	Approximately 0.2 mile upstream of State Road 674/Sun City Center Boulevard.	+69	
Dug Creek Tributary 1	At the confluence with Dug Creek	+20	Hillsborough County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Ed Lane	+47	
Dug Creek Tributary 2	At the confluence with Dug Creek	+32	Hillsborough County (Unincorporated Areas).
	Approximately 0.2 mile upstream of West Lake Drive	+69	
Dug Creek Tributary 3	At the confluence with Dug Creek	+60	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of West Lake Drive	+84	
East Canal	At the confluence with Itchepackesassa Creek	+96	Hillsborough County (Unincorporated Areas), City of Plant City.
	At the downstream side of Frontage Road	+114	
East Canal Tributary	At the confluence with East Canal	+119	City of Plant City.
	Approximately 700 feet upstream of Crystal Terrace	+133	
East Canal	At the upstream side of Frontage Road	+118	City of Plant City.
Upstream of Frontage Road	Approximately 15 feet upstream of Alsobrook Street	+127	
Flint Creek	At the confluence with Hillsborough River	+35	Hillsborough County (Unincorporated Areas).
	Approximately 160 feet downstream of Kelso Road	+38	
Gulley Branch	At the confluence with Little Manatee River	+39	Hillsborough County (Unincorporated Areas).
	Approximately 2.5 miles upstream of the confluence with Little Manatee River.	+94	
Half Moon Lake Branch	At the confluence with Rocky Creek	+33	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet downstream of Vanderbilt Drive	+43	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Hillsborough Bay	Areas within MacDill Air Force Base	+10	Hillsborough County (Unincorporated Areas), City of Tampa.
Hillsborough River	Approximately 500 feet downstream of Temple Terrace	+23	Hillsborough County (Unincorporated Areas), City of Tampa, City of Temple Terrace.
	Approximately 700 feet upstream of the confluence of Big Ditch Creek.	+52	
Hollomans Branch	At the confluence with Hillsborough River	+35	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of West Knights Griffin Road.	+97	
Hollomans Branch Tributary 1	At the confluence with Hollomans Branch	+69	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of Dormany Road	+76	
Hollomans Branch Tributary 2	At the confluence with Hollomans Branch	+62	Hillsborough County (Unincorporated Areas).
	At the downstream side of Platt Road	+91	
Hollomans Branch Tributary 3	At the confluence with Hollomans Branch	+55	Hillsborough County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Knights Griffin Road	+71	
Howard Prairie Branch	At the confluence with Little Manatee River	+57	Hillsborough County (Unincorporated Areas).
	Approximately 40 feet upstream of South County Road 39	+109	
Howard Prairie Branch Tributary 1.	At the confluence with Howard Prairie Branch	+57	Hillsborough County (Unincorporated Areas).
	Approximately 3.2 miles upstream of Grange Hall Loop	+73	
Howard Prairie Branch Tributary 2.	At the confluence with Howard Prairie Branch	+76	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of South County Road 39	+117	
Itchepackesassa Creek	At the confluence with Blackwater Creek	+88	Hillsborough County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Knights Griffin Road	+112	
Itchepackesassa Creek Tributary 1.	At the confluence with Itchepackesassa Creek	+104	Hillsborough County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Knights Griffin Road	+110	
Itchepackesassa Creek Tributary 2.	At the confluence with Itchepackesassa Creek	+101	Hillsborough County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Itchepackesassa Creek.	+103	
Lake Thonotosassa Tributary	At Thonotosassa Road	+38	Hillsborough County (Unincorporated Areas).
	At the confluence of Baker Creek and Baker Canal	+44	
Little Bullfrog Creek	At the confluence with Bullfrog Creek	+33	Hillsborough County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Big Bend Road	+80	
Little Manatee River	Approximately 800 feet downstream of I–75	+9	Hillsborough County (Unincorporated Areas).
	Approximately 2.2 miles upstream of Taylor Gill Road	+99	
Little Manatee River Tributary 2.2.	At the confluence with Little Manatee River Tributary 2	+9	Hillsborough County (Unincorporated Areas).
	Approximately 600 feet upstream of Butch Cassidy Trail	+28	
Little Manatee River Tributary 2.1.	At the confluence with Little Manatee River Tributary 2	+9	Hillsborough County (Unincorporated Areas).
	Approximately 980 feet upstream of Lightfoot Road	+17	
Little Manatee River Tributary 1	At the confluence with Little Manatee River	+9	Hillsborough County (Unincorporated Areas).
	At 30th Street SE	+9	
Little Manatee River Tributary 10.	At the confluence with Little Manatee River	+57	Hillsborough County (Unincorporated Areas).
	Approximately 1.1 miles upstream of State Road 674	+105	
Little Manatee River Tributary 11.	At the confluence with Little Manatee River	+61	Hillsborough County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with Little Manatee River.	+83	
Little Manatee River Tributary 12.	At the confluence with Little Manatee River	+72	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of State Road 674	+116	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Little Manatee River Tributary 13.	At the confluence with Little Manatee River	+72	Hillsborough County (Unincorporated Areas).
	Approximately 0.3 mile upstream of State Road 674	+120	
Little Manatee River Tributary 2	At the confluence with Little Manatee River	+9	Hillsborough County (Unincorporated Areas).
	Approximately 50 feet upstream of U.S. Route 301	+21	
Little Manatee River Tributary 3	At the confluence with Little Manatee River	+15	Hillsborough County (Unincorporated Areas).
	Approximately 600 feet upstream of Palmetto Road	+19	
Little Manatee River Tributary 4	At the confluence with Little Manatee River	+35	Hillsborough County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Little Manatee River.	+54	
Little Manatee River Tributary 5	At the confluence with Little Manatee River	+36	Hillsborough County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence of Little Manatee River Tributary 5.1.	+85	
Little Manatee River Tributary 5.1.	At the confluence with Little Manatee River Tributary 5	+53	Hillsborough County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Little Manatee River Tributary 5.	+92	
Little Manatee River Tributary 6	At the confluence with Little Manatee River	+40	Hillsborough County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Leonard Lee Road	+56	
Little Manatee River Tributary 7	At the confluence with Little Manatee River	+44	Hillsborough County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of Little Manatee River Tributary 7.1.	+79	
Little Manatee River Tributary 7.1.	At the confluence with Little Manatee River Tributary 7	+53	Hillsborough County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Little Manatee River Tributary 7.	+81	
Little Manatee River Tributary 8	At the confluence with Little Manatee River	+50	Hillsborough County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Grange Hall Loop	+72	
Little Manatee River Tributary 9	At the confluence with Little Manatee River	+51	Hillsborough County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Grange Hall Loop	+59	
Lower Sweetwater Creek Tributary 1.	Approximately 500 feet downstream of Sawyer Road	+10	Hillsborough County (Unincorporated Areas).
	Approximately 800 feet upstream of Paris Street West	+33	
Mil Lake Tributary	Approximately 0.4 mile downstream of Livingston Avenue	+35	Hillsborough County (Unincorporated Areas).
	Approximately 65 feet downstream of Livingston Avenue	+42	
Mill Creek Tributary 1	At the confluence with Mill Creek	+105	Hillsborough County (Unincorporated Areas).
	Approximately 25 feet upstream of Bennett Road	+108	
Mill Creek Tributary 2	At the confluence with Mill Creek	+106	Hillsborough County (Unincorporated Areas), City of Plant City.
	Approximately 0.6 mile upstream of Interstate 4	+108	
New River	At the confluence with Hillsborough River	+41	Hillsborough County (Unincorporated Areas), City of Tampa.
	Approximately 2,000 feet upstream of Morris Bridge Road	+63	
New River East	At the confluence with New River	+47	Hillsborough County (Unincorporated Areas).
	At the Hillsborough County boundary	+66	
North Archie Creek	Approximately 1,500 feet downstream of 78th Street South.	+11	Hillsborough County (Unincorporated Areas).
	At the upstream side of Valhalla Pond Drive	+28	
North Lake Tributary	At the upstream side of Pebble Beach Boulevard	+38	Hillsborough County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Cherry Hills Drive	+54	
North Prong Bullfrog Creek	At the confluence with Bullfrog Creek	+53	Hillsborough County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Bullfrog Creek.	+85	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Pemberton Creek Tributary 1	At the confluence with Pemberton Creek	+78	Hillsborough County (Unincorporated Areas).
	At U.S. Highway 92	+83	
Pierce Branch	At the confluence with Little Manatee River	+50	Hillsborough County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence of Pierce Branch Tributary 3.	+124	
Pierce Branch Tributary 1	At the confluence with Pierce Branch	+79	Hillsborough County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Pierce Branch.	+110	
Pierce Branch Tributary 2	At the confluence with Pierce Branch	+99	Hillsborough County (Unincorporated Areas).
	Approximately 1.9 miles upstream of the confluence with Pierce Branch.	+117	
Pierce Branch Tributary 3	At the confluence with Pierce Branch	+101	Hillsborough County (Unincorporated Areas).
	Approximately 30 feet upstream of Sweat Loop Road	+115	
Ponding Area	Entire shoreline within community	+35	City of Temple Terrace.
Ponding Area	Approximately 400 feet northwest of the intersection of Ojai Avenue and Hacienda Drive.	+53.8	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 400 feet northwest of the intersection of Kings Green Drive and Vilmont Greens Drive.	+19.1	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 200 feet east of the intersection of 36th Street and Myrtle Tree Lane.	+29.1	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 100 feet east of the intersection of Vilmont Greens Drive and Kensington Greens Drive.	+29.9	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 370 feet northeast of the intersection of Radison Avenue and Radison Lake Court.	+35.6	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 500 feet northeast of the intersection of Kings Boulevard and McDaniel Street.	+35.6	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 400 feet southeast of the intersection of Olive Branch Drive and Oxford Park Drive.	+36.5	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 500 feet southeast of the intersection of Vista Greens Drive and New Point Loop.	+37.8	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 1,600 feet east of the intersection of Vista Greens Drive and New Point Loop.	+33	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 600 feet southwest of the intersection of Chipper Drive and Pebble Beach Boulevard.	+59.1	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 600 feet southwest of the intersection of Council Drive and Pebble Beach Boulevard.	+51.4	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 300 feet southwest of the intersection of Foxhunt Drive and Finsbury Circle.	+34	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 300 feet southwest of the intersection of Foxhunt Drive and Foxglove Circle.	+31	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 800 feet southeast of the intersection of Nebraska Avenue and 139th Avenue.	+44.7	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 1,300 feet southeast of the intersection of Nebraska Avenue and 139th Avenue.	+39.3	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 300 feet northeast of the intersection of Lucerne Drive and 143rd Avenue.	+43.4	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 200 feet northeast of the intersection of Skipper Road and 16th Street.	+43.8	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 800 feet northwest of the intersection of Ojai Avenue and El Rancho Drive.	+52.7	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 500 feet southeast of the intersection of Emerald Lake Drive and Del Webb Boulevard.	+42.7	Hillsborough County (Unincorporated Areas).
Ponding Area	Approximately 400 feet south of the intersection of Foxhunt Drive and Finsbury Circle.	+37	Hillsborough County (Unincorporated Areas).
Ponding Areas	Entire shoreline within community, lowest range of elevations found.	+105	City of Plant City.
	Entire shoreline within community, highest range of elevations found.	+145	
Ponding Areas	Entire shoreline within community, lowest range of elevations found.	+8	Hillsborough County (Unincorporated Areas).
	Entire shoreline within community, highest range of elevations found.	+143	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Ponding Areas	Entire shoreline within community, lowest range of elevations found.	+12	City of Tampa.
	Entire shoreline within community, highest range of elevations found.	+62	
Rocky Creek	Approximately 1,400 feet downstream of Linebaugh Avenue.	+13	Hillsborough County (Unincorporated Areas).
	Approximately 300 feet upstream of Hammock Woods Drive.	+46	
Rocky Creek Tributary 1	At the confluence with Turkey Ford Lake	+56	Hillsborough County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Fishermans Bend Drive.	+63	
Ruskin Inlet/Marsh Branch	Approximately 350 feet downstream of College Avenue	+9	Hillsborough County (Unincorporated Areas).
	Approximately 0.8 mile upstream of 14th Avenue SE	+21	
Six Mile Creek	At the confluence with Tampa Bypass Canal	+11	Hillsborough County (Unincorporated Areas).
	Approximately 450 feet upstream of Orient Road	+26	
South Fork Little Manatee River	At the confluence with Little Manatee River	+35	Hillsborough County (Unincorporated Areas).
	At the Hillsborough County boundary	+45	
Spartman Branch	At the confluence with Pemberton Creek	+88	Hillsborough County (Unincorporated Areas), City of Plant City.
	At Mud Lake Road	+125	
Sweetwater Creek	Approximately 500 feet upstream of Hanley Road	+10	Hillsborough County (Unincorporated Areas).
	Approximately 65 feet upstream of Orange Grove Drive	+43	
Sweetwater Creek Channel H	At the confluence with Sweetwater Creek	+18	Hillsborough County (Unincorporated Areas).
	Approximately 75 feet downstream of Waters Avenue	+30	
Tadpole Creek	At the confluence with Bullfrog Creek	+24	Hillsborough County (Unincorporated Areas).
	Approximately 70 feet upstream of U.S. Highway 301	+42	
Tampa Bay	Areas within MacDill Air Force Base	+9	Hillsborough County (Unincorporated Areas), City of Tampa.
Tampa Bypass Canal	At Gate S–160	+11	Hillsborough County (Unincorporated Areas).
	At the confluence of Cow House Creek	+35	
Tampa Bypass Canal Main Ditch.	At the confluence with Tampa Bypass Canal	+15	Hillsborough County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Eureka Springs Road.	+18	
Tampa Bypass Canal Tributary 1.	At the confluence with Tampa Bypass Canal	+11	Hillsborough County (Unincorporated Areas).
	Approximately 40 feet downstream of Lakewood Drive	+34	
Tampa Bypass Canal Tributary 1 South Branch.	At the confluence with Tampa Bypass Canal Tributary 1	+15	Hillsborough County (Unincorporated Areas).
	Approximately 300 feet upstream of the confluence with Tampa Bypass Canal Tributary 1.	+16	
Tampa Bypass Canal Tributary 2.	Approximately 200 feet upstream of the confluence with Tampa Bypass Canal.	+10	Hillsborough County (Unincorporated Areas).
	Approximately 20 feet upstream of railroad	+22	
Tiger Creek	At the confluence with Blackwatch Creek	+83	Hillsborough County (Unincorporated Areas).
	On the upstream side of Half Mile Road	+100	
Trout Creek	At the confluence with Hillsborough River	+35	Hillsborough County (Unincorporated Areas), City of Tampa.
	At the Hillsborough County boundary	+49	
Tucker Rhodine	Approximately 0.3 mile from the confluence with Bullfrog Creek.	+22	Hillsborough County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Bullfrog Creek.	+39	
Two Hole Branch	At the confluence with Hillsborough River	+37	Hillsborough County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Bruton Road	+93	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Two Hole Branch Tributary 1	At the confluence with Two Hole Branch	+69	Hillsborough County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Bob Smith Avenue	+97	
Wildcat Creek	Approximately 1.7 miles upstream of the confluence with Little Manatee River.	+9	Hillsborough County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Stephens Road	+15	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Plant City
Maps are available for inspection at the Plant City City Hall, 302 West Reynolds Street, Plant City, Florida.

City of Tampa
Maps are available for inspection at the City of Tampa Construction Services Center, 1400 North Boulevard, Tampa, Florida.

City of Temple Terrace
Maps are available for inspection at the City of Temple Terrace Engineering Department, 11210 North 53rd Street, Temple Terrace, Florida.

Unincorporated Areas of Hillsborough County
Maps are available for inspection at the Hillsborough County Department of Planning and Growth Management, 5701 East Hillsborough Avenue, Suite 1140, Tampa, Florida.

Lee County, Florida and Incorporated Areas
Docket No.: FEMA–D–7680

Bayshore Creek	Approximately 600 feet downstream of Jamestown Circle	+7	Lee County (Unincorporated Areas).
	At Nalle Grade Road	+23	
Bedman Creek/Dog Canal	Approximately 700 feet downstream of Palm Beach Boulevard.	+8	Lee County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Weir S–D–2	+26	
Billy Creek	At upstream side of Veronica Shoemaker Boulevard	+8	Lee County (Unincorporated Areas), City of Fort Myers.
	Approximately 0.4 mile upstream of Oritz Circle	+17	
Caloosahatchee River	At intersection of Cohn Road and Marsh Cove Lane	+8	Lee County (Unincorporated Areas), City of Cape Coral, City of Fort Myers.
	Approximately 0.4 mile south of intersection of Tarpon Estates Boulevard and Tarpon Estates Court.	+11	
Carrell Canal	Approximately 900 feet upstream of confluence with Caloosahatchee River.	+7	City of Fort Myers.
	Approximately 375 feet upstream of Evans Avenue	+13	
Chapel Branch Creek	Approximately 600 feet downstream of Samville Road	+7	Lee County (Unincorporated Areas).
	Approximately 650 feet upstream of Rich Road	+20	
Charlotte Harbor	At intersection of Kismet Parkway and Burnt Stove Road	+6	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 0.7 mile west from Old Burnt Stove Road and 48th Terrace intersection (follow Yucca Creek).	+10	
Cypress Creek	Approximately 800 feet downstream of North River Road	+8	Lee County (Unincorporated Areas).
	Approximately 3.0 miles upstream of North River Road	+18	
Daughtrey Creek	Approximately 0.4 mile downstream of Bayshore Road	+7	Lee County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Nalle Grade Road	+24	
East Branch Daughtrey Creek	At downstream side of Bayshore Road	+7	Lee County (Unincorporated Areas).
	At Nalle Grade Road	+23	
East Branch Yellow Fever Creek.	Approximately 0.2 mile downstream of Pine Island Road	+7	Lee County (Unincorporated Areas), City of Cape Coral.
	At upstream side of U.S. 41 Culvert	+18	
Estero Bay	Approximately 0.3 mile west of intersection of Baybridge Boulevard and Bridge Run Court.	+11	Lee County (Unincorporated Areas), City of Bonita Springs, Town of Fort Myers Beach.
	Approximately 0.5 mile west of intersection of Redfish Street and Spring Creek Drive.	+15	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Estero River	Approximately 0.4 mile downstream of South Tamiami Trail.	+11	Lee County (Unincorporated Areas).
	Approximately 0.4 mile upstream of I–75	+21	
Fichter Creek	Approximately 1,000 feet upstream of the confluence with Caloosahatchee River.	+7	Lee County (Unincorporated Areas).
	Approximately 50 feet upstream of Fichters Creek Lane	+15	
Ford Street Canal	At upstream side of Gallee Way	+9	City of Fort Myers.
	Approximately 200 feet downstream of Hanson Street	+18	
Gulf of Mexico	Approximately 1,000 feet west of the Pelican Pass and Charlotte Harbor Mouth (Cayo Costa Island).	+8	Lee County (Unincorporated Areas), City of Bonita Springs, City of Sanibel, Town of Fort Myers Beach.
	Approximately 500 feet west of intersection of Estero Boulevard and Hickory Boulevard.	+20	
Halfway Creek	Approximately 0.6 mile downstream of U.S. Route 41	+11	Lee County (Unincorporated Areas).
	Approximately 100 feet upstream of Railroad	+16	
Halls Creek	Approximately 500 feet upstream of North River Road	+7	Lee County (Unincorporated Areas).
	Approximately 0.6 mile upstream of North River Road	+13	
Hancock Creek	Approximately 100 feet upstream of Barrett Road	+7	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 100 feet upstream of Diplomat Parkway	+11	
Hickey Creek	Approximately 1,000 feet upstream of Palm Beach Boulevard.	+8	Lee County (Unincorporated Areas).
	At the confluence of Hickey Creek Drainageway	+10	
Hickey Creek (upstream of Hickey Creek Drainageway).	At confluence of Hickey Creek	+10	Lee County (Unincorporated Areas).
	Approximately 800 feet upstream of confluence of Hickey Creek.	+10	
Hickey Creek Drainageway	At the confluence with Hickey Creek	+10	Lee County (Unincorporated Areas).
	Approximately 1.1 miles upstream of 17th Street	+22	
Kickapoo Creek	At upstream side of Bayshore Road	+8	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Old Bayshore Road	+8	
L–3 Canal	At the confluence with L Canal	+8	Lee County (Unincorporated Areas), City of Fort Myers.
	Approximately 0.4 mile upstream of Fowler Street	+14	
Leitner Creek	Approximately 800 feet upstream of Terry Street	+12	City of Bonita Springs.
	Approximately 0.3 mile upstream of I–75	+14	
Manuels Branch	At upstream side of McGregor Boulevard	+7	City of Fort Myers.
	Approximately 975 feet upstream of Evans Avenue	+12	
Marsh Point Creek	At upstream side of Bayshore Road	+7	Lee County (Unincorporated Areas).
	At Payne Lane	+14	
Matlacha Pass	Approximately 0.5 mile east of intersection of Game Bird Lane and Ficus Tree Lane.	+6	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 0.7 mile east of intersection of Tropical Point Drive and Cove Street.	+11	
Mullock Creek	Approximately 300 feet downstream of Constitution Circle	+10	Lee County (Unincorporated Areas).
	At Oriole Road	+15	
Mullock Creek Tributary	Approximately 0.2 mile downstream of South Tamiami Trail.	+11	Lee County (Unincorporated Areas).
	Approximately 150 feet upstream of South Tamiami Trail	+13	
North Colonial Waterway	At the confluence with Ten Mile Canal	+17	City of Fort Myers.
	Approximately 400 feet upstream of Milan Drive	+17	
Oak Creek	At Imperial Street	+11	City of Bonita Springs.
	Approximately 1,000 feet upstream of Imperial Street	+11	
Orange River	Approximately 2.5 miles upstream of Palm Beach Boulevard.	+8	Lee County (Unincorporated Areas).
	Approximately 2.5 miles upstream of Buckingham Road	+17	
Owl Creek	Approximately 1,000 feet downstream of North River Road.	+7	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Shirley Lane	+20	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Palm Creek	At downstream side of Bayshore Road	+7	Lee County (Unincorporated Areas).
	Approximately 50 feet downstream of Sharon Drive	+22	
Pine Island Sound	Approximately 500 feet west of intersection of State Route 767 and Helen Road.	+6	Lee County (Unincorporated Areas), City of Sanibel.
	At intersection of Seair Lane and Sol Vista Drive on Captiva Island.	+12	
Popash Creek	Approximately 0.3 mile upstream of Bayshore Road	+7	Lee County (Unincorporated Areas).
	At County boundary	+25	
Powell Bypass	At Weir Valencia	+12	Lee County (Unincorporated Areas).
	Approximately 2.0 miles upstream of Mellow Drive	+20	
Powell Creek	Approximately 0.3 mile upstream of Brooks Road	+7	Lee County (Unincorporated Areas).
	At Weir Valencia	+12	
Powell Creek Tributary No. 1	At confluence with Powell Creek	+7	Lee County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Powell Creek.	+10	
San Carlos Bay	At intersection of Sanibel Boulevard and Bay View Avenue.	+7	Lee County (Unincorporated Areas), City of Cape Coral, City of Sanibel, Town of Fort Myers Beach.
	Approximately 500 feet south of intersection of Punta Rassa Road and McGregor Boulevard.	+20	
Six Mile Cypress Slough	At confluence with Ten Mile Canal	+13	Lee County (Unincorporated Areas), City of Fort Myers.
	At State Route 82	+22	
South Branch	At confluence with Estero River	+13	Lee County (Unincorporated Areas).
	At upstream side of I–75	+17	
Spanish Canal	At confluence with Spanish Creek	+13	Lee County (Unincorporated Areas).
	Approximately 0.8 mile upstream of confluence with Spanish Creek.	+18	
Spanish Creek	Approximately 900 feet upstream of confluence with Caloosahatchee River.	+8	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Persimmon Ridge Road.	+19	
Spring Creek	Approximately 500 feet downstream of Railroad	+11	City of Bonita Springs.
	Approximately 0.4 mile upstream of Railroad	+13	
Stricklin Gully	At confluence with Trout Creek/Curry Lake Canal	+13	Lee County (Unincorporated Areas).
	Approximately 1.4 miles upstream of confluence with Trout Creek/Curry Lake Canal.	+18	
Stroud Creek	Approximately 100 feet upstream of Bayshore Road	+7	Lee County (Unincorporated Areas).
	Approximately 0.2 mile upstream of St. Paul Road	+23	
Telegraph Creek	Approximately 1,000 feet upstream of confluence with Caloosahatchee River.	+8	Lee County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Telegraph Creek Lane.	+18	
Ten Mile Canal	Approximately 1,500 feet downstream of Briarcliff Road	+11	Lee County (Unincorporated Areas), City of Fort Myers.
	At Hanson Street	+17	
Trout Creek/Curry Lake Canal	At downstream side of North River Road	+8	Lee County (Unincorporated Areas).
	At County boundary	+23	
Winkler Canal	Approximately 700 feet upstream of the confluence with Caloosahatchee River.	+7	City of Fort Myers.
	Approximately 125 feet upstream of Evans Avenue	+14	
Yellow Fever Creek	Approximately 1,000 feet downstream of Pine Island Road	+7	Lee County (Unincorporated Areas), City of Cape Coral.
	Approximately 0.5 mile upstream of Littleton Road	+11	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected

+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Bonita Springs
Maps are available for inspection at the City of Bonita Springs Administration Office, 9101 Bonita Beach Road, Bonita Springs, Florida.

City of Cape Coral
Maps are available for inspection at the City of Cape Coral Community Development Department, 1015 Cultural Park Boulevard, Cape Coral, Florida.

City of Fort Myers
Maps are available for inspection at the City of Fort Myers Community Development Department, 1825 Hendry Street, Suite 101, Fort Myers, Florida.

Town of Fort Myers Beach
Maps are available for inspection at the Town of Fort Myers Beach Council Chambers, 2523 Estero Boulevard, Fort Myers Beach, Florida.

City of Sanibel
Maps are available for inspection at the Sanibel City Hall, Planning Department, 800 Dunlop Road, Sanibel, Florida.

Unincorporated Areas of Lee County
Maps are available for inspection at the Lee County Community Development Department, 1500 Monroe Street, 2nd Floor, Fort Myers, Florida.

Source of flooding and location	Range of elevations in feet (NAVD)
FLORIDA	
Marion County (FEMA Docket No. D–7668)	
City of Belleview	
Unnamed Ponding Areas	+65–+108
Maps available for inspection at the Belleview City Hall, Public Works Department, 5343 Southeast Abshier Boulevard, Belleview, Florida.	
City of Dunnellon	
Unnamed Ponding Areas	+32–+69
Maps available for inspection at the Dunnellon City Hall, 20750 River Drive Dunnellon, Florida.	
Marion County (Unincorporated Areas)	
Unnamed Ponding Areas (*primarily,* but not exclusively located west of Interstate 75)	+6–+200
Maps available for inspection at the Marion County Transportation Department, 412 Southeast 25th Avenue, Ocala, Florida. For more information, please contact the Marion County Stormwater Division at (352) 671–8686.	
Town of McIntosh	
Orange Lake	+61
Maps available for inspection at the McIntosh Town Hall, 5975 Avenue G, McIntosh, Florida.	
City of Ocala	
Unnamed Ponding Areas	+48–+133
Maps available for inspection at the City of Ocala Engineering Department, 405 Southewast Osceola Avenue, Ocala, Florida.	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Erie County, Ohio, and Incorporated Areas Docket No.: FEMA–B–7735			
Boos Ditch	Approximately 400 feet from mouth	+577	Unincorporated Areas of Erie County.
	Mouth at Lake Erie	+577	
Hahn Creek	Mouth at Lake Erie	+577	City of Huron.
	Downstream of Cleveland Road	+577	
Huron River	Mouth at Lake Erie	+577	City of Huron.
	Approximately 3,700 feet upstream of Norfolk Southern Corporation Railroad.	+577	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Lake Erie	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	City of Huron.
	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	
	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	
	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	
Lake Erie	Entire Lake Erie coastline from the western City of Sandusky corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	City of Sandusky.
Lake Erie	Entire Lake Erie coastline from the western Village of Kelleys Island corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+578	Village of Kelleys Island.
Lake Erie	Entire Lake Erie coastline within Erie County. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	Unincorporated Areas of Erie County.
	Entire Lake Erie coastline within Erie County. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+577	
Mudbrook Creek	Mouth at Huron River	+577	City of Huron.
	Downstream of Mudbrook Road	+577	
Plum Creek	Downstream of US6 Highway	+577	Unincorporated Areas of Erie County.
	Mouth at Lake Erie	+577	
Sawmill Creek	Approximately 1,900 feet upstream from mouth	+577	Unincorporated Areas of Erie County.
	Mouth at Lake Erie	+577	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Huron
Maps are available for inspection at Huron Township Station, 1820 Bogart Road, Huron, OH 48839.

City of Sandusky
Maps are available for inspection at 222 Meigs Street, Sandusky, OH 44870.

Unincorporated Areas of Erie County

Maps are available for inspection at 2900 Columbus Avenue, Sandusky, OH 44870.

Village of Bay View
Maps are available for inspection at 304 East Bay View Drive, Sandusky, OH 44870.

Village of Berlin Heights
Maps are available for inspection at 8 West Main Street, Berlin Heights, OH 44814.

Village of Castalia
Maps are available for inspection at 126 Main Street, Castalia, OH 44824.

Village of Kelleys Island
Maps are available for inspection at Municipal Building of Kelleys Island, 121 Addison Street, Kelley Island, OH 43438.

Village of Milan
Maps are available for inspection at 11 South Main Street, PO Box 1450, Milan, OH 44846.

Monroe County, New York (All Jurisdictions)
Docket No.: FEMA–B–7742 and FEMA–D–7828

East Branch Larkin Creek	At Northbridge Road	+380	Town of Greece.
	Approximately 1,440 feet upstream of St. Andrews Dam	+456	
East Branch Red Creek	At confluence with Middle Branch Red Creek	+523	Town of Henrietta.
	Approximately 2,400 feet upstream of Erie Station Road	+572	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
East Branch Round Pond Creek Reach 1.	Approximately 50 feet downstream of Ridgeway Avenue on 249–NY.	+472	Town of Greece.
	Approximately 690 feet upstream of Indigo Creek Drive	+515	
East Branch Shipbuilders Creek	At railroad	+328	Town of Webster.
	Approximately 1,800 feet upstream of Dirt Track	+430	
East Branch Tributary Red Creek.	At confluence with East Branch Red Creek	+530	Town of Henrietta.
	Approximately 150 feet upstream of East Henrietta Road	+574	
East Stem Middle Branch Red Creek.	At confluence with Middle Branch Red Creek and West Stem Middle Branch Red Creek.	+524	Town of Henrietta.
	Approximately 150 feet upstream of centerline of Erie Station Road.	+578	
Irondequoit Creek Reach 1	Approximately 387 feet downstream of Linden Avenue	+357	Village of East Rochester.
	Approximately 1,600 feet upstream of Ontario Street	+380	
Larkin Creek	At approximately 20 feet upstream of Lake Ontario State Parkway.	+255	Town of Greece, Town of Ogden.
	Approximately 430 feet upstream of Black Forest Drive in Town of Ogden.	+464	
Middle Branch Red Creek	At confluence with Red Creek and East Branch Red Creek.	+523	Town of Henrietta.
	At confluence with East and West Stem Middle Branch Red Creek.	+524	
Northrup Creek	At Flynn Road	+249	Town of Greece, Town of Ogden, Town of Parma, Village of Spencerport.
	Approximately 612 feet upstream of Wood Duck Run	+593	
Red Creek	At confluence with New York State Barge Canal	+514	Town of Henrietta, City of Rochester, Town of Brighton.
	At confluence with Middle and East Branch Red Creek	+523	
Round Pond Creek Reach 1	At Island Cottage Road	+257	Town of Greece.
	Approximately 4,400 feet downstream of Flood Control Dam.	+461	
South Stem East Branch Tributary Red Creek.	At confluence with East Branch Tributary Red Creek	+553	Town of Henrietta.
	Approximately 42 feet upstream of East Henrietta Road ...	+582	
West Branch Red Creek	At confluence with Red Creek	+518	City of Rochester, Town of Brighton.
	At Bridge to Park Dump	+519	
West Stem Middle Branch Red Creek.	At confluence with Middle Branch Red Creek and East Stem Middle Branch Red Creek.	+524	Town of Henrietta.
	Approximately 270 feet upstream of Erie Station Road	+563	

+ North American Vertical Datum.
* National Geodetic Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Rochester
Maps are available for inspection at Rochester City Hall, 30 Church Street, Rochester, New York.

Town of Brighton
Maps are available for inspection at Brighton Town Hall, 2300 Elmwood Avenue, Rochester, New York.

Town of Greece
Maps are available for inspection at Town of Greece Department of Public Works, 697 Long Pond Road, Rochester, New York.

Town of Henrietta
Maps are available for inspection at Henrietta Town Hall, 475 Calkins Road, Henrietta, New York.

Town of Ogden
Maps are available for inspection at Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York.

Town of Parma
Maps are available for inspection at Parma Town Hall, 1300 Hilton-Parma Corners Road, Hilton, New York.

Town of Perinton
Maps are available for inspection at Perinton Town Hall, 1350 Turk Hill Road, Fairport, New York.

Town of Webster
Maps are available for inspection at Webster Town Hall, 1000 Ridge Road, Webster, New York.

Village of East Rochester
Maps are available for inspection at East Rochester Village Hall, 120 West Commercial Street, East Rochester, New York.

Village of Spencerport

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Maps are available for inspection at Spencerport Village Building Department, 269 Ogden Center Road, Spencerport, New York.			
Rutland County, Vermont (All Jurisdictions) Docket No.: FEMA–B–7746			
Clarendon River	Approximately 1,700 feet upstream of confluence with Otter Creek.	+487	Town of Rutland.
	At the confluence with Otter Creek	+487	
Curtis Brook	At the confluence with East Creek	+663	Town of Rutland.
	Approximately 500 feet upstream of confluence with East Creek.	+667	
East Creek	At the confluence with Otter Creek	+532	City of Rutland, Town of Rutland.
	Approximately 1.07 miles upstream of East Pittsford Road	+752	
Homer Stone Brook	At the confluence with Otter Creek	+630	Town of Wallingford.
	Approximately 75 feet upstream of confluence with Otter Creek.	+632	
Lake St. Catherine (Little Lake)	Entire shoreline within the Town of Poultney	+486	Town of Poultney.
Moon Brook	At the downstream side of Granger Street	+533	City of Rutland.
	Approximately 2,964 feet upstream of Sharon Drive	+699	
Otter Creek	At upstream side of Center Rutland Dam	+515	Town of Clarendon, City of Rutland, Town of Danby, Town of Rutland, Town of Wallingford.
	Approximately 1.09 miles upstream of confluence of Homer Stone Brook.	+642	
Roaring Brook	At the confluence with Otter Creek	+567	Town of Wallingford.
	Approximately 165 feet upstream of confluence with Otter Creek.	+571	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Rutland
Maps are available for inspection at Rutland City Clerk's Office, 1 Strongs Avenue, Rutland, Vermont.

Town of Clarendon
Maps are available for inspection at Clarendon Town Hall, 279 Middle Road, North Clarendon, Vermont.

Town of Danby
Maps are available for inspection at Danby Town Hall, 130 Brook Road, Danby, Vermont.

Town of Poultney
Maps are available for inspection at Poultney Town Clerk's Office, 9 Main Street, Poultney, Vermont.

Town of Rutland
Maps are available for inspection at Rutland Town Clerk's Office, 181 Business Route 4, Center Rutland, Vermont.

Town of Wallingford
Maps are available for inspection at Wallingford Town Clerk's Office, 75 School Street, Wallingford, Vermont.

Carroll County, Virginia, and Incorporated Areas Docket Nos.: FEMA–B–7742 & D–7828			
Chestnut Creek	Approximately 2450 feet downstream of Cliffview Road	+2298	Unincorporated Areas of Carroll County.
	Approximately 7500 feet upstream of Cliffview Road	+2332	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

ADDRESSES

Unincorporated Areas of Carroll County
Maps are available for inspection at Building Officials Office, 605–1 Pine Street, Hillsville, VA 24343.

City of Galax, Virginia Docket Nos.: FEMA–B–7742 & D–7828			
Chestnut Creek	Just upstream of Cliffview Road	+2308	City of Galax.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 7500 feet upstream of Cliffview Road	+2332	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

ADDRESSES

City of Galax
Maps are available for inspection at Galax Municipal Building, 111 East Grayson Street, Galax, VA 24333.

Grayson County, Virginia, and Incorporated Areas
Docket Nos.: FEMA–B–7742 & D–7828

Chestnut Creek	Near Sewage Treatment Plant, just upstream of County Boundary.	+2332	Unincorporated Areas of Grayson County.
	Near Sewage Treatment Plant, approximately 375 feet downstream of old Railroad Bridge.	+2335	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

ADDRESSES
Unincorporated Areas of Grayson County
Maps are available for inspection at County Administrator's Office, 129 Davis Street, Independence, VA 24348.

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

Dated: March 17, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–6911 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071017599–8435–02]

RIN 0648–AW16

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2008 Georges Bank Cod Hook Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Final rule.

SUMMARY: This final rule implements the Georges Bank (GB) Cod Hook Sector (Hook Sector) Fishing Year (FY) 2008 Operations Plan and Agreement, approved by the Administrator, Northeast Region, NMFS (Regional Administrator), and modifies the eligibility criteria for membership for the Hook Sector and the GB Cod Fixed Gear Sector (Fixed Gear Sector). Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (Amendment 13) authorized allocation of up to 20 percent of the annual GB cod total allowable catch (TAC) to the Hook Sector. Pursuant to that authorization, the Sector submitted an Operations Plan and Sector Contract entitled, ''Georges Bank Cod Hook Sector Fishing Year 2008–2009 Operations Plan and Agreement'' (together referred to as the Sector Agreement) and an Environmental Assessment (EA), and requested an allocation of GB cod, consistent with the FMP. This action results in authorization of the Sector Operations Plan during the 2008 fishing year and allocation of 658 mt of GB cod to the Sector. This rule also modifies the eligibility criteria for membership in both the Hook Sector and the Fixed Gear Sector by allowing vessels without GB cod landings history to join a sector.

DATES: Effective May 1, 2008.

ADDRESSES: Copies of the Sector Agreement, EA and the Final Regulatory Flexibility Analysis (FRFA) are available from the Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The EA and FRFA are also accessible via the Internet at *http://www.noaa.gov/nero/regs/com.html*.

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

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on the Sector Agreement for the Hook Sector was published in the **Federal Register** on March 3, 2008 (73 FR 11376), with public comment accepted through March 18, 2008. The Regional Administrator approved the FY 2008 Sector Operations Plan, based

on public comment, and based on a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. Details pertaining to the principal regulations applying to the Hook Sector, the process of review and approval of sectors, and facts regarding the Sector's submission of the FY 2008 Sector Agreement are contained in the proposed rule. An EA entitled ''Approval of the Georges Bank Cod Hook Sector Operations Plan Fishing Year 2008'', which analyzes the impacts of the proposed Hook Sector operations, was also prepared.

The Hook Sector was authorized to fish in FYs 2004, 2005, 2006, and 2007, and, based upon the GB cod landings history of its members, was allocated 12.60, 11.70, 10.03, and 8.02 percent, respectively, of the annual GB cod TAC.

The 2008 Sector Agreement contains the same elements as the FY 2007 Sector Agreement. The Sector Agreement will be overseen by a board of directors and a Sector Manager. The Sector's GB cod TAC is based upon the number of Sector members and their qualifying historic landings of GB cod. The GB cod TAC is a ''hard'' TAC, meaning that, once the TAC is caught, Sector vessels may not fish under a NE multispecies Day-at-Sea (DAS), possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations). Should the hard TAC be exceeded, the Sector's allocation will be reduced by the overharvest in the following year.

The FY 2008 Sector Agreement contains exemptions from the following restrictions of the FMP: The GB and Gulf of Maine (GOM) cod trip limit; the GOM, GB and Southern New England (SNE) limit on the number of hooks fished; the GB Seasonal Closure Area; the DAS Leasing Program vessel size restrictions; differential DAS in the Gulf of Maine Differential DAS Area and in the SNE Differential DAS Area (those portions of the differential areas which overlap the Hook Sector Area); and the Western U.S./Canada Area 72–hr observer program notification. Justification for the proposed exemptions and analysis of the potential impacts of the Operations Plan are contained in the EA.

A total of nineteen Hook Sector members signed the 2008 Hook Sector Contract. The GB cod TAC calculation is based upon the historic cod landings of the participating Hook Sector vessels, regardless of gear used. The allocation percentage is calculated by dividing the sum of total landings of GB cod landed by prospective Hook Sector members in FY 1996 through 2001, by the sum of the total accumulated landings of GB cod landed by all NE multispecies vessels for the same time period. Based upon the 19 qualifying landings histories of the Hook Sector members, the Hook Sector's share of the overall U.S. portion of the GB cod TAC is 658 mt (6.44 percent), or 1,450,566 lb (6.44 percent times the fishery-wide GB cod target TAC of 10,222 mt). Note, the proposed rule contained a calculation error that has been corrected in this final rule. Specifically, the proposed rule GB cod TAC of 614 mt was incorrect because it was based upon an incorrect percentage share of 6.01 percent, however the correct percentage share is 6.44 percent, which results in a correct TAC of 658 mt.

The Sector Agreement contains procedures for the enforcement of the Hook Sector rules and a schedule of penalties, and provides the authority to the Hook Sector Manager to issue stop fishing orders to members of the Hook Sector. Participating vessels will be required to land fish only in designated landing ports and would be required to provide the Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hr of offloading. Dealers purchasing fish from participating vessels will be required to provide the Hook Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Hook Sector Manager will transmit to NMFS a copy of the VTRs and the aggregate catch information from these reports. After 90 percent of the Hook Sector's allocation has been harvested, the Hook Sector Manager will be required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Hook Sector's GB cod TAC, minus a reserve, will be allocated to each month of the fishing year. GB cod quota that is not landed during a given month will be rolled over into the following month. Once the aggregate monthly quota of GB cod is reached, for the remainder of the month, participating vessels may not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies. Once the annual TAC of GB cod is reached, Hook Sector members may not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies for the rest of the fishing year. The harvest rules will not preclude vessels from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules on separate trips. For each fishing trip, participating vessels will be required to fish under the NE multispecies DAS program to account for any incidental groundfish species that they may catch while fishing for GB cod. In addition, participating vessels will be required to call the Hook Sector Manager prior to leaving port. All legal-sized cod caught would be retained and landed and counted against the Hook Sector's aggregate allocation. Participating vessels will not be allowed to fish with or have on board gear other than jigs, non-automated demersal longline, or handgear. NE multispecies DAS used by participating vessels while conducting fishery research under an Exempted Fishing Permit during the FY 2008 would be deducted from that Hook Sector member's individual DAS allocation. Similarly, all GB cod landed by a participating vessel while conducting research would count toward the Hook Sector's allocation of GB cod TAC. Participating vessels will be exempt from the GB Seasonal Closure Area during May.

A Letter of Authorization will be issued to each member of the Hook Sector exempting them, conditional upon their compliance with the Sector Agreement, from the GOM and GB cod possession restrictions, the GB Seasonal Closure Area, the Western U.S./Canada Area 72–hr observer notification requirement, the DAS Leasing Program vessel size restrictions, differential DAS, and the limits on the number of hooks requirements as specified in §§ 648.86(b)(1) and (2); 648.81(g); 648.85(a)(3)(ii)(C); 648.82(k)(4)(ix); 648.82 (e)(2); 648.80(a)(3)(v) and (a)(4)(v); and 648.80(b)(2)(v), respectively. If the effective date of the approval of the Hook Sector is past May 1, 2008, the Hook Sector would be allowed to fish under common pool rules until the Hook Sector is approved, as authorized by § 648.87(b)(1)(xii).

Based on the authority granted to the Secretary of Commerce under Section 305(d) (16 U.S.C. 1855(d)) of the Magnuson-Stevens Act, this final rule also modifies the regulations that define eligibility criteria for membership in the Hook Sector and the Fixed Gear Sector, in order to be consistent with the original Council intent. The eligibility criteria for membership in the Hook Sector and Fixed Gear Sector were implemented by Amendment 13 and Framework Adjustment 42 (69 FR 22906, April 27, 2004; and 71 FR 62156, October 23, 2006, respectively). Of the

several eligibility criteria for both these sectors in the implementing regulations, a criterion requiring documented landings of GB cod was not explicitly included as a criterion in the Council documents that proposed formation of the sectors. The implications of this eligibility criterion (requiring landings history of GB cod) were not apparent at the time of implementation, but became apparent during the evaluation of sector Operations Plans for FY 2008. Because the proposed roster for the Fixed Gear Sector for 2008 contains vessels that did not land GB cod during the period 1996 to 2001, the current regulations would prevent such vessels without landings from joining a sector.

During the formation of the Hook Sector and Fixed Gear Sector, it was assumed that only vessels with GB cod landings would be interested in joining the sector, and therefore the landings criterion was not perceived as exclusionary. However, NMFS evaluated the pertinent information regarding the development of this regulation and concluded that this eligibility criterion does not reflect Council intent. Based on this evaluation, NMFS is correcting the current regulations by eliminating the eligibility requirement (for landings) because it precludes vessels without GB cod landings history from joining either sector, and is more restrictive than Council intent.

Comments and Responses

One pertinent comment was received from a representative of the Hook Sector on the proposed rule.

Comment: The commenter expressed strong support for approval of the Hook Sector Operations Plan and the modification to the eligibility criteria for the Hook Sector and the Fixed Gear Sector.

Response: NMFS is approving the Hook Sector for FY 2008 and modifying the eligibility criteria.

Classification

NMFS has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner in order to allow the Hook Sector to fish at the start of the fishing year, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after the date of publication. Because this final rule authorizes the Hook Sector to fish under the Hook Sector's Operations Plan, members of the Hook Sector may not fish under the Hook Sector rules until the final rule is effective. If the effective date is delayed past May 1, 2008, the members would be precluded from fishing under Operations Plan rules, which provide relief from various restrictions of the Fishery Management Plan, and enable more efficient fishing practices. A delay would likely result in economic harm to the sector members by not allowing them to fish during a very productive time of the fishing year.

Under an approved Operations Plan, with an effective date of May 1, 2008, the Hook Sector would be afforded exemptions from a seasonal closure on Georges Bank, the differential Day-at-Sea (DAS) requirement, the restriction on number of hooks, cod possession limits, the observer notification requirement for the Western U.S./Canada Area, and the DAS Leasing Program size restriction. The approval would coincide with the beginning of the Fishing Year, May 1, which is one of the most productive months for the fishery. If the effective date of the approved Operations Plan is delayed, Hook Sector members would be fishing under the more restrictive≥common pool'' regulations until the approval. The GB seasonal closure and the cod trip limits are two such regulations that would preclude or severely constrain their fishing operations. The GB seasonal closure, which includes the area traditionally fished by the Hook Sector, would prevent the Hook Sector members from fishing on easily accessible fishing grounds. Due to the current high cost of fuel, and the relatively small size of vessels in the Hook Sector, it is not likely that vessels would travel a long distance to fish in open areas, and there would be no revenue earned. Even if vessels chose to travel to open fishing areas, they would be subject to relatively low cod trip limits, and the other restrictions which would result in low economic returns.

The need to establish an effective date less than 30 days after the date of publication results from the objective of allowing vessels to fish in the Hook Sector as of May 1, 2008, the beginning of the fishing year, and the timing of the rulemaking process. The time period under which these regulations were developed was short due to the complexity and length of the process governing the Operations Plans approval. Due to the limited time available to develop this rulemaking, there was insufficient time remaining to allow for the full 30–day delay in effectiveness. Therefore, for the reason above, the AA finds good cause to waive the 30–day delay in effectiveness and to make these regulations effective on May 1, 2008.

Because the Hook Sector will be fishing under a hard TAC for GB cod, effort controls (i.e., the exemptions) are not necessary to constrain the impact of the Sector on the GB cod stock. Should the Sector's allocated GB cod TAC be caught, participating vessels would no longer be allowed to fish under a NE multispecies DAS, possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Sector members will be required to fish under their current NE multispecies DAS allocation to account for any other regulated NE multispecies that they may catch while fishing for GB cod and are restricted to using hook gear only.

A FRFA was prepared as required by section 603 of the Regulatory Flexibility Act (RFA). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to the proposed rule and in the EA prepared for this action, and is not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

No public comments pertaining to the IRFA or the economic effects of this action were received. In this final rule, a minor increase was made to the size of the GB cod TAC in order to correct a calculation error in the proposed rule, which will result in the potential for additional revenue for the Hook Sector.

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

The Small Business Administration (SBA) size standard for small commercial fishing entities is $ 4 million in annual gross sales. All permitted and participating vessels in the groundfish fishery, including prospective Hook Sector members, are considered to be small entities because

gross sales by any one entity (vessel) do not exceed this threshold, and, therefore there is no disproportionate impact between large and small entities. The number of prospective participants in the Hook Sector is 19 (or less), substantially less than the total number of active vessels in the groundfish fishery. These 19 vessels will be subject to the regulatory exemptions and operational restrictions approved for the Hook Sector for FY 2008.

Description of Steps the Agency Has Taken to Minimize the Economic Impact on Small Enitites Consistent With the Stated Objectives of Applicable Statutes

Approval of the FY 2008 Sector Agreement results in an allocation of 658 mt of GB cod to the Hook Sector, and minimization of economic impacts on the Hook Sector. Once the GB cod TAC is harvested, participating vessels would not be allowed to fish under a NE multispecies DAS, possess or land GB cod, or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or party/charter regulations). Hook Sector vessels may only fish with jigs, non-automated demersel longline, or handgear. Under the Sector Agreement, members will be exempt from several restrictions of the FMP described in the preamble to the proposed and final rule and in the EA.

This action will positively impact the members of the Hook Sector's 19 vessels that have voluntarily joined the Hook Sector, who are relatively dependendant upon groundfish revenue compared to other participants in the groundfish fishery. The approval of the Hook Sector and allocation of GB cod TAC will indirectly benefit the communities of Chatham and Harwichport, MA, and to a lesser extent other Cape Cod communities involved in the groundfish fishery. During FY 2006, members of the Hook Sector made 359 fishing trips, landed 179,616 lb (81,472 kg) of cod and 258,544 lb (117,274 kg) of haddock, and generated approximately $ 269,424, and $ 310,253 in revenue from those species, respectively (assuming a dock-side price of $ 1.50 and $1.20 per lb, respectively). Hook Sector members also landed various other species, which contributed additionally to their revenue. In general, the operation of the Hook Sector would continue to mitigate the negative economic impacts that result from the current suite of regulations that apply to the groundfish fishery (most recently Framework Adjustment 42; October 23, 2006; 71 FR 62156). The Hook Sector, by fishing under rules that are designed to meet their needs (as well as the conservation requirements of the FMP), is afforded a larger degree of flexibility and efficiency, which will result in economic gains. For example, Hook Sector members are able to plan their fishing activity and income in advance with more certainty due to the fact that there is a cod TAC, which is apportioned to each month of the year. They are able to maximize their efficiency (revenue per trip) due to the exemption from trip limits and hook numbers. For some vessel owners in the Hook Sector, participation in the Hook Sector enables their businesses to remain economically viable. For the above reasons, approval of the FY 2008 Sector Agreement minimizes the impact on small entities.

In contrast, under the No Action alternative, all Sector members would have remained in the common pool of vessels and fished under all the rules implemented by Amendment 13 and subsequent Framework Adjustments. Under the regulatory scenario of the No Action alternative, relative to the preferred alternative, Sector members would likely have faced increased economic uncertainty, loss of efficiency, and loss of revenue. Because cod usually represents a high proportion of total fishing income for hook gear vessels, revenues for Sector members are sensitive to regulations that impact how and when they can fish for cod, such as trip limits and hook gear restrictions. Sector members would have been unnecessarily impacted by regulations designed to affect the catch of species of which hook gear catches very little (e.g., yellowtail flounder, because hook gear is more selective than other gear types). For example, under the No Action alternative, Sector members would have been affected by the differential DAS counting requirement, one of the objectives of which is to protect yellowtail flounder.

No other alternatives beyond the No Action were considered during the development of this action. The RFA requires each IRFA to include a description of significant alternatives that accomplish the objectives of applicable statues (in this case, sector provisions) and minimize any significant economic impact to small entities. The objectives of sector management, as originally developed and implemented under Amendment 13, are to provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. The Hook Sector developed the Sector Agreement after consultation with prospective members. Prospective members then signed a binding sector contract to abide by the measures specified in the Sector Agreement. As described above, the approved Sector Agreement minimizes economic impacts to participating vessels by allowing them to operate more efficiently. Accordingly, the approved Sector Agreement reflects the management measures preferred by vessels participating in the GB Cod Hook Sector during FY 2008 and represents all of the significant alternatives that accomplish the objectives of sector provisions and minimize economic impacts to small entities, as required by the RFA. Therefore, in conjunction with the NEPA requirement to consider a reasonable range of alternatives, no other alternatives were considered prior to approval of this action.

Modification of the eligibility criteria for the Hook Sector and the Fixed Gear Sector will allow vessels without a history of landing GB cod the opportunity to participate in a sector and to therefore take advantage of the associated sector efficiencies and financial benefits. Although, the number of vessels that this modification will impact is likely very small, this change in the eligibility requirement minimizes economic impacts on such vessels by allowing the opportunity to fish in the Hook Sector that would not otherwise be possible.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Action

This final rule contains no collection-of-information requirement subject to the Paperwork Reduction Act (PRA).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 28, 2008.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service/

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.87, paragraphs (d)(1)(ii) and (d)(2)(i) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(1) * * *

(ii) *Eligibility.* All vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector.

* * * * *

(2) * * *

(i) *Eligibility.* All vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Fixed Gear Sector.

* * * * *

[FR Doc. E8–6953 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG86

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by American Fisheries Act Catcher Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2008 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2008, though 1200 hrs, A.l.t., June 10, 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 B season allowance of the 2008 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI is 877 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)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the 2008 Pacific cod TAC allocated to AFA catcher processors in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 877 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors in 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 cod by AFA trawl catcher processors in 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 27, 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 is exempt from review under Executive Order 12866.

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

Dated: March 28, 2008.

Alan D. Risenhoover

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

[FR Doc. 08–1089 Filed 3–31–08; 3:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 65
Thursday, April 3, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0224; Directorate Identifier 2007–NE–44–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) provided by the aviation authority of Germany to identify and correct an unsafe condition on an aviation product. The MCAI states the following:

It is necessary to change the limits of the High Pressure (HP) Turbine Stage 1 and Stage 2 Rotor Discs. The maximum approved life of these discs is decreased for all flight missions.

This Emergency Airworthiness Directive (EAD) has been raised to instruct mandatory decreased maximum approved lives in the BR715 Time Limits Manual (TLM) T–715–3BR for the HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and of the High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 for all flight missions. The life limits are decreased by the same proportion for all flight missions, thus back to birth pro-rata calculations due to the life limit changes are not necessary.

We are proposing this AD to prevent rotating parts that may have exceeded their low-cycle fatigue life limits from failing, which could result in uncontained engine failure and subsequent damage to the airplane.

DATES: We must receive comments on this proposed AD by May 5, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0224; Directorate Identifier 2007–NE–44–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive (EAD) 2007–0152–E, dated June 1, 2007, to correct an unsafe condition for the specified products. The EASA EAD states:

It is necessary to change the limits of the High Pressure (HP) Turbine Stage 1 and Stage 2 Rotor Discs. The maximum approved life of these discs is decreased for all flight missions.

This Emergency Airworthiness Directive (EAD) has been raised to instruct mandatory decreased maximum approved lives in the BR715 Time Limits Manual (TLM) T–715–3BR for the HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and of the High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 for all flight missions. The life limits are decreased by the same proportion for all flight missions, thus back to birth pro-rata calculations due to the life limit changes are not necessary.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, they have notified us of the unsafe condition described in the EASA EAD and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require reducing the published life limits of HP Turbine Stage 1 Discs, P/Ns BRH20130 and BRH20131, and HP Turbine Stage 2 Discs, P/Ns BRH19423 and BRH19427.

Costs of Compliance

We estimate that this proposed AD would affect 260 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform the proposed actions and that the average labor rate is $80 per work-hour. Based

on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $20,800. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2008–0224; Directorate Identifier 2007–NE–44–AD.

Comments Due Date

(a) We must receive comments by May 5, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. These engines are installed on, but not limited to, McDonnell Douglas Model 717–200 airplanes.

Reason

(d) It is necessary to change the limits of the High Pressure (HP) Turbine Stage 1 and Stage 2 Rotor Discs. The maximum approved life of these discs is decreased for all flight missions.

This Emergency Airworthiness Directive (EAD) has been raised to instruct mandatory decreased maximum approved lives in the BR715 Time Limits Manual (TLM) T–715–3BR for the HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and of the High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 for all flight missions. The life limits are decreased by the same proportion for all flight missions, thus back to birth pro-rata calculations due to the life limit changes are not necessary.

We are issuing this AD to prevent rotating parts that may have exceeded their low-cycle fatigue life limits from failing, which could result in uncontained engine failure and subsequent damage to the airplane.

Actions and Compliance

(e) No later than 30 days after the effective date of this AD the following mandatory actions need to be completed for each individual BR700–715 HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 installed in a BR700–715A1–30, B1–30 or C1–30 engine:

(1) Identify the mandatory decreased maximum approved life for the HP Turbine Stage 1 and Stage 2 Rotor Discs listed in the tables below:

HIGH PRESSURE (HP) TURBINE STAGE 1 ROTOR DISC

Part No.	Mandatory decreased maximum approved life					
	Engine thrust rating			Engine flight mission		
	A1–30 Design	B1–30 Design	C1–30 Design	A1–30 Hawaiian	C1–30 Tropical	C1–30 derated Tropical
BRH20130	15971	13324	10500	17647	3794	7941
BRH20131	15971	13324	10500	17647	3794	7941

HIGH PRESSURE (HP) TURBINE STAGE 2 ROTOR DISC

Part No.	Mandatory decreased maximum approved life					
	Engine thrust rating			Engine flight mission		
	A1–30 Design	B1–30 Design	C1–30 Design	A1–30 Hawaiian	C1–30 Tropical	C1–30 derated Tropical
BRH19423	21165	17800	13372	1165	10893	13461
BRH19427	21165	17800	13372	21165	10893	13461

Note: Approved lives in the table are in flight cycles

(2) Record the mandatory maximum approved life in the applicable lifing documentation. It is mandatory to use the values given in the two tables in step (e)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to EASA Emergency Airworthiness Directive 2007–0152–E, dated June 1, 2007, for related information.

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

Issued in Burlington, Massachusetts, on March 19, 2008.

Ann C. Mollica,

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

[FR Doc. E8–6866 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA No. FAA–2008–0180; Airspace Docket No. 08–AAL–6]

Proposed Revocation of Area Navigation Jet Routes J–888R and J–996R; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This action corrects a notice of proposed rulemaking (NPRM) published in the **Federal Register** March 12, 2008 (73 FR 13159), Airspace Docket No. 08–AAL–6, FAA Docket No. FAA–2008–0111. In that rule, the FAA docket number is incorrect. The correct FAA docket number should state FAA–2008–0180, instead of FAA–2008–0111. In addition, a typographical error to one Jet Route was made in the title. The title of the NPRM should reference Jet Route J–888R, instead of J–889R. This action corrects those errors.

DATES: *Effective Date:* 0901 UTC, April 3, 2008.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 12, 2008, an NPRM was published in the **Federal Register** for Airspace Docket No. 08–AAL–6, FAA Docket No. FAA–2008–0111 (73 FR 13159), revoking Area Navigation Jet Routes J–889R and J–996R in Alaska. Subsequent to publication, it was found that the FAA docket number was incorrect; the correct number is FAA–2008–0180. In addition, the reference to one Area Navigation Jet Route was incorrectly stated in the title of the NPRM. The correct Jet Route should have stated J–888R, instead of J–889R. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the FAA docket number and the title of the NPRM as published in the **Federal Register** on March 12, 2008 (73 FR 13159), Airspace Docket No. 08–AAL–6, FAA Docket No. FAA–2008–0111, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

On page 13159, correct the FAA docket number and the title to read as follows:

* * * * *

Docket No. FAA–2008–0180

Proposed Revocation of Area Navigation Jet Routes J–888R and J–996R; Alaska

* * * * *

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

Stephen L. Rohring,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–6935 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0162]

RIN 1625–AA00

Safety Zone; Red Bull Air Race; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of San Diego Bay, CA in support of the Red Bull Air Race. The safety zone would be necessary to provide for the safety of the crew, spectators, participants in the event, participating vessels and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 11, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0162 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Adam Proctor, Waterways Management Division, U.S. Coast Guard Sector San Diego, CA, at telephone (619) 278–7277. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this

rulemaking (USCG–2008–0162), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0162) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard would be establishing a safety zone on the navigable waters of San Diego Bay in support of the Red Bull Air Races. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the race and is also necessary to protect other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone that would be enforced from 8 a.m. through 7 p.m. from April 29th, 2008 through May 4th, 2008. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Red Bull Air Race and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The limits of this temporary safety zone include all areas within a box that extends to the following coordinates: 32°42′41.00″ N, 117°10′33.06″ W; 32°42′26.40″ N, 117°10′55.69″ W; 32°41′57.22″ N, 117° 9′33.05″ W; and 32°41′45.04″ N, 117° 9′54.28″ W. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The safety zone is of a limited duration, only eleven hours per day for a period of four days, and is limited to a relatively small geographic area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

(1) The propsed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the safety zone in San Diego Bay, San Diego, CA, from 8 a.m. to 7 p.m. on April 29th, 2008 through May 4th, 2008.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule only encompasses only a portion of the waterway, there will be chances for boating traffic to pass through the safety zone and the Captain of the Port may authorize entry into the zone, if necessary.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Adam Proctor, Waterways Management Division, U.S. Coast Guard Sector San Diego at telephone (619) 278–7277. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add new § 165.T11–015 to read as follows:

§ 165.T11–015 Safety Zone; Red Bull Air Race, San Diego Bay, San Diego, CA

(a) *Location*. The limits of this temporary safety zone would include all areas within a box that extends to the following coordinates: 32°42′41.00″ N, 117°10′33.06″ W; 32°42′26.40″ N, 117°10′55.69″ W; 32°41′57.22″ N, 117°9′33.05″ W; and 32°41′45.04″ N, 117°9′54.28″ W.

(b) *Effective Period*. This section would be effective from 8 a.m. through 7 p.m. from April 29th, 2008 through May 5th, 2008. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels would be prohibited, unless authorized by the Captain of the Port or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted on VHF–FM Channel 16.

Enforcement. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by the U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 5, 2008.

D.L. LeBlanc,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Diego.

[FR Doc. E8–6892 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0219]

RIN 1625–AA00

Safety Zones: Annual Events Requiring Safety Zones in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes establishment of safety zones for annual events in the Captain of the Port Buffalo zone. This proposed rule consolidates current regulations establishing safety zones for annual fireworks events in the former Captain of the Port Cleveland Zone and the former Captain of the Port Buffalo Zone. In addition, it adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays or other events.

DATES: Comments and related materials must reach the Coast Guard on or before May 5, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0219 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov*.

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Boudrow, U.S. Coast Guard Sector Buffalo; (716) 843–9572.

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0219), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted; your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0219) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

SUPPLEMENTARY INFORMATION:

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Buffalo, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On July 22, 2005, the Coast Guard consolidated the Captain of the Port Cleveland zone and the Captain of the Port Buffalo zone into one zone re-defining the Captain of the Port Buffalo zone. This proposed rule will consolidate the regulations found in 33 CFR 165.202, Safety Zones; Annual Fireworks Events in the Captain of the Port Cleveland Zone, the regulations found in 33 CFR 165.914, Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone so that all the annual fireworks events in the current Captain of the Port Buffalo Zone are found in one CFR section. In addition this proposal adds events not previously published in the CFR.

These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays or other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Proposed Rule

The proposed rule and associated safety zones are necessary to ensure the safety of vessels and people during annual firework events in the Captain of the Port Buffalo area of responsibility that may pose a hazard to the public. This proposal consolidates the events listed in §§ 165.202 and 165.914 into a new section 165.939. This new section unites all the annual Firework events in the recently consolidated COTP Buffalo zone into one section of the CFR. In addition, there are several events that are added and some events that have been deleted in this new section.

The proposed safety zones will be enforced only immediately before, during, and after events that pose

hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port Buffalo will notify the public that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of these safety zones will be periodic, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before, during, and after the time the events occur. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (1) through (28) during the dates and times the safety zones are being enforced.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for short periods of time, and only once per year, per zone. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Joseph Boudrow, Prevention Department, Coast Guard Sector Buffalo, Buffalo, NY, at (716) 843–9572. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we nevertheless discuss its effects elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these safety zones and fishing rights protection need not be incompatible. We have also determined that this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this section is not likely to have a significant effect on the human environment.

A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.939 to read as follows:

§ 165.939 Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone.

(a) *Safety Zones.* The following areas are designated Safety zones and are listed geographically from New York to Ohio.

(1) *Boldt Castle 4th of July Fireworks, Heart Island, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 500-foot radius of the land position: 44°20′39″ N, 075°55′16″ W; at Heart Island, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9pm to 10pm on July 4 of each year.

(2) *Clayton Chamber of Commerce Fireworks, Calumet Island, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 500-foot radius of land position: 44°15′05″ N, 076°05′35″ W; in Calumet Island Harbor, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9 p.m. to 10 p.m. on July 1 of each year.

(3) *French Festival Fireworks, Cape Vincent, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 500-foot radius of land position: 44°07′53″ N, 076°20′02″ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the first or second weekend of July each year.

(4) *Brewerton Fireworks, Brewerton, NY.*

(i) *Location.* All waters of Lake Oneida within a 500-foot radius of barge position: 43°14′15″ N, 076°08′03″ W; in Brewerton, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the first weekend of July each year.

(5) *Celebrate Baldwinsville Fireworks, Baldwinsville, NY.*

(i) *Location.* All waters of the Seneca River within a 500-foot radius of land position: 43°09′21″ N, 076°20′01″ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10 p.m. on the third weekend of September each year.

(6) *Island Festival Fireworks Display, Baldwinsville, NY.*

(i) *Location.* All waters of the Seneca River within a 500-foot radius of land position: 43°09′25″ N, 076°20′21″ W; in Baldwinsville, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 10 p.m. to 10:30 p.m. on the first weekend of July each year.

(7) *Seneca River Days, Baldwinsville, NY.*

(i) *Location.* All waters of the Seneca River within a 500-foot radius of land position: 43°09′25″ N, 076°20′21″ W; in Baldwinsville, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the first weekend of July each year.

(8) *Oswego Harborfest, Oswego, NY.*

(i) *Location.* All waters of Lake Ontario within a 1,000 foot radius of barge position: 43°28′10″ N, 076°31′04″ W; in Oswego, NY. (DATUM: NAD 83).

(ii) *Enforcement Date.* This section is effective from 9 p.m. to 10 p.m. on the last Saturday in July each year.

(9) *Village Fireworks, Sodus Point, NY.*

(i) *Location.* All waters of Sodus Bay within a 500-foot radius of land position: 43°16′27″ N, 076°58′27″ W; in Sodus Point, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 10 p.m. to 10:30 p.m. on the first Saturday in July each year.

(10) *City of Syracuse Fireworks Celebration, Syracuse, NY.*

(i) *Location.* All waters of Onondaga Lake within a 350-foot radius of land position: 43°03′37″ N, 076°09′59″ W; in Syracuse, NY. (DATUM: NAD 83).

(ii) *Enforcement Date.* This section is effective from 9:30 p.m, to 10:30 p.m. on the last weekend in June each year.

(11) *Tom Graves Memorial Fireworks, Port Bay, NY.*

(i) *Location.* All waters of Port Bay within a 500-foot radius of barge position: 43°17′46″ N, 076°50′02″ W; in Port Bay, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 10 p.m. to 10:30 p.m. on the first weekend in July each year.

(12) *Rochester Harbor and Carousel Festival, Rochester, NY.*

(i) *Location.* All waters of Lake Ontario within a 500-foot radius of land position: 43°15′21″ N, 077°36′19″ W in Rochester, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 8 p.m. to 10 p.m. on June 24th of each year.

(13) *North Tonawanda Fireworks Display, Tonawanda, NY.*

(i) *Location.* All waters of the East Niagara River within a 500-foot radius of a barge located at position: 43°01′12″ N, 078°53′36″ W; in North Tonawanda, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 10:15 p.m. on July 4th of each year.

(14) *Tonawanda's Canal Fest Fireworks, Tonawanda, NY.*

(i) *Location.* All waters of the East Niagara River within a 500-foot radius of barge position: 43°01′12″ N, 078°53′36″ W; in Tonawanda, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:30 p.m. to 10:30 p.m. on the fourth Sunday in July each year.

(15) *Celebrate Erie Fireworks, Erie, PA.*

(i) *Location.* All waters of Presque Isle Bay within an 800-foot radius of land position: 42°08′19″ N, 080°05′29″ W; at the end of Dobbins Landing Pier, Erie, PA. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 10:30 p.m. on the third weekend in August each year.

(16) *Ashtabula Area Fireworks, Walnut Beach, Ashtabula, OH.*

(i) *Location.* All waters of Lake Erie and Ashtabula Harbor within a 300-yard radius of land position: 41°54.167′ N, 080°48.416′ W; in Ashtabula, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the second weekend in July each year.

(17) *Fairport Harbor Mardi Gras, Fairport Harbor, OH.*

(i) *Location.* All waters of Fairport Harbor and Lake Erie within a 300-yard radius of land position: 41°45.500′ N, 081°16.300′ W; east of the harbor entrance at Fairport Harbor Beach, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first Saturday of July each year.

(18) *Lake County Perchfest Fireworks, Fairport, OH.*

(i) *Location.* All waters of Fairport Harbor and Lake Erie within a 300-yard radius of land position: 41°45.500′ N, 081°16.300′ W; in Fairport, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the second weekend in September each year.

(19) *Mentor Harbor Yacht Club Fireworks, Mentor Harbor, OH.*

(i) *Location.* All waters of Lake Erie and Mentor Harbor within a 200-yard radius of 41°43.200′ N, 081°21.400′ W (west of the harbor entrance); in Mentor Harbor, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(20) *Browns Football Halftime Fireworks, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie beginning in approximate land position: 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176′ N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.823′ N, 081°41.620′ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective on a Sunday during the second or third Cleveland Brown's home game each year.

(21) *City of Cleveland 4th of July Fireworks, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie within a 400-yard radius of Main Entrance Light 5 (LLNR 4180) at position: 41°30.23′ N, 081°42.7′ W; in Cleveland, OH (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(22) *Dollar Bank Jamboree Fireworks Display, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie beginning at land position: 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176′ N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.823′ N, 081°41.620′ W. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(23) *Lakewood City Fireworks Display, Lakewood,OH.*

(i) *Location.* All waters of Lake Erie within a 200-yard radius of land position: 41°29.755′ N, 081°47.780′ W (off of Lakewood Park); in Lakewood, OH. (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(24) *Cleveland Yachting Club Fireworks Display, Rocky River, OH.*

(i) *Location.* All waters of the Rocky River and Lake Erie within a 200-yard radius of land position 41°29.428′ N, 081°50.309′ W (DATUM: NAD 83) at Sunset Point on the western side of the mouth of the Rocky River in Cleveland, OH.

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the third weekend in July each year.

(25) *Lorain 4th of July Celebration Fireworks Display, Lorain, OH.*

(i) *Location.* All waters of Lorain Harbor within a 300-yard radius of land position 41°28.591′ N, 082°10.855′ W (DATUM: NAD 83), east of the harbor entrance on the end of the break wall near Spitzer's Marina.

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the first weekend in July each year.

(26) *Lorain Port Fest Fireworks Display, Lorain, OH.*

(i) *Location.* All waters of Lorain Harbor within a 250-yard radius of land position: 41°28.040′ N, 082°10.365′ W; in Lorain, OH (DATUM: NAD 83).

(ii) *Enforcement date.* This section is effective from 9:45 p.m. to 11 p.m. on the third weekend in July each year.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his designated representative.

(2)(i) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated representative.

(ii) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(iii) Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3)(i) All vessels must obtain permission from the Captain of the Port Buffalo or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced.

(ii) Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of

the Captain of the Port or a designated representative.

(iii) While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(d) *Exemption*. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(e) *Waiver*. For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(f) *Notification*. The Captain of the Port Buffalo will notify the public that that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

§ 165.202 [Removed and Reserved]

3. Remove and reserve § 165.202.

§ 165.914 [Removed and Reserved]

4. Remove and reserve § 165.914.

Dated: March 25, 2008.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E8–6896 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2008–0229; FRL–8550–8]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada, Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAP) to the Nevada Division of Environmental Protection on December 4, 2007. EPA is proposing to revise the Code of Federal Regulations to reflect the current delegation status of NESHAP in Nevada.

DATES: Any comments on this proposal must arrive by May 5, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0229, by one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns the delegation of unchanged NESHAP to the Nevada Division of Environmental Protection. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAP in Nevada. EPA is taking direct final action without prior proposal because the Agency believes this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: March 19, 2008.

Andrew Steckel,

Acting Director, Air Division, Region IX.

[FR Doc. E8–6920 Filed 4–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2008–0256; FRL–8549–1]

Virginia: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Virginia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Virginia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this

authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by May 5, 2008.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *E-mail:* Thomas UyBarreta, *uybarreta.thomas@epa.gov*.

3. *First Class or Overnight Mail:* Thomas UyBarreta, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

4. *Hand Delivery or Courier:* Deliver your comments to Thomas UyBarreta, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta at 215–814–2953.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: March 18, 2008.

William T. Wisniewski,

Acting Regional Administrator, EPA Region III.

[FR Doc. E8–6675 Filed 4–2–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7770]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 2, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7770, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Crawford County, Kansas, and Incorporated Areas				
Cow Creek	Approximately 0.34 mile downstream of South Broadway.	None	+878	Unincorporated Areas of Crawford County, City of Pittsburg.
	Confluence of Second Cow Creek	None	+891	
East Fork of Taylor Branch	Approximately 0.35 mile downstream of East 4th Street.	None	+899	Unincorporated Areas of Crawford County, City of Pittsburg.
	At East Atkinson Avenue	None	+930	
First Cow Creek	Confluence with Second Cow Creek	None	+891	Unincorporated Areas of Crawford County, City of Pittsburg.
	Approximately 53 feet upstream of West 20th Street	None	+908	
Taylor Branch	Confluence with East Fork Taylor Branch	None	+897	City of Pittsburg.
	Approximately 0.36 mile upstream of East 10th Street	None	+934	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Pittsburg

Maps are available for inspection at 201 West 4th Street, Pittsburg, KS 66762.

Unincorporated Areas of Crawford County

Maps are available for inspection at 111 East Forest, Suite M, Girard, KS 66743.

Yadkin County, North Carolina, and Incorporated Areas				
Arnold Branch	At the confluence with South Deep Creek	None	+1030	Unincorporated Areas of Yadkin County.
	Approximately 0.5 mile upstream of Rena Road (State Road 1316).	None	+1113	
Beaverdam Creek	At the confluence with Cobb Creek and Jonesville Creek.	None	+909	Unincorporated Areas of Yadkin County, Town of Jonesville.
	Approximately 1,190 feet upstream of Haynes Road (State Road 1312).	None	+1030	
Big Kennedy Creek	At the Iredell/Yadkin County boundary	None	+847	Unincorporated Areas of Yadkin County.
	Approximately 160 feet upstream of the Iredell/Yadkin County boundary.	None	+849	
Cain Mill Branch	At the Davie/Yadkin County boundary	None	+795	Unincorporated Areas of Yadkin County.
	Approximately 1,590 feet upstream of Snow Road (State Road 1160).	None	+858	
Chinquapin Creek	At the Davie/Yadkin County boundary	None	+788	Unincorporated Areas of Yadkin County.
	Approximately 90 feet downstream of Baity Road (State Road 1723).	None	+805	
Cobb Creek	At the confluence with Beaverdam Ceek and Jonesville Creek.	None	+909	Unincorporated Areas of Yadkin County, Town of Jonesville.
	Approximately 1.2 miles upstream of Swaim Road	None	+951	
Cranberry Creek	At the confluence with South Deep Creek	None	+844	Unincorporated Areas of Yadkin County.
	Approximately 1.9 miles upstream of Whitaker Road (State Road 1334).	None	+1019	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Deep Creek	At the confluence with Yadkin River	None	+718	Unincorporated Areas of Yadkin County.
	Approximately 1,150 feet downstream of Speer Bridge Road (State Road 1711).	+732	+731	
Dobbins Creek	At the confluence with North Little Hunting Creek	None	+977	Unincorporated Areas of Yadkin County.
	Approximately 0.6 mile upstream of Twin Creek Road (State Road 1319).	None	+1060	
Dobbins Creek Tributary	At the confluence with Dobbins Creek	None	+1040	Unincorporated Areas of Yadkin County.
	At the downstream side of Sandy Creek Drive	None	+1051	
Fall Creek	At the confluence with Yadkin River	None	+833	Unincorporated Areas of Yadkin County.
	Approximately 1,575 feet upstream of NC Highway 67	None	+960	
Fisher Creek	At the confluence with South Deep Creek	None	+777	Unincorporated Areas of Yadkin County.
	Approximately 910 feet upstream of Brandon Hills Road (State Road 1153).	None	+798	
Flat Rock Branch	At the confluence with North Little Hunting Ceek	None	+839	Unincorporated Areas of Yadkin County.
	Approximately 810 feet downstream of Flat Rock Church Road.	None	+941	
Forbush Creek	At the confluence with Yadkin River	None	+720	Unincorporated Areas of Yadkin County.
	Approximately 400 feet upstream of Union Grove Church Road (State Road 1585).	None	+922	
Forbush Creek Tributary 1	At the confluence with Forbush Creek	None	+747	Unincorporated Areas of Yadkin County.
	Approximately 0.7 mile upstream of the confluence with Forbush Creek.	None	+762	
Forbush Creek Tributary 2	At the confluence with Forbush Creek	None	+748	Unincorporated Areas of Yadkin County.
	Approximately 1.1 miles upstream of the confluence with Forbush Creek.	None	+795	
Forbush Creek Tributary 3	At the confluence with Forbush Creek	None	+809	Unincorporated Areas of Yadkin County.
	Approximately 0.5 mile upstream of the confluence with Forbush Creek.	None	+836	
Forbush Creek Tributary 4	At the confluence with Forbush Creek	None	+830	Unincorporated Areas of Yadkin County.
	Approximately 0.7 mile upstream of Griffin Road (State Road 1591).	None	+852	
Forbush Creek Tributary 5	At the confluence with Forbush Creek	None	+889	Unincorporated Areas of Yadkin County.
	Approximately 0.8 mile upstream of Bovendertown Road (State Road 1584).	None	+942	
Hall Creek	At the confluence with Yadkin River	None	+778	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of the confluence of Hall Creek Tributary 2.	None	+902	
Hall Creek Tributary 1	At the confluence with Hall Creek	None	+853	Unincorporated Areas of Yadkin County.
	Approximately 0.6 mile upstream of the confluence with Hall Creek.	None	+875	
Hall Creek Tributary 2	At the confluence with Hall Creek	None	+874	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of the confluence with Hall Creek.	None	+901	
Harmon Creek	Approximately 0.5 mile upstream of the confluence with South Deep Creek.	+740	+741	Unincorporated Areas of Yadkin County.
	Approximately 1,990 feet upstream of Ray T Moore Road (State Road 1725).	None	+812	
Hauser Creek	At the confluence with Yadkin River	None	+711	Unincorporated Areas of Yadkin County.
	At the Davie/Yadkin County boundary	None	+711	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Haw Branch	At the confluence with North Deep Creek	None	+800	Unincorporated Areas of Yadkin County, Town of Yadkinville.
	Approximately 1.1 miles upstream of the confluence with North Deep Creek.	None	+825	
Jonesville Creek	At the confluence with Sandyberry Creek	None	+896	Town of Jonesville.
	At the confluence of Cobb Creek and Beaverdam Creek.	None	+909	
Lineberry Creek	At the confluence with Yadkin River	None	+883	Unincorporated Areas of Yadkin County.
	Approximately 1.2 miles upstream of NC Highway 67	None	+900	
Little Forbrush Creek	At the confluence with Forbrush Creek	None	+769	Unincorporated Areas of Yadkin County.
	Approximately 1.3 miles upstream of the confluence with Little Forbrush Creek Tributary 1.	None	+956	
Little Forbush Creek Tributary 1.	At the confluence witih Little Forbush Creek	None	+880	Unincorporated Areas of Yadkin County.
	Approximately 0.9 mile upstream of the confluence with Little Forbush Creek.	None	+956	
Logan Creek	At the confluence with Forbush Creek	None	+720	Unincorporated Areas of Yadkin County.
	Approximately 1,180 feet downstream of NC Highway 67.	None	+959	
Logan Creek Tributary 1	At the confluence with Logan Creek	None	+813	Unincorporated Areas of Yadkin County.
	Approximately 2.2 miles upstream of the confluence with Logan Creek.	None	+883	
Logan Creek Tributary 2	At the confluence with Logan Creek	None	+850	Unincorporated Areas of Yadkin County.
	Approximately 1,800 feet upstream of Dal Road (State Road 1581).	None	+906	
Logan Creek Tributary 3	At the confluence with Logan Creek	None	+912	Unincorporated Areas of Yadkin County.
	Approximately 1.5 miles upstream of Mill Hill Road (State Road 1542).	None	+987	
Loney Creek	At the confluence with Logan Creek	None	+739	Unincorporated Areas of Yadkin County.
	Approximately 1.7 miles upstream of the confluence with Logan Creek.	None	+786	
Long Branch	At the Iredell/Yadkin County boundary	None	+898	Unincorporated Areas of Yadkin County.
	Approximately 0.7 mile upstream of Barron Hill Road (State Road 1102).	None	+948	
Long Branch North	At the confluence with North Little Hunting Creek	None	+938	Unincorporated Areas of Yadkin County.
	Approximately 1,350 feet upstream of Wells Hollow Drive.	None	+1075	
Mill Branch	At the confluence with Logan Creek	None	+722	Unincorporated Areas of Yadkin County.
	Approximately 1.2 miles upstream of Bloomtown Road (State Road 1569).	None	+758	
Miller Creek	At the confluence with Yadkin River	None	+757	Unincorporated Areas of Yadkin County.
	Approximately 60 feet downstream of Apperson Road (State Road 1557).	None	+766	
North Deep Creek	Approximately 250 feet upstream of the confluence with Deep Creek and South Deep Creek.	None	+739	Unincorporated Areas of Yadkin County, Town of Yadkinville.
	Approximately 1,290 feet downstream of Center Road (State Road 1381).	None	+1079	
North Deep Creek Tributary 1.	At the confluence with North Deep Creek	None	+831	Unincorporated Areas of Yadkin County.
	Approximately 1.5 miles upstream of the confluence with North Deep Creek.	None	+872	
North Deep Creek Tributary 2.	At the confluence with North Deep Creek	None	+835	Unincorporated Areas of Yadkin County, Town of Yadkinville.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.1 miles upstream of U.S. Highway 601.	None	+897	
North Deep Creek Tributary 2A.	At the confluence with North Deep Creek Tributary 2	None	+860	Town of Yadkinville.
	Approximately 0.7 mile upstream of the confluence with North Deep Creek Tributary 2.	None	+877	
North Deep Creek Tributary 3.	At the confluence with North Deep Creek	None	+840	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of Shugarts Mill Road (State Road 1379).	None	+873	
North Deep Creek Tributary 4.	At the confluence with North Deep Creek	None	+847	Unincorporated Areas of Yadkin County, Town of Boonville.
	Approximately 1.0 mile upstream of Baptist Church Road.	None	+941	
North Deep Creek Tributary 4A.	At the confluence with North Deep Creek Tributary 4	None	+854	Unincorporated Areas of Yadkin County.
	Approximately 0.7 mile upstream of the confluence with North Deep Creek Tributary 4.	None	+875	
North Deep Creek Tributary 4B.	At the confluence with North Deep Creek Tributary 4	None	+884	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of Abraham Road (State Road 1512).	None	+921	
North Little Hunting Creek	At the Iredell/Yadkin County boundary	None	+813	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of Union Church Road (State Road 1109).	None	+1025	
North Little Hunting Creek Tributary 1.	At the confluence with North Little Hunting Creek	None	+825	Unincorporated Areas of Yadkin County.
	Approximately 0.5 mile upstream of the confluence with North Little Hunting Creek.	None	+836	
North Little Hunting Creek Tributary 2.	At the confluence with North Little Hunting Creek	None	+947	Unincorporated Areas of Yadkin County.
	Approximately 210 feet downstream of Old U.S. Highway 421 West.	None	+1091	
Roby Creek	At the confluence with Turner Creek	None	+712	Unincorporated Areas of Yadkin County.
	Approximately 0.7 mile upstream of Georgia Road (State Road 1717).	None	+761	
Rocky Branch	At the confluence with North Little Hunting Creek	None	+887	Unincorporated Areas of Yadkin County.
	Approximately 630 feet downstream of Rocky Branch Road.	None	+1027	
Sandyberry Creek	At the upstream side of Center Road	None	+948	Unincorporated Areas of Yadkin County, Town of Jonesville.
	Approximately 140 feet downstream of Interstate 77 ..	None	+1062	
South Deep Creek	At Old Stage Road (State Road 1733)	None	+741	Unincorporated Areas of Yadkin County, Town of Yadkinville.
	Approximately 1,700 feet downstream of Rock House Mountain Road (State Road 1349).	None	+1043	
South Deep Creek Tributary 1.	At the confluence with South Deep Creek	None	+763	Unincorporated Areas of Yadkin County, Town of Yadkinville.
	Approximately 1,580 feet upstream of Billy Reynolds Road (State Road 1134).	None	+932	
South Deep Creek Tributary 3.	At the confluence with South Deep Creek	None	+780	Unincorporated Areas of Yadkin County.
	Approximately 0.5 mile upstream of Merry Acres Drive.	None	+818	
South Deep Creek Tributary 3A.	At the confluence with South Deep Creek Tributary 3	None	+784	Unincorporated Areas of Yadkin County.
	Approximately 780 feet upstream of Helton Road (State Road 1136).	None	+802	
South Deep Creek Tributary 3B.	At the confluence with South Deep Creek Tributary 3	None	+794	Unincorporated Areas of Yadkin County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of Arnold Road (State Road 1132).	None	+827	
South Deep Creek Tributary 4.	At the confluence with South Deep Creek	None	+885	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of Cranberry Road (State Road 1343).	None	+1078	
South Deep Creek Tributary 4A.	At the confluence with South Deep Creek Tributary 4	None	+1051	Unincorporated Areas of Yadkin County.
	Approximately 550 feet downstream of Longtown Road (State Road 1338).	None	+1075	
South Deep Creek Tributary 5.	At the confluence with South Deep Creek	None	+930	Unincorporated Areas of Yadkin County.
	Approximately 900 feet upstream of Marler Road (State Road 1103).	None	+1076	
South Deep Creek Tributary 5A.	At the confluence with South Deep Creek Tributary 5	None	+954	Unincorporated Areas of Yadkin County.
	Approximately 360 feet downstream of Marler Road (State Road 1103).	None	+1043	
South Deep Creek Tributary 6.	At the confluence with South Deep Creek	None	+1007	Unincorporated Areas of Yadkin County.
	Approximately 160 feet downstream of U.S. Highway 21.	None	+1017	
South Deep Tributary 7	At the confluence with South Deep Creek	None	+1020	Unincorporated Areas of Yadkin County.
	Approximately 1,100 feet downstream of Swaims Church Road (State Road 1347).	None	+1035	
Steelman Creek	At the Davie/Yadkin County boundary	None	+795	Unincorporated Areas of Yadkin County.
	Approximately 0.9 mile upstream of Else Road (State Road 1163).	None	+829	
Tanyard Creek	At the confluence with Yadkin River	None	+840	Unincorporated Areas of Yadkin County, Town of Boonville.
	Approximately 1.4 miles upstream of River Road (State Road 1367).	None	+909	
Turner Creek	At the confluence with Yadkin River	None	+712	Unincorporated Areas of Yadkin County.
	Approximately 0.4 mile upstream of Turners Creek Road (State Road 1728).	None	+824	
Turner Creek Tributary 1	At the confluence with Turner Creek	None	+712	Unincorporated Areas of Yadkin County.
	Approximately 0.7 mile upstream of the confluence with Turner Creek.	None	+719	
Walkers Branch	At the confluence with North Little Hunting Creek	None	+880	Unincorporated Areas of Yadkin County.
	Approximately 0.5 mile upstream of Buck Shoals Road (State Road 1103).	None	+1006	
Williams Creek	At the confluence with Yadkin River	None	+882	Unincorporated Areas of Yadkin County.
	Approximately 180 feet upstream of Hailey Drive	None	+899	
Yadkin River	At the Davie/Forsyth/Yadkin County boundary	None	+711	Unincorporated Areas of Yadkin County, Town of Jonesville.
	Approximately 500 feet downstream of the Surry/Wilkes/Yadkin County boundary.	+904	+903	
Yadkin River Tributary 10	At the confluence with Yadkin River	None	+748	Unincorporated Areas of Yadkin County.
	Approximately 90 feet downstream of Hauser Road	None	+784	
Yadkin River Tributary 11	At the confluence with Yadkin River	None	+854	Unincorporated Areas of Yadkin County, Town of Boonville.
	Approximately 1.0 mile upstream of U.S. Highway 601.	None	+964	
Yadkin River Tributary 15	At the confluence with Yadkin River	None	+815	Unincorporated Areas of Yadkin County.
	Approximately 475 feet upstream of Limerock Road (State Road 1529).	None	+826	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Yadkin River Tributary 17	At the confluence with Yadkin River	None	+827	Unincorporated Areas of Yadkin County.
	Approximately 0.5 mile upstream of Doe Run Drive	None	+849	
Yadkin River Tributary 27	At the confluence with Yadkin River	None	+771	Unincorporated Areas of Yadkin County, Town of East Bend.
	Approximately 3.2 miles upstream of the confluence with Yadkin River.	None	+951	
Yadkin River Tributary 9	At the confluence with Yadkin River	None	+741	Unincorporated Areas of Yadkin County.
	Approximately 1.8 miles upstream of Butner Mill Road (State Road 1562).	None	+847	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Boonville
Maps are available for inspection at Boonville Town Hall, 110 North Carolina Avenue, Boonville, NC.

Town of East Bend
Maps are available for inspection at East Bend Town Hall, 108 West Main Street, East Bend, NC.

Town of Jonesville
Maps are available for inspection at Jonesville Town Hall, 136 West Main Street, Jonesville, NC.

Town of Yadkinville
Maps are available for inspection at Yadkinville Town Hall, 213 Van Buren Street, Yadkinville, NC.

Unincorporated Areas of Yadkin County
Maps are available for inspection at Yadkin County Manager's Office, 217 East Willow Street, Yadkinville, NC.

Bexar County, Texas, and Incorporated Areas

Ackerman Creek	At the confluence with Rosillo Creek	None	+651	City of San Antonio.
	Approximately 1,600 feet upstream of Candlemeadow	None	+698	
Balcones Creek	At the confluence with Cibolo Creek	+1278	+1277	City of Fair Oaks Ranch, City of San Antonio, Unincorporated Areas of Bexar County.
	At the confluence with Tributary A	None	+1580	
Beital Creek Tributary A	Approximately 600 feet upstream of confluence with Beital Creek.	+722	+723	City of San Antonio, City of Windcrest.
	Approximately 1,500 feet upstream of Jim Seal Drive	None	+792	
Bertal Creek	Just upstream of confluence with Salado Creek	+694	+697	City of San Antonio.
	Just upstream of Nacogdoches Road	+827	+828	
Caracol Creek	Approximately 600 feet upstream of confluence with Medio Creek.	+773	+770	City of San Antonio.
	Approximately 3,700 feet upstream of West Military Drive.	None	+854	
Catalpa Pershing Channel	Just upstream of U.S. Highway 281	None	+661	City of San Antonio.
	Approximately 1,000 feet upstream of Mulberry Avenue.	None	+672	
Chimenea Creek	At the confluence with Helotes Creek	None	+1086	City of San Antonio.
	Approximately 5 miles upstream of Private Road	None	+1398	
Comanche Creek	Approximately 4,500 feet downstream of Mauemann Road.	None	+525	City of San Antonio.
	Approximately 700 feet upstream of Applewhite Road	None	+572	
Concepcion Creek	Approximately 400 feet downstream of Probandt Street.	None	+592	City of San Antonio.
	Approximately 400 feet upstream of U.S. Highway 90 W Access Road.	None	+683	
Culebra Creek	Approximately 1,800 feet upstream of confluence with Leon Creek.	+775	+779	City of San Antonio.
	Approximately 9,000 feet upstream of Galm Road	None	+1003	
Culebra Creek Tributary A	Just downstream of Grissom Road	+794	+792	City of San Antonio.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,500 feet upstream of Dover Ridge	None	+899	
Culebra Creek Tributary B	Approximately 200 feet downstream of Culebra Road	None	+864	City of San Antonio.
	Approximately 600 feet upstream of Culebra Road	None	+868	
Culebra Creek Tributary C	Approximately 4,000 feet downstream of FM 1560 North.	None	+895	City of San Antonio, City of Helotes.
	Approximately 500 feet upstream of Beverly Hills Road.	None	+996	
Culebra Creek Tributary C–1	Approximately 800 feet upstream of the confluence with Culebra Creek Tributary C at the FM 1560 N.	None	+909	City of San Antonio.
	Approximately 1,800 feet upstream of Shaenfield Road.	None	+923	
Culebra Creek Tributary D	Approximately 2,400 feet downstream of FM 1560 North.	None	+892	City of San Antonio.
	Approximately 3,200 feet upstream of Gass Road	None	+960	
Culebra Creek Tributary E	Approximately 110 feet upstream of Galm Road	None	+953	City of San Antonio.
	Approximately 2,700 feet upstream of Remuda Ranch	None	+998	
Culebra Creek Tributary F	Approximately 1,500 feet upstream of Kallison Lane ..	None	+980	City of San Antonio.
	Approximately 6,200 feet upstream of Kallison Lane ..	None	+1007	
Elm Creek	At the confluence with Mud Creek	+794	+790	City of San Antonio.
	Approximately 900 feet upstream of Loop 1604 Access Road.	+833	+834	
Elm Waterhole Creek	Approximately 4,300 feet downstream of Redland Road.	+798	+796	City of San Antonio.
	Approximately 2,700 feet downstream of Judson Road.	None	+847	
Escondido Creek	Approximately 700 feet downstream of private road near the confluence with Martinez Creek B.	None	+575	City of San Antonio, City of New Berlin.
	Approximately 1,200 feet upstream of Binz-Engleman Road.	None	+695	
Fort Sam Houston Tributary	Just upstream of Road S–33 E	+647	+645	Unincorporated Areas of Bexar County, City of San Antonio, City of Terrell Hills.
	Approximately 300 feet upstream of Rittiman Road	None	+746	
French Creek	Approximately 1,250 feet downstream of Private Road at 7581 Bandera Road.	None	+826	City of San Antonio.
	Approximately 150 feet upstream of FM 1560 at French Creek.	None	+995	
French Creek Tributary A	Just upstream of Hausman Road South	+922	+923	City of San Antonio.
	Just upstream of Loop 1604 West Access Road	+938	+936	
French Creek Tributary B	Approximately 600 feet downstream of Loop 1604 West Access Road.	+926	+929	City of San Antonio.
	Just upstream of Loop 1604 West Access Road	+936	+937	
French Creek Tributary No. 2	Approximately 1,180 feet downstream of Braun Hollow.	None	+848	City of San Antonio.
	Approximately 980 feet downstream of Braun Hollow	None	+849	
French Creek Tributary No. 4	Approximately 1,370 feet upstream of Guilbeau Road along French Creek.	None	+852	City of San Antonio.
	Approximately 970 feet upstream of Tezel Road	None	+908	
Government Canyon Tributary E.	Approximately 500 feet upstream of confluence with Government Canyon.	None	+1198	City of San Antonio.
	Approximately 900 feet upstream of confluence with Government Canyon.	None	+1216	
Government Canyon Creek ..	Approximately 950 feet upstream of confluence with Culebra Creek.	None	+926	City of San Antonio.
	Approximately 1,300 feet upstream of Helotes Springs	None	+1327	
Government Canyon Creek Tributary B.	Approximately 2,900 feet upstream of Galm Road along Government Canyon Creek.	None	+968	City of San Antonio.
	Approximately 1.2 miles above Galm Road along Government Canyon Creek.	None	+1000	
Government Canyon Creek Tributary C.	Approximately 170 feet upstream of confluence with Government Canyon.	None	+1028	City of San Antonio.
	Approximately 1,600 feet upstream of confluence with Government Canyon.	None	+1055	
Government Canyon Creek Tributary A.	Approximately 1,050 feet upstream of Galm Road	None	+958	City of San Antonio.
	Approximately 3.5 miles upstream of Galm Road	None	+1132	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Government Canyon Greek Tributary D.	Approximately 650 feet upstream of confluence with Government Canyon Creek.	None	+1176	City of San Antonio.
	Approximately 4,100 feet upstream of confluence with Government Canyon Creek.	None	+1216	
Helotes Creek	Approximately 2,000 feet upstream of confluence with Culebra Creek.	+855	+852	City of San Antonio, City of Grey Forest, City of Helotes.
	Approximately 3,000 feet upstream of Four Rogers Road.	None	+1240	
Helotes Creek Tributary A	Approximately 2,800 feet downstream of FM 1560 North.	None	+970	City of San Antonio, City of Helotes.
	Approximately 700 feet upstream of Parrigin Road	None	+1039	
Huebner Creek	Approximately 400 feet upstream of Ingram Road	+765	+768	City of San Antonio, City of Leon Valley.
	Approximately 2,500 feet downstream of DeZavala Road.	+958	+956	
Huebner Creek Tributary A	Approximately 1,300 feet downstream of Eckhert Road.	+841	+843	City of San Antonio.
	Approximately 260 feet downstream of Southwell Road.	None	+918	
Huesta Creek	Approximately 2,400 feet downstream of Old Babcock Road.	+920	+922	City of San Antonio.
	Approximately 5,000 feet upstream of Arroyo Hondo	None	+1102	
Huesta Creek Tributary A	Just upstream of Hausman Road	None	+957	City of San Antonio.
	Approximately 1,300 feet upstream of Old Cedar Boulevard.	None	+989	
Indian Creek	Approximately 4,000 feet downstream of Ripps Ranch Road.	+565	+572	City of San Antonio.
	Approximately 600 feet upstream of Medina Base Road.	None	+716	
Lee Creek	Just downstream of Hilltop Drive	+1105	+1106	City of San Antonio, City of Grey Forest.
	Approximately 1,600 feet downstream of Babcock Road.	None	+1240	
Leon Creek	Approximately 2,500 feet upstream of Missouri Pacific Railroad along Medina River.	None	+519	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 4,900 feet upstream of Miranda Ridge	None	+1400	
Leon Creek Overflow	Just upstream of Prue Road at confluence with Leon Creek.	+888	+889	City of San Antonio.
	Approximately 1,230 feet downstream at Hausman Road.	+946	+948	
Leon Creek Tributary B	Approximately 500 feet upstream of confluence with Leon Creek.	None	+598	City of San Antonio.
	Approximately 130 feet downstream of Somerset Road.	None	+624	
Leon Creek Tributary C	Approximately 750 feet upstream of confluence with Leon Creek.	None	+635	City of San Antonio.
	Approximately 2,200 feet upstream of Southwest Military Drive.	None	+653	
Leon Creek Tributary D	Approximately 120 feet downstream of Kelly Drive	None	+667	Unincorporated Areas of Bexar County.
	Approximately 1,600 feet downstream of Growndon Road.	None	+675	
Leon Creek Tributary E	At confluence with Leon Creek	None	+672	Unincorporated Areas of Bexar County.
	Approximately 140 feet downstream of Unnamed Street in Lackland AFB.	None	+719	
Leon Creek Tributary E1	Approximately 210 feet upstream of confluence with Leon Creek Tributary E.	None	+672	Unincorporated Areas of Bexar County.
	Approximately 100 feet upstream of Kenly Avenue	None	+738	
Leon Creek Tributary F	At confluence with Leon Creek	None	+713	City of San Antonio.
	Just upstream of South Callaghan Road	None	+715	
Leon Creek Tributary J	Approximately 300 feet downstream of Intersate Highway 10 West.	None	+1107	City of San Antonio.
	Approximately 200 feet downstream of Cielo Vista Road.	None	+1174	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Leon Creek Tributary L	Approximately 150 feet upstream of Boerne Stage Road.	None	+1149	City of San Antonio.
	Approximately 1,900 feet upstream of Boerne Stage Road.	None	+1157	
Leon Creek Tributary M	Approximately 1,300 feet downstream of Boerne Stage Road.	None	+1202	City of San Antonio.
	Approximately 2.18 miles upstream of Boerne Stage Road.	None	+1348	
Leon Creek Tributary N	Approximately 350 feet upstream of confluence with Leon Creek at the Unnamed Road.	None	+1277	City of San Antonio.
	Approximately 3,700 feet upstream of Unnamed Road	None	+1323	
Live Oak Slough	Approximately 1,700 feet downstream of Rife Lane	None	+559	City of San Antonio.
	Approximately 1,200 feeet upstream of Old Pearsall Road at Loop 1604.	None	+617	
Lorence Creek	Approximately 100 feet downstream of Entrance Avenue.	+738	+736	City of San Antonio, Town of Hollywood Park.
	Just upstream of Sonterra Boulevard	None	+967	
Los Reyes Creek	Approximately 2,000 feet downstream of Antonio Drive.	+1025	+1026	City of San Antonio, City of Helotes.
	Approximately 4,200 feet upstream of State Highway 16 North.	None	+1299	
Los Reyes Creek Tributary A	Approximately 300 feet upstream of confluence with Los Reyes Creek.	None	+1175	City of San Antonio.
	Approximately 250 feet upstream of Private Road at 18524 State Highway 16.	None	+1210	
Lower French Creek	Approximately 170 feet downstream of Heliport Drive	+800	+802	City of San Antonio.
	Approximately 100 feet downstream of Low Bid Lane	+826	+825	
Lower Mud Creek	Just downstream of Wurzbach Parkway	+737	+732	City of San Antonio.
	Approximately 6,000 feet upstream of west Bound Loop 1604.	None	+893	
Macaway Creek	Approximately 4,000 feet downstream of U.S. Highway 87.	None	+509	Unincorporated Areas of Bexar County, City of San Antonio.
	Approximately 1,450 feet downstream of LaVernia Road.	None	+614	
Martinez Creek B	At the confluence with Cibolo Creek	None	+527	City of St. Hedwig, City of New Berlin, City of San Antonio.
	Approximately 1,400 feet upstream of Crestway Drive	None	+822	
Maverick Creek	Approximately 400 feet upstream of Old Babcock Road.	+925	+926	City of San Antonio.
	Approximately 1,400 feet upstream of Kyle Seale Parkway.	None	+1174	
Medina River	Approximately 2,000 feet upstream of Interstate Highway 37 South along San Antonio River.	None	+478	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 5,000 feet upstream of Gross Lane	+688	+690	
Medio Creek	Approximately 100 feet downstream of Campground Road.	None	+556	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 8,700 feet upstream of Talley Road	None	+875	
Meusebach Creek	Approximately 1,370 feet downstream of private road at 188 Specht Road.	None	+1111	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 1,360 feet upstream of Blanco Road	None	+1140	
New Braunfels Avenue, Austin Highway and Broadway Drain.	At the confluence with San Antonio River	+682	+684	City of Alamo Heights, City of San Antonio, City of Terrell Hills.
	Just upstream of Ridgehaven Place	None	+794	
Nichols Creek	Just downstream of Aue Road	None	+1131	City of San Antonio.
	Approximately 1,700 feet upstream of Old Fredericksburg Access Road.	None	+1241	
Nichols Creek Tributary 1	Just downstream of Interstate Highway 10 West Access Road.	None	+1158	City of San Antonio.
	Approximately 900 feet downstream of Lost Creek Way.	None	+1166	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Olmos Creek (Lower and Upper Reaches).	At confluence with San Antonio River	+726	+722	Town of Shavano Park, City of Alamo Heights, City of Castle Hills, City of San Antonio.
	Approximately 3,000 feet upstream of Lou Mell Road	None	+1047	
Panthe Spring Creek	Just upstream of North Loop Road	+798	+796	City of San Antonio, Town of Hollywood Park.
	Approximately 3,000 feet upstream of Loop 1604	None	+963	
Pecan Creek	Approximately 550 feet upstream of confluence with Leon Creek.	None	+1237	City of San Antonio.
	Just downstream of Private Road at 26690 Toutant Beauregard Road.	None	+1366	
Polecat Creek	Approximately 2,900 feet downstream of Cagnon Road.	None	+618	City of San Antonio.
	Just upstream of South Keller Road	+701	+703	
Quail Creek	Just downstream of Interstate Highway 410	+707	+709	City of San Antonio.
	Approximately 1,300 feet upstream of Oakhaven Road.	None	+754	
Ranch Creek	Approximately 650 feet upstream of confluence with Los Reyes Creek.	None	+1092	City of San Antonio.
	Approximately 4,000 feet upstream of confluence with Los Reyes Creek.	None	+1123	
Rittman Creek	Just downstream of Summer Fest	None	+689	City of Kirby, City of San Antonio.
	Approximately 3,000 feet upstream of Rittman Road	None	+719	
Rock Creek	At confluence with Olmos Creek	+761	+763	City of San Antonio.
	Approximately 600 feet downstream of Datapoint Road.	None	+894	
Rosillo Creek	Approximately 400 feet upstream of Old Corpus Christi Road.	None	+532	City of Kirby, City of San Antonio.
	Approximately 550 feet upstream of Walzem Road	None	+756	
Rundale Creek	Approximately 250 feet downstream of private road at Upper Balcones Road.	None	+1457	Unincorporated Areas of Bexar County.
	Approximately 4,050 feet upstream of Upper Balcoones Road.	None	+1639	
Salado Creek	At the confluence with San Antonio River	None	+599	City of San Antonio, Town of Shavano Park, Unincorporated Areas of Bexar County.
	Approximately 100 feet downstream of Loop W Access Road.	+951	+948	
San Antonio River	Approximately 4.5 miles downstream of Loop 1604	None	+435	City of San Antonio, City of Alamo Heights.
	Downstream of Almos Dam	+686	+685	
Selma Creek	At confluence with Cibolo Creek	+738	+743	City of Selma, City of San Antonio.
	Approximately 1,900 feet upstream of Loop 1604	None	+850	
Slick Ranch Creek	Approximately 1,000 feet downstream of Pinn Road	+706	+711	City of San Antonio.
	Approximately 1,100 feet upstream of Rogers Road	None	+874	
Slick Ranch Creek Tributary B.	Approximately 650 feet upstream of Richland Hills Road.	None	+761	City of San Antonio.
	Approximately 1,400 feet upstream of Potranco Road	None	+778	
Tributary A to Panther Springs Creek.	Approximately 1,200 feet downstream of Blanco Road at confluence with Panther Spring Creek.	None	+844	City of San Antonio.
	Approximately 200 feet downstream of Loop 1604 W Access Road.	None	+942	
Tributary A to Salado Creek	Just downstream of Unnamed Park Road at Pecan Valley.	+570	+573	City of San Antonio.
	Approximately 200 feet upstream of Gateway	None	+602	
Tributary A–1 to Panther Spring Creek.	Approximately 50 feet downstream of Private Road	None	+921	City of San Antonio.
	Just downstream of Loop 1604 W Access Road	None	+962	
Tributary B To Salado Creek	At confluence with Salado Creek	+596	+598	City of San Antonio.
	Approximately 400 feet upstream of Amanda Street	None	+622	
Tributary C to Salado Creek	At confluence with Salado Creek	+620	+621	City of San Antonio.
	Just upstream of Seguin Street	None	+691	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary C to Selma Creek ..	Approximately 1,600 feet downstream of North Loop 1604.	None	+799	City of Selma, City of Live Oak, City of San Antonio.
	Approximately 2,700 feet upstream of North Loop 1604.	None	+846	
Tributary D to Salado Creek	Just upstream of Ira Lee Road	+705	+708	City of San Antonio.
	Approximately 900 feet upstream of Tesoro River	None	+753	
Tributary D to Selma Creek ..	Approximately 250 feet downstream of North Loop 1604 Access Road.	None	+813	City of San Antonio.
	Approximately 1,700 feet upstream of North Loop 1604 Access Road.	None	+853	
Tributary E To Salado Creek	Approximately 550 feet downstream of Nacogdoches Road.	+725	+727	City of San Antonio.
	Approximately 600 feet upstream of Perrin Beitel Road.	None	+787	
Tributary E to Martinez Creek B.	Approximately 400 feet downstream of NRCS Dam No 2.	None	+638	City of San Antonio.
	Approximately 1,500 feet downstream of Lucky Feilds	None	+688	
Tributary E to Salado Creek	Approximately 1,200 feet upstream of Nacogdoches Road.	+721	+724	City of San Antonio.
	Approximately 900 feet upstream of O'Connor Road ..	None	+868	
Tributary F to Martinez Creek B.	Approximately 3,000 feet downstream of Walzem Road.	None	+678	City of San Antonio.
	Approximately 1,800 feet upstream of Elm Trail Drive	None	+733	
Tributary G to Martinez Creek B.	Approximately 750 feet upstream of confluence with Balcones Creek at Boerne Stage Road.	None	+1370	City of San Antonio.
	Approximately 2,700 feet upstream of confluence with Balcones Creek at Boerne Stage Road.	None	+1391	
Tuttle Road Ditch	Approximately 300 feet downstream of Harry Wurzbach Road.	None	+684	City of Terrell Hills, City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 500 feet upstream of Harry Wurzbach Road.	None	+697	
US 281 Tributary Salado Creek.	Downstream of Country Parkway	+782	+784	City of Hill Country Village, City of San Antonio.
	Upstream of Blackhawk Trail	None	+881	
UTSA Tributary to Leon Creek.	Approximately 1,300 feet upstream of UTSA Boulevard.	+960	+956	City of San Antonio.
	Approximately 700 feet upstream of UTSA Boulevard	+975	+972	
Unnamed Tributary 1 to Beitel Creek.	At confluence with Beitel Creek	None	+707	City of San Antonio.
	Just upstream of Interstate Highway 35	None	+752	
Unnamed Tributary 1 to Elm Waterhole Creek.	Just upstream of Loop 1604 E Access Road at confluence with Elm Waterhole Creek.	None	+833	City of San Antonio.
	Approximately 1,000 feet downstream of Roseheart ...	None	+892	
Unnamed Tributary 2 in Olmos Creek Watershed.	Just downstream of Rock Creek Run	None	+836	City of San Antonio.
	Approximately 800 feet upstream of Rock Creek Run	None	+847	
Unnamed Tributary 2 to Beitel Creek.	Downstream of Old O'Connor Road	None	+789	City of San Antonio.
	Just upstream of Judson Road	None	+848	
Unnamed Tributary 3 in Olmos Creek Watershed.	Downstream of Greely Street	None	+722	City of Alamo Heights.
	Approximately 250 feet downstream of Townsend Avenue.	None	+746	
Unnamed Tributary 3 to Beitel Creek.	Approximately 100 feet downstream of O'Connor Road.	None	+812	City of San Antonio.
	Approximately 1,500 feet upstream of Dreamwood Drive.	None	+850	
Unnamed Tributary 5 in Olmos Creek Watershed.	At the confluence with Olmos Creek	None	+960	Town of Shavano Park, City of San Antonio.
	Approximately 5,000 feet upstream of Northwest Loop 1604.	None	+1041	
Unnamed Tributary 5 to Caracol.	Approximately 900 feet downstream of West Loop 1604 N.	None	+828	City of San Antonio.
	Approximately 300 feet upstream of Copperfield	None	+866	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Unnamed Tributary 6 in Olmos Creek Watershed.	At confluence with West Fork Olmos Creek	None	+932	City of San Antonio.
	Approximately 600 feet upstream of DeZavala Road	None	+942	
Unnamed Tributary to Rundale Creek.	At the confluence with Rundale Creek	None	+1480	Unincorporated Areas of Bexar County.
	Approximately 70 feet upstream of Grow Ranch	None	+1548	
Walzem Creek	Just upstream of Judivan Drive	+673	+678	City of Windcrest, City of San Antonio.
	Approximately 200 feet downstream of Crestway Drive.	+840	+841	
West Fork Olmos Creek Upper.	Approximately 1,300 feet upstream of confluence with Olmos Creek.	+830	+831	City of San Antonio.
	Approximately 4,000 feet upstream of Rod Maplewood.	None	+970	
West Salitrillo Creek	Approximately 100 feet downstream of FM 1516	+647	+646	City of San Antonio, City of Converse, City of Live Oak, Unincorporated Areas of Bexar County.
	About 200 feet upstream of Avery Road	+889	+886	
West Tributary to Rosillo Creek.	Approximately 550 feet upstream of confluence with Rosillo Creek.	None	+673	City of Kirby.
	Approximately 500 feet upstream of Old Seguin Road	None	+694	
Westwood Village Creek	Approximately 100 feet upstream of Old U.S. Highway 90.	+698	+700	City of San Antonio.
	Approximately 1,000 feet upstream of Pinn Road	None	+724	
Wildcat Canyon	At confluence with Government Canyon Creek	None	+1058	City of San Antonio.
	Approximately 300 feet upstream of confluence with Government Canyon Creek.	None	+1058	
Woman Hollering Creek	Approximately 850 feet downstream of New Berlin Road.	None	+539	Unincorporated Areas of Bexar County, City of New Berlin, City of Schertz, City of St. Hedwig.
	Approximately 1,100 feet usptream of Golf Road	None	+719	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Alamo Heights
Maps are available for inspection at 6116 Broadway Street, San Antonio, TX 78209.

City of Castle Hills
Maps are available for inspection at 6915 West Avenue, Castle Hills, TX 78213.

City of Converse
Maps are available for inspection at 403 South Seguin, P. O. Box 35, Converse, TX 78109.

City of Fair Oaks Ranch
Maps are available for inspection at 7286 Dietz Elkhorn, Fair Oaks Ranch, TX 78015.

City of Grey Forest
Maps are available for inspection at 18502 Scenic Loop Rd, Grey Forest, TX 78023.

City of Helotes
Maps are available for inspection at 12951 Bandara Road, Helotes, TX 78023.

City of Hill Country Village
Maps are available for inspection at 116 Aspen Lane, San Antonio, TX 78232.

City of Kirby
Maps are available for inspection at 5631 Binz Engleman Road, Kirby, TX 78219.

City of Leon Valley
Maps are available for inspection at 6400 El Verde Road, Leon Valley, TX 78238.

City of Live Oak
Maps are available for inspection at 8001 Shin Oak Drive, Live Oak, TX 78233.

City of New Berlin
Maps are available for inspection at 415 East Donnegan Street, Maintenance Building, Seguin, TX 78155.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

City of San Antonio
Maps are available for inspection at 114 West Commerce, Seventh Floor, San Antonio, TX 78205.
City of Schertz
Maps are available for inspection at 1400 Schertz Parkway, Schertz, TX 78154.
City of Selma
Maps are available for inspection at 9375 Corporate, Selma, TX 78154.
City of St. Hedwig
Maps are available for inspection at 13065 FM 1346, St. Hedwig, TX 78152.
City of Terrell Hills
Maps are available for inspection at 5100 N. New Braunfels, San Antonio, TX 78209.
City of Universal City
Maps are available for inspection at 2150 Universal City Blvd., Universal City, TX 78148.
City of Windcrest
Maps are available for inspection at 8601 Midcrown, Windcrest, TX 78239.
Town of Hollywood Park
Maps are available for inspection at 407 Rhapsody Lane, Hollywood Park, TX 78216.
Town of Shavano Park
Maps are available for inspection at 99 Saddletree Court, Shavano Park, TX 78231.
Unincorporated Areas of Bexar County
Maps are available for inspection at 233 North Pecos Street, La Trinidad, Suite 420, San Antonio, TX 78207.

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

Dated: March 25, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–6913 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7769]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 2, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7769, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood

elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) Depth in feet above ground		Communities affected
		Effective	Modified	
Jersey County, Illinois, and Incorporated Areas				
Elsah Creek	At the mouth of the Mississippi River	+439	+438	Village of Elsah.
	Approximately 500 feet upstream of Maple Street	+439	+438	
Illinois River	At the mouth of the Mississippi River in Jersey County.	+440	+439	Unincorporated Areas of Jersey County, City of Grafton.
	Approximately 1500 feet upstream of the Illinois River Road Ferry Crossing.	+440	+439	
Mississippi River	Approximately 0.5 miles downstream of the confluence of Piasa Creek.	+438	+437	Unincorporated Areas of Jersey County, City of Grafton, Village of Elsah.
	At river mile 223.1 at the downstream tip of Iowa Island.	+441	+440	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Grafton

Maps are available for inspection at Grafton City Hall, 118 East Main Street, Grafton, IL 62037.

Unincorporated Areas of Jersey County

Maps are available for inspection at Jersey County Government Building, 200 North Lafayette St., Jerseyville, IL 62052.

Village of Elsah

Maps are available for inspection at 51 North Street, P.O. Box 28, Elsah, IL 62028.

Yancey County, North Carolina, and Incorporated Areas				
Bailey Branch	At the confluence with Pine Swamp Branch	None	+2575	Unincorporated Areas of Yancey County.
	Approximately 1,740 feet upstream of the confluence with Pine Swamp Branch.	None	+2637	
Bald Mountain Creek	At the confluence with Cane River	+2293	+2294	Unincorporated Areas of Yancey County.
	Approximately 1,810 feet upstream of Bee Log Road (State Road 1408).	None	+2467	
Big Crabtree Creek	The confluence with South Toe River	None	+2411	Unincorporated Areas of Yancey County.
	Approximately 1.4 miles upstream of Seven Mile Ridge Road (State Road 1167).	None	+3147	
Brown Creek	Approximately 300 feet upstream of the confluence with South Toe River.	+2633	+2634	Unincorporated Areas of Yancey County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.2 miles upstream of Upper Browns Creek Road (State Road 1154).	None	+4690	
Cane River	At the confluence with Nolichucky River and North Toe River.	None	+2044	Unincorporated Areas of Yancey County.
	Approximately 60 feet downstream of the confluence of Mitchell Creek.	None	+3157	
Cattail Creek	At Mountain Farm Road	None	+3012	Unincorporated Areas of Yancey County.
	At the confluence of North Fork Cattail Creek and South Fork Cattail Creek.	None	+3157	
Jacks Creek	At the confluence with North Toe River	None	+2136	Unincorporated Areas of Yancey County.
	Approximately 60 feet upstream of Sheriff Anglin Road (State Road 1364).	None	+2532	
Little Crabtree Creek	Approximately 450 feet downstream of Depot Street (State Road 1140).	+2622	+2623	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 650 feet upstream of East Boulevard	None	+2740	
McIntosh Branch	The confluence with Pine Swamp Branch	None	+2699	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 50 feet upstream of Van Kirk Lane	None	+2751	
Mitchell Branch	At the confluence with Little Crabtree Creek	None	+2705	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 260 feet upstream of Mitchell Branch (State Road 1373).	None	+2751	
Nolichucky River	Approximately 550 feet upstream of the railroad	None	+1981	Unincorporated Areas of Yancey County.
	At the confluence of Cane River and North Toe River	None	+2044	
North Cox Creek	Approximately 220 feet upstream of the confluence with Cane River.	+2148	+2149	Unincorporated Areas of Yancey County.
	Approximately 1.5 miles upstream of the confluence with Cane River.	None	+3061	
North Fork Cattail Creek	At the confluence with Cattail Creek and South Fork Cattail Creek.	None	+3157	Unincorporated Areas of Yancey County.
	Approximately 1.1 miles upstream of North Fork Road	None	+4869	
North Toe River	At the confluence with Nolichucky River and Cane River.	None	+2044	Unincorporated Areas of Yancey County.
	At the Yancey/Mitchell County boundary	None	+2411	
Pine Swamp Branch	At the confluence with Cane River	None	+2553	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 1,770 feet upstream of Cherry Lane (State Road 1139).	None	+2720	
Pine Swamp Branch	Approximately 1,770 feet upstream of Cherry Lane (State Road 1139).	None	#1	Town of Burnsville.
	Approximately 200 feet upstream of East Main Street	None	#1	
South Cox Creek	At the confluence with Jacks Creek	None	+2420	Unincorporated Areas of Yancey County.
	Approximately 700 feet upstream of Coxes Creek Road (State Road 1354).	None	+2791	
South Fork Cattail Creek	At the confluence with Cattail Creek and North Fork Cattail Creek.	None	+3157	Unincorporated Areas of Yancey County.
	Approximately 0.5 mile upstream of Tennis Court Road.	None	+3739	
South Toe River	At the confluence with North Toe River	None	+2356	Unincorporated Areas of Yancey County.
	Approximately 1,100 feet downstream of the confluence of Brown Creek.	None	+2629	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) Depth in feet above ground		Communities affected
		Effective	Modified	
ADDRESSES				
Town of Burnsville				
Maps are available for inspection at Town of Burnsville Courthouse, Mapping Department, 110 Town Square, Burnsville, NC.				
Unincorporated Areas of Yancey County				
Maps are available for inspection at Yancey County Courthouse, Room 11, Burnsville, NC.				
Beadle County, South Dakota, and Incorporated Areas				
James River	Just upstream of the Sanborn County and Beadle County line.	None	+1237	Unincorporated Areas of Beadle County, City of Huron.
	Just downstream of the Spink County and Beadle County line.	None	+1253	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Huron
Maps are available for inspection at 329 Wisconsin, P.O. Box 1369, Huron, SD 57350.

Unincorporated Areas of Beadle County
Maps are available for inspection at 400 3rd S.W., P.O. Box 25, Huron, SD 57350.

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

Dated: March 18, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–6910 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7768]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 2, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7768, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new

buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
City of Richmond, Virginia					
Virginia	City of Richmond	Bacons Quarter Branch	Approximately at the confluence with Shockoe Creek.	None	+67
			Approximately 1400 feet upstream of Hermitage Road.	None	+184
Virginia	City of Richmond	Battery Park Ponding Area	Approximately 2250 feet south of Overbrook Road.	None	+136
			Approximately 850 feet north of Overbrook Road.	None	+139
Virginia	City of Richmond	Cannons Creek Branch	Approximately at the confluence with Bacons Quarter Branch.	None	+74
			Approximately 200 feet downstream of Vale Street.	None	+96
Virginia	City of Richmond	Jordans Branch	Approximately 35 feet north of Route 64 near the Henrico County line.	None	+164
			Approximately 120 feet north of Route 64 near the Henrico County line.	None	+164
Virginia	City of Richmond	Pocoshock Creek	Approximately at the Chesterfield County line.	None	+133
			Approximately at the confluence with Pocosham Creek.	None	+133
Virginia	City of Richmond	Shockoe Creek	Approximately at East Franklin Street	+21	+23
			Approximately 2700 feet upstream of Magnolia Street.	None	+129

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Richmond

Maps are available for inspection at City Hall, 900 East Broad Street, Room 600, Richmond, VA 23219.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Washington County, Minnesota, and Incorporated Areas				
10th Street Basin	Entire shoreline	None	+885	City of Afton.
10th Street and Neal Avenue Basin.	Entire shoreline	None	+867	City of Afton.
8th Street Basin	Entire shoreline	None	+880	City of Afton.
Barker Lake	Entire shoreline	None	+891	City of Hugo, Unincorporated Areas of Washington County.
Bay Lake	Entire shoreline	None	+891	Unincorporated Areas of Washington County.
Cloverdale Lake	Entire shoreline	None	+907	Unincorporated Areas of Washington County.
East Boot Lake	Entire shoreline	None	+920	Unincorporated Areas of Washington County.
Fish Lake	Entire shoreline	None	+954	City of Scandia.
Forest Lake	Entire shoreline	None	+903	City of Forest Lake.
Freidrich Pond	Entire shoreline	None	+913	City of Lake Elmo.
German Lake	Entire shoreline	None	+959	City of Scandia.
Klawitter Pond	Entire shoreline	None	+963	City of Lake Elmo.
Kramer Pond	Entire shoreline	None	+914	City of Lake Elmo.
Legion Pond	Entire shoreline	None	+889	City of Lake Elmo.
Maple Marsh	Entire shoreline	None	+975	Unincorporated Areas of Washington County.
McDonald Lake	Entire shoreline	None	+892	Unincorporated Areas of Washington County.
Mississippi River	Approximately 1,850 feet upstream of southern County Boundary.	+692	+691	City of Cottage Grove, City of Hastings, City of Newport, City of St. Paul Park, Unincorporated Areas of Washington County.
	Approximately 1,200 feet downsteam of southern County Boundary.	+705	+704	
Mooers Lake Channel	At the convergence with the Mississippi River	+698	+697	City of Cottage Grove, Unincorporated Areas of Washington County.
	Just downstream of Grey Cloud Island Drive South	+698	+697	
Raleigh Creek	Approximately 180 feet upstream of the confluence with Lake Elmo.	+889	+899	City of Lake Elmo, City of Oakdale.
	Approximately 845 feet upstream of 31st Street North	None	+975	
Silver Lake	Entire shoreline	None	+991	City of Oakdale.
South Branch Clearwater Creek.	At the confluence with Clearwater Creek	+912	+910	City of Hugo.
	Approximately 950 feet upstream of the confluence with Clearwater Creek.	+912	+911	
St. Croix River	Approximately 16,265 feet downstream of confluence with Interstate Highway 94.	+691	+692	Unincorporated Areas of Washington County, City of Afton, City of Bayport, City of Lake St. Croix Beach, City of Lakeland, City of Lakeland Shores, City of Marine-On-St. Croix, City of Oak Park Heights, City of St. Mary's Point, City of Stillwater.
	Approximately 23,050 feet downstream of SOO Line Railroad.	None	+698	
Staples Lake	Entire shoreline	None	+950	Unincorporated Areas of Washington County.
Sunfish Lake	Entire shoreline	+894	+899	City of Lake Elmo.
Tingley Springs	Entire shoreline	None	+931	City of Hugo.
Unnamed Wetland DNR ID No. 82015600.	Entire shoreline	None	+962	City of Hugo, City of Forest Lake.
Unnamed Wetland DNR ID No. 82016500.	Entire shoreline	None	+964	City of Forest Lake.
Unnamed Wetland DNR ID No. 82021200.	Entire shoreline	None	+965	City of Forest Lake, City of Scandia.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Unnamed Wetland DNR ID No. 82021300.	Entire shoreline	None	+966	City of Scandia.
Unnamed Wetland DNR ID No. 82021600.	Entire shoreline	None	+936	City of Forest Lake, City of Hugo.
Unnamed Wetland DNR ID No. 82022000.	Entire shoreline	None	+958	City of Forest Lake, City of Hugo.
Unnamed Wetland DNR ID No. 82022100.	Entire shoreline	None	+940	City of Hugo.
Unnamed Wetland DNR ID No. 82022200.	Entire shoreline	None	+948	City of Hugo.
Unnamed Wetland DNR ID No. 82022300.	Entire shoreline	None	+983	City of Hugo, Unincorporated Areas of Washington County.
Unnamed Wetland DNR ID No. 82022400.	Entire shoreline	None	+957	City of Hugo.
Unnamed Wetland DNR ID No. 82022500.	Entire shoreline	None	+974	City of Hugo.
Unnamed Wetland DNR ID No. 82022700.	Entire shoreline	None	+945	City of Hugo.
Unnamed Wetland DNR ID No. 82022900.	Entire shoreline	None	+952	City of Hugo.
Unnamed Wetland DNR ID No. 82031200.	Entire shoreline	None	+910	Unincorporated Areas of Washington County.
Unnamed Wetland DNR ID No. 82035000.	Entire shoreline	None	+1005	City of Grant.
Unnamed Wetland North DNR ID No. 82031100.	Entire shoreline	None	+916	Unincorporated Areas of Washington County.
Unnamed Wetland South DNR ID No. 82031100.	Entire shoreline	None	+918	Unincorporated Areas of Washington County.
Valley Branch	Approximately 345 feet downstream of Putman Boulevard South.	+692	+693	City of Afton.
	At West Metcalf Marsh Outfall	None	+813	
Valley Creek	At the confluence with Valley Branch	+717	+714	City of Afton.
	Approximately 2,080 feet upstream of 22nd Street South (most upstream crossing).	None	+907	
Valley Creek Tributary	At the confluence with Valley Creek	None	+792	City of Afton.
	Approximately 3,265 feet upstream of the confluence with Valley Creek.	None	+812	
West Boot Lake	Entire shoreline	None	+920	Unincorporated Areas of Washington County.
West Metcalf Marsh	Entire shoreline	None	+813	City of Afton.
White Rock Lake	Entire shoreline	None	+966	City of Scandia.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Afton
Maps are available for inspection at 3033 St. Croix Trail South, Afton, MN 55001.

City of Bayport
Maps are available for inspection at 294 North Third Street, Bayport, MN 55003.

City of Cottage Grove
Maps are available for inspection at 7516 80th Street South, Cottage Grove, MN 55016.

City of Forest Lake
Maps are available for inspection at 220 North Lake Street, Forest Lake, MN 55025.

City of Grant
Maps are available for inspection at 111 Wildwood Road, Willernie, MN 55090.

City of Hastings
Maps are available for inspection at 101 Fourth Street East, Hastings, MN 55033.

City of Hugo
Maps are available for inspection at 14669 Fitzgerald Avenue North, Hugo, MN 55038.

City of Lake Elmo
Maps are available for inspection at 3800 Laverne Avenue, Lake Elmo, MN 55042.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

City of Lake St. Croix Beach
Maps are available for inspection at 1919 Quebec Avenue South, Lake St. Croix Beach, MN 55043.

City of Lakeland
Maps are available for inspection at 690 Quinnell Avenue North, Lakeland, MN 55043.

City of Lakeland Shores
Maps are available for inspection at 1858 Ramada Avenue South, Lakeland Shores, MN 55043.

City of Marine-On-St. Croix
Maps are available for inspection at 121 Judd Street, Marine on St. Croix, MN 55047.

City of Newport
Maps are available for inspection at 596 7th Avenue, Newport, MN 55055.

City of Oak Park Heights
Maps are available for inspection at 14168 Oak Park Blvd. North, Oak Park Heights, MN 55082.

City of Oakdale
Maps are available for inspection at 1584 Hadley Ave. North, Oakdale, MN 55128.

City of Scandia
Maps are available for inspection at 13809 Scandia Trail, Scandia, MN 55073.

City of St. Mary's Point
Maps are available for inspection at 16491 St. Mary's Drive South, St. Mary's Point, MN 55043.

City of St. Paul Park
Maps are available for inspection at 600 Portland Avenue, St. Paul Park, MN 55071.

City of Stillwater
Maps are available for inspection at 106 South Main Street, Stillwater, MN 55082.

Unincorporated Areas of Washington County
Maps are available for inspection at 14949 62nd Street North, Stillwater, MN 55082–0006.

Portage County, Ohio, and Incorporated Areas

Breakneck Creek	Approximately 260 feet upstream of Brady Lake Road	None	+1040	Unincorporated Areas of Portage County.
	At confluence of Breakneck Creek and Hudson Ditch	None	+1069	
Breakneck Creek Overflow	Approximately 5,300 feet upstream of Main Street	None	+1048	City of Kent.
	Approximately 1,400 feet downstream of Powder Mill Road.	None	+1048	
Breakneck Creek Overflow	Approximately 3,500 feet upstream of Main Street	None	+1047	Unincorporated Areas of Portage County.
	Approximately 600 feet downstream of Powder Mill Road.	None	+1048	
Cuyahoga River	Approximately 80 feet upstream of Main Street	+1085	+1084	Village of Mantua.
	Approximately 3,300 feet upstream of High Street	+1088	+1087	
Cuyahoga River	Approximately 1,500 feet upstream of River Bend Boulevard.	None	+1040	Unincorporated Areas of Portage County.
	Approximately 2,900 feet upstream of River Bend Boulevard.	None	+1040	
	Approximately 1,600 feet downstream of Infirmary Road.	None	+1082	
	Approximately 3,300 feet upstream of High Street	None	+1087	
Cuyahoga River Overflow	Approximately 1,100 feet upstream of confluence with Cuyahoga River.	None	+1083	Village of Mantua.
	Approximately 2,600 feet upstream of confluence with Cuyahoga River.	None	+1083	
Cuyahoga River Overflow	Approximately 700 feet upstream of confluence with Cuyahoga River.	None	+1083	Unincorporated Areas of Portage County.
	Approximately 1,700 feet upstream of confluence with Cuyahoga River.	None	+1083	
Hudson Ditch	At confluence of Breakneck Creek and Hudson Ditch	None	+1069	Unincorporated Areas of Portage County.
	Approximately 2,300 feet upstream of Bower Road	None	+1084	
Plum Creek	Approximately 30 feet upstream of Railroad	+1016	+1017	City of Kent.
	Approximately 200 feet downstream of Howe Road	None	+1040	
Plum Creek	Approximately 330 feet downstream of Howe Road	None	+1039	Unincorporated Areas of Portage County.
	Approximately 4,000 feet upstream of Tallmadge Road.	None	+1078	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Kent

Maps are available for inspection at 930 Overholt Road, Kent, OH 44240.

Unincorporated Areas of Portage County

Maps are available for inspection at 449 South Meridian Street, Ravenna, OH 44266.

Village of Mantua

Maps are available for inspection at 4736 East High Street, Mantua, OH 44255.

Centre County, Pennsylvania, and Incorporated Areas

Cherry Run	Approximately at the confluence with North Fork Beech Creek.	None	+1396	Township of Snow Shoe.
	Approximately at Clarence Road	None	+1396	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Snow Shoe

Maps are available for inspection at Town Hall, 268 Oldside Road, Clarence, PA 16829.

Bedford County, Virginia, and Incorporated Areas

Ivy Creek	Approximately 1,430 ft downstream of Hawkins Mill Road.	+678	+679	Unincorporated Areas of Bedford County.
	Approximately 2,200 ft downstream of Tabernacle Lane.	+823	+829	
Johns Creek	Approximately at confluence with Little Otter River	None	+732	Unincorporated Areas of Bedford County, City of Bedford.
	Approximately 1,800 ft downstream of Independence Boulevard.	None	+818	
Johns Creek	Approximately 445 ft downstream of Independence Boulevard.	+827	+828	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 740 ft upstream of Independence Boulevard.	+841	+842	
	Approximately 3,400 ft upstream of Independence Boulevard.	None	+861	
	Approximately at East Main Street	None	+939	
Little Otter River	Approximately at Big Island Highway	+790	+792	Unincorporated Areas of Bedford County.
	Approximately at Route 43	+837	+839	
Tributary No. 10 To Ivy Creek.	Approximately at confluence with Ivy Creek	None	+700	Unincorporated Areas of Bedford County.
	Approximately 500 ft downstream of Forest Road	None	+838	
Tributary No. 10 To Little Otter River.	Approximately at confluence with Little Otter River	None	+839	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately at Lake Drive	None	+867	
Tributary No. 11 To Ivy Creek.	Approximately at confluence with Ivy Creek	None	+696	Unincorporated Areas of Bedford County.
	Approximately 250 ft downstream of Forest Road	None	+802	
Tributary No. 14 To Ivy Creek.	Approximately at confluence with Ivy Creek	None	+683	Unincorporated Areas of Bedford County.
	Approximately 1,500 ft upstream of McIntosh Drive	None	+812	
Tributary No. 15 To Ivy Creek.	Approximately at county boundary with the City of Lynchburg.	None	+671	Unincorporated Areas of Bedford County.
	Approximately 1 mi upstream of Hawkins Mill Road	None	+800	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary No. 8 To Little Otter River.	Approximately at confluence with Little Otter River	None	+797	Unincorporated Areas of Bedford County, City of Bedford.
	Approximately at Bedford City corporate limits	None	+824	
Tributary No. 8 To Little Otter River.	Approximately at Bedford City corporate limits	None	+824	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 500 ft downstream of Longwood Avenue.	None	+932	
Tributary No. 8A To Little Otter River.	Approximately at confluence with Tributary No. 8 To Little Otter River.	None	+824	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 0.5 mi upstream of confluence with Tributary No. 8 To little Otter River.	None	+914	
Tributary No. 9 To Little Otter River.	Approximately at confluence with Little Otter River	None	+826	Unincorporated Areas of Bedford County, City of Bedford.
	Approximately 1,700 ft downstream of Whitfield Drive	None	+851	
Tributary No. 9 To Little Otter River.	Approximately 1,700 ft downstream of Whitfield Drive	None	+851	City of Bedford, Unincorporated Areas of Bedford County.
	Approximately 2,400 ft upstream of Whitfield Drive	None	+940	

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bedford

Maps are available for inspection at City Municipal Building, 215 E. Main Street, Bedford, VA 24523.

Unincorporated Areas of Bedford County

Maps are available for inspection at Office of the County Administrator, 122 E. Main Street, Suite 2002, Bedford, VA 24523.

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

Dated: March 17, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–6912 Filed 4–2–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–568; MB Docket No. 08–26; RM–11418]

Radio Broadcasting Services; Evart, Ludington, Pentwater, and Manistee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments. The Commission requests comment on a petition filed by Roy E. Henderson. Petitioner proposes the allotment of Channel 274A at Evart, Michigan, as a first local service. Channel 274A can be allotted at Evart in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.6 km (9.1 miles) north of Evart. The proposed coordinates for Channel 274A at Evart are 44–01–43 North Latitude and 85–17–51 West Longitude. In order to accommodate the proposed allotment of Channel 274A at Evart, the Commission also issues a show cause order to Bay View Broadcasting, Inc., to show cause why its Station WMOM(FM) license should not be modified to specify operation on Channel 242A in lieu of Channel 274A at Pentwater, Michigan. In order to accommodate that channel substitution, the Commission further proposes, and invites comment on, the substitution of FM Channel 249A for vacant FM Channel 242A at Ludington, Michigan. Channel 249A can be allotted at Ludington in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.0 km (5.6 miles) north of Ludington. The proposed coordinates for Channel 249A at Ludington are 44–01–53 North Latitude and 86–24–57 West Longitude. Finally, in order to accommodate that channel substitution, the Commission issues a show cause order to Synergy Media, Inc., to show cause why its Station WMLZ(FM) license should not be modified to specify operation on Channel 282A in lieu of Channel 249A at Manistee, Michigan. *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Comments must be filed on or before May 5, 2008, and reply comments on or before May 20, 2008.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner and her counsel as

follows: Katherine Pyeatt, 3500 Maple Avenue, #1320, Dallas, Texas 75219; and Gene A. Bechtel, Esq., Law Office of Gene Bechtel, 1050 17th Street, NW., Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–26, adopted March 12, 2008, and released March 14, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Hugo, Channel 286A.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 242A and adding Channel 249A at Ludington.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–6658 Filed 4–2–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 697

[Docket No. 0612242961–7381–01]

RIN 0648–AT13

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Red Drum Fishery off the Atlantic States; Transfer of Management Authority

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to repeal the Atlantic Coast Red Drum Fishery Management Plan (FMP) and to transfer the management authority of Atlantic red drum in the exclusive economic zone (EEZ) from the South Atlantic Fishery Management Council (South Atlantic Council), in cooperation with the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), under the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act) to the Atlantic States Marine Fisheries Commission (Commission) under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), as requested by the Councils and the Commission. The intent of this action is to enhance the effectiveness and efficiency of managing Atlantic red drum.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on May 5, 2008.

ADDRESSES: You may submit comments, identified by ''0648–AT13'', by any one of the following methods:

- Electronic Submissions: Submit electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Fax: 727–824–5308; Attention: Kate Michie.
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the environmental assessment, which describes the impacts of the transfer of management authority, may be obtained from Kate Michie at the address above or by e-mail at: *Kate.Michie@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Kate.Michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Atlantic red drum fishery off the South Atlantic and Mid-Atlantic coastal states is currently managed under two separate FMPs. Atlantic red drum located in the EEZ are managed under the Atlantic Coast Red Drum FMP prepared by the South Atlantic Council, in cooperation with the Mid-Atlantic Council (Council FMP), and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The Council FMP prohibits harvest or possession of red drum in the South Atlantic and Mid-Atlantic EEZ. Atlantic red drum located in state waters are managed under the Interstate Fishery Management Plan (ISFMP) for Red Drum (Commission FMP) by the Atlantic coast states (New Jersey through Florida) and the Atlantic States Marine Fisheries Commission. The Commission was established under the Atlantic States Marine Fisheries Commission Compact, an interstate compact approved by Congress in 1942. This proposed rule would repeal the Council FMP and implementing regulations issued under the Magnuson-Stevens Act and replace them with

substantially identical regulations under the Atlantic Coastal Act. to the Commission under the Atlantic Coastal Act. The Atlantic Coastal Act allows the Federal government to better coordinate its management practices with the states via the Commission process. The repeal of the Council FMP would occur at the same time as this rule is implemented.

Statutory Authority

Section 803(b) of the Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.*, states that in the absence of an approved and implemented FMP under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ, which in this case is from 3 to 200 nautical miles (nm) offshore. These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. Regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the Commission FMP.

Purpose and Need for the Transfer of Management Authority

The management of red drum (*Sciaenops ocellatus*) is greatly influenced by the biology of the fish. The younger fish are found primarily in state waters (estuaries and inlets) while the larger fish and schools may be found in either the offshore state waters (shore to 3 nm) or Federal waters (3 to 200 nm offshore). Because of this distribution, juveniles tend to experience higher rates of exploitation than the offshore adult population. According to the most recent stock assessment of Atlantic red drum, conducted in 2000, recruitment of individuals to the spawning stock continues to decline, largely due to excessive fishing mortality on juvenile red drum, predominantly in state waters.

Since most of the day-to-day management and all harvest of red drum takes place in state waters, the South Atlantic Council, the Mid-Atlantic Council, and the Commission have requested that Atlantic red drum in the South Atlantic and Mid-Atlantic EEZ be managed under the Atlantic Coastal Act instead of under the Magnuson-Stevens Act. Managing Atlantic red drum under a single FMP would minimize management costs and eliminate unnecessary duplication of management efforts.

Background

In the early 1980's, Atlantic coastal states realized that significant overfishing of juvenile red drum had been occurring in state waters for some time. At the same time, a purse seine fishery for red drum developed in the Gulf of Mexico EEZ. Although Gulf red drum is a different stock than Atlantic red drum, there was concern that a purse seine fishery might develop in the South Atlantic. Given these conditions, the Commission implemented an ISFMP for Atlantic red drum in 1984. Although this ISFMP addressed overfishing in state waters, it lacked the authority to protect the Atlantic red drum spawning stock in the EEZ.

The South Atlantic Council, in cooperation with the Mid-Atlantic Council, developed the Council FMP in 1990 under the authority of the Magnuson-Stevens Act. The management unit for Atlantic red drum was defined as the population of red drum occurring along the United States Atlantic coast from the Federal boundary, separating the Gulf of Mexico EEZ from the South Atlantic EEZ to the New Jersey/New York line. Regulations implementing the Council FMP (55 FR 47059, November 9, 1990) prohibited the possession or harvest of red drum in this management area.

Objectives of the Council FMP included: (1) Maintaining a spawning stock biomass sufficient to prevent recruitment failure by working cooperatively with the states to provide a 30–percent escapement of juvenile red drum to the spawning stock and control fishing mortality to achieve at least a 30–percent spawning stock biomass per recruit level; (2) providing a flexible management system to address incompatibility and inconsistency among state and Federal regulations which minimizes regulatory delay while retaining substantial Council and public input into management decisions and which can adapt to changes in resource abundance, new scientific information, and changes in fishing patterns among user groups or by area; and (3) promoting cooperative collection of biological, economic, and sociological data required to effectively monitor and assess the status of the red drum resource and evaluate management efforts.

In 1991, the Commission implemented Amendment 1 to their ISFMP for red drum to make it compatible with the Council FMP. Escapement rates of juvenile red drum increased as a result of Amendment 1 to the ISFMP for red drum, however, overall exploitation estimates indicated that overfishing was still occurring in state waters.

In 1993, the Atlantic Coastal Act was enacted to facilitate coordination of inter-jurisdictional fisheries management (16 U.S.C. 5101 *et seq).* The Atlantic Coastal Act acknowledges the Commission's authority for preparing and adopting coastal FMPs and facilitates the states' implementation and enforcement of these FMPs in their waters. Under the Atlantic Coastal Act, Federal support is still required for cooperative interstate management. The Commission FMP for Atlantic red drum was adopted under the authority of the Atlantic States Marine Fisheries Compact, originally approved by Congress in 1940.

In 1998, the Secretary approved Amendment 1 to the Council FMP, which identified essential fish habitat and habitat areas of particular concern. In 2000, Amendment 2 to the Council FMP established new proxy reference points for red drum, based on a 40–percent static spawning potential ratio (SPR) of the stock. However, under the Commission FMP, state management measures were still based on an SPR of 30 percent and red drum continued to be overfished. Therefore, to reduce mortality of juvenile red drum in state waters and achieve optimum yield from the stock, the South Atlantic Council's Red Drum Management Committee and the Commission's South Atlantic State-Federal Management Board recommended the Commission implement compatible management measures.

In June 2002, the Commission developed and approved Amendment 2 to the Commission FMP, which among other things, updated the Commission FMP to meet the standards for Commission FMPs under the Atlantic Coastal Act. The management goal of Amendment 2 was to achieve and maintain the optimum yield for the Atlantic red drum fishery, i.e. the amount of harvest U.S. fishermen could take while maintaining the SPR at or above 40 percent. To meet this goal, Amendment 2 required states to implement appropriate bag and size limits. In addition, all states agreed to maintain their current level of harvest restrictions to preclude the establishment of any new commercial fisheries for red drum.

The Commission's Red Drum Plan Review Team examined the status of the Atlantic red drum stock the next year. They found that although escapement of juvenile red drum to the EEZ was increasing (by approximately 15 percent in the southern region and 18 percent in the northern region), it was increasing

by only approximately half of the desired rate of 30 percent. Thus, overfishing of juvenile red drum in state waters was still occurring.

Following implementation of Amendment 2 to the Commission FMP, the Councils determined they had done all they could to protect the Atlantic red drum spawning stock, but lacked the ability to prevent overfishing of juveniles in state waters under the present management structure. As a result, the Mid-Atlantic and South Atlantic Councils requested in letters dated December 9, 2003, and October 26, 2004, respectively, that the Secretary repeal the Council FMP, as authorized under section 304(h) of the Magnuson-Stevens Act, and use the authority provided by the Atlantic Coastal Act to manage red drum in Federal waters of the U.S. Atlantic, with the provision that the current EEZ harvest or possession prohibitions remain in place. The letters stated that the basis for the Councils' requests was that the Commission has an Atlantic red drum FMP that mirrors the Council FMP, and 100 percent of the harvest and most of the day-to-day management of Atlantic red drum takes place in state waters under the Commission's jurisdiction. The letters also stated that consolidating the management of Atlantic red drum under one management authority, namely the Commission, would minimize costs and avoid unnecessary duplication as mandated by national standard 7 of the Magnuson-Stevens Act, without having any adverse impacts on the red drum resource. This would provide for a more efficient and timely mechanism to address managing Atlantic red drum throughout its range.

The Commission supported these requests in a December 17, 2004, letter to NOAA's Assistant Administrator for Fisheries. The Commission requested that the current EEZ harvest or possession prohibitions remain in place, and that the process of withdrawing the Council FMP and establishing management authority under the Atlantic Coastal Act be a simultaneous action to ensure continuous protection of Atlantic red drum in the EEZ.

Benefits of the Change in Management Authority

Consistent with national standard 7, this action would reduce management costs and avoid unnecessary duplication of management efforts. Under the Atlantic Coastal Act, the Secretary will maintain the existing harvest or possession prohibitions in the EEZ, and the states, NMFS, and the U.S. Coast Guard will continue to enforce those prohibitions. Repealing the Council FMP under the Magnuson-Stevens Act and simultaneously implementing comparable regulations under the Commission FMP under the Atlantic Coastal Act, will provide for a more efficient and timely rebuilding of the Atlantic red drum resource.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this is as follows:

No small entities, as defined by the Regulatory Flexibility Act, are directly or indirectly impacted by the rule and the rule has no direct or indirect economic costs. Specifically, this rule would transfer management of the Atlantic Red Drum Resource from the South Atlantic Fishery Management Council to the Atlantic States Marine Fisheries Commission (Commission) to reduce management costs by avoiding unnecessary duplication of management efforts. The Commission is the creation of 15 member states and each member state is represented by 3 Commissioners: the director for the state's marine fisheries management agency, a state legislator, and an individual appointed by the governor. Neither the Commission, which is directly affected by this rule, nor its member states are small governmental jurisdictions as defined by the RFA. The transfer would not require the Commission to change its existing Red Drum Fishery Management Plan, nor, in turn, would it require member states to change their existing regulations regarding harvest of red drum by small or large entities. Consequently, this rule would not require the Commission, its member states, or entities operating within the states to change existing practices. The Secretary would maintain the existing prohibitions in the EEZ, and NMFS and the U.S. Coast Guard would continue to enforce those prohibitions.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 697

Fisheries, Fishing.

Dated: March 28, 2008.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 697, are proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows.

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

§ 622.1 [Amended]

2. In § 622.1, Table 1, the entries for ''Atlantic Coast Red Drum FMP'' are removed.

§ 622.32 [Amended]

3. In § 622.32, remove paragraph (b)(3), and redesignate paragraph (b)(4) as paragraph (b)(3); remove newly redesignated paragraph (b)(3)(iii), and redesignate newly redesignated paragraphs (b)(3)(iv) through (vi) as paragraphs (b)(3)(iii) through (v).

§ 622.48 [Amended]

4. In § 622.48, remove paragraph (k), and redesignate paragraphs (l) and (m) as paragraphs (k) and (l), respectively.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

5. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

6. In § 697.2(a), the definition of ''Atlantic red drum'' is added and the definition of ''Regional Administrator'' is revised, in alphabetical order, to read as follows:

§ 697.2 Definitions.

(a) * * *

Atlantic red drum, also called redfish, means *Sciaenops ocellatus*, or a part thereof, found in the waters of the Atlantic Ocean off the Atlantic coastal states, to the outer boundary of the EEZ, as specified in § 600.10 of this chapter, from the boundary of the United States and Canada, to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council, as specified in § 600.105(c) of this chapter.

* * * * *

Regional Administrator, means Regional Administrator, Northeast Region, NMFS, or Regional Administrator, Southeast Region, NMFS, whichever has the applicable jurisdiction, or a respective designee.

* * * * *

7. In § 697.7, paragraph (f) is added to read as follows:

§ 697.7 Prohibitions.

* * * * *

(f) *Atlantic red drum fishery*. In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Harvest or possess Atlantic red drum in the EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6′ N. lat., 73°54.1′ W. long., such point being the intersection of the New Jersey/New York boundary with the 3–nm line denoting the seaward limit of state waters, and north of the demarcation line between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council described in § 600.105(c) of this chapter.

(2) Fail to release immediately without further harm, all Atlantic red drum caught in the EEZ area described in paragraph (f)(1) of this section.

8. In § 697.22, the introductory text and paragraph (a)(1) are revised to read as follows:

§ 697.22 Exempted fishing.

The Regional Administrator or Director may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic red drum, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery, pursuant to the provisions of § 600.745 of this chapter.

(a) * * *

(1) Have a detrimental effect on the American lobster, weakfish, Atlantic red drum, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery; or

* * * * *

[FR Doc. E8–6955 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 65
Thursday, April 3, 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

Food Safety and Inspection Service

[Docket No. FSIS–2008–0011]

Shiga Toxin-Producing *E. coli* Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) will sponsor a public meeting on April 9–10, 2008. The purpose of the meeting is to have a discussion with stakeholders on recent spikes in recalls and illnesses related to *Escherichia coli* (*E. coli*) O157:H7, provide updates on FSIS initiatives related to *E. coli* O157:H7, review perspectives, research progress, and build a foundation for establishing solutions to address the challenges this pathogen causes.

DATES: The public meeting will be held on Wednesday, April 9, 2008, 8 a.m. to 5 p.m., and Thursday, April 10, 2008, 8 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007, Phone: (202) 338–3120, Web site: *http://www.higeorgetown.com*.

Any changes to meeting dates, times, location, and agenda will be posted on the FSIS Web site and announced in the Agency's Constituent Update.

Registration

Pre-registration for this meeting is encouraged. To pre-register to attend in person or via teleconference, access the FSIS Web site, *http://www.fsis.usda.gov*. Contact Sheila Johnson for more information on logistics at (202) 690–6498 or via e-mail at *Sheila.johnson@fsis.usda.gov*.

All documents related to the meeting will be available for public inspection in the FSIS Docket Room, 1400 Independence Avenue, SW., Room 2534 South Building, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available.

FSIS will finalize an agenda on or before the meeting date and post it and the documents related to the public meeting on the FSIS Web page at: *http://www.fsis.usda.gov/News/Meetings_&_Events/*.

Also, when it becomes available, the official transcript of the meeting will be kept in the FSIS Docket Room at the above address and will also be posted on the Agency Web site, *http://www.fsis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Keith Payne, Phone: (202) 690–6522, FAX: (202) 690–6519, e-mail: *keith.payne@fsis.usda.gov* or at the mail address: USDA, FSIS, 1400 Independence Avenue, SW., Room 1175, South Building, Washington, DC 20250.

Persons requiring a sign language interpreter or other special accommodations should notify Mr. Payne by April 2, 2008.

SUPPLEMENTARY INFORMATION:

Background

Shiga toxin-producing *E. coli* (STEC) was first identified in the early 1980s in North America as the cause of outbreaks of bloody diarrhea, often leading to severe and fatal illness. These outbreaks were associated with ground beef consumption, and *E. coli* O157:H7 was the STEC identified as causing the illnesses. In 1994, FSIS notified the public that raw ground beef contaminated with *E. coli* O157:H7 is adulterated under the Federal Meat Inspection Act unless the ground beef is processed to destroy this pathogen. Also in 1994, FSIS began sampling and testing ground beef for *E. coli* O157:H7.

On January 19, 1999, FSIS published a policy statement in the **Federal Register** that explained that if non-intact raw beef products or intact raw beef products that are to be processed into non-intact product prior to distribution for consumption are found to be contaminated with *E. coli* O157:H7, they will be deemed to be adulterated if not processed to destroy the pathogen (64 FR 2803).

Beginning at least with the high prevalence season for *E. coli* O157:H7 in April 2007, some control measures for *E. coli* O157:H7 implemented by beef operations have proven to be inadequate. During the period following April 2007, there has been an increased number of positives in Agency sampling for *E. coli* O157:H7 compared to the preceding three years, a couple of outbreaks attributed to this pathogen and beef products, and a number of large recalls. FSIS took a number of steps to address the increase in Agency *E. coli* O157:H7 positive results, outbreaks, and illnesses.

For example, on October 12, 2007, FSIS issued instructions to inspection program personnel to inform establishments producing raw beef products that they had an obligation (under 9 CFR 417.4(a)(3)) to reassess their HACCP system to determine whether any changes were necessary in response to these *E. coli* O157:H7 developments. On October 12, 2007, FSIS also instructed inspection program personnel at establishments producing raw beef products to complete an on-line checklist detailing steps the establishment takes to address *E. coli* O157:H7. FSIS intends to use the information from the checklist to determine targeted approaches for Agency *E. coli* O157:H7 verification testing.

Also in October 2007, FSIS implemented other steps, including follow-up sampling and testing of raw ground beef, raw ground beef trimmings, and other raw ground beef and raw beef patty components in response to an FSIS positive *E. coli* O157:H7 result or another Federal or State entity's positive *E. coli* O157:H7 result. It also announced that it would begin routine sampling and testing of raw ground beef components (including raw beef patty components) other than beef manufacturing trimmings for *E. coli* O157:H7. Raw ground beef components other than beef manufacturing trimmings include two piece chucks and other primal/sub-primal cuts intended for use in raw ground beef or other raw non-intact product, raw esophagus (weasand) meat, head meat, cheek meat, beef from advanced meat recovery (AMR) systems, low temperature rendered lean finely textured beef (LFTB), partially defatted chopped beef, partially defatted beef fatty tissue, and heart meat. Finally, on January 1, 2008, FSIS began a new risk-

based sampling program for *E. coli* O157:H7 that takes into account establishment volume.

To continue to take steps to address *E. coli* O157:H7, FSIS will hold a public meeting on Wednesday and Thursday, April 9–10, 2008, to facilitate discussion with stakeholders on recent spikes in recalls and illnesses related to *E. coli* O157:H7; provide updates on FSIS initiatives related to *E. coli* O157:H7; and solicit input from producers, industry, consumers, academia, states, and other public health and regulatory agencies for possible solutions to address the challenges this pathogen presents.

All interested parties are welcome to attend the meeting and to submit written comments on the agenda items after they are discussed through May 7, 2008, to Mr. Payne by phone (202) 690–6522, fax (202) 690–6519, e-mail: *Keith.payne@fsis.usda.gov*, or at the mail address: USDA, FSIS, 1400 Independence Avenue, SW., Room 1175, South Building, Washington, DC 20250. Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail address, telephone number—on the Internet may leave the information off their comments.

The comments and the official transcript of the meeting, when they become available, will be posted on the agency's Web site at *http://www.fsis.usda.gov*.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: March 28, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–6868 Filed 4–2–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 23, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 2104.

Docket Number: 08–007. Applicant: University of Southern California, University Park, Los Angeles, CA 90089–9045. Instrument: Transmission Electron Microscope, Model JEM–2100. Manufacturer: Jeol, Inc., Japan. Intended Use: The instrument is intended to be used to visualize tissues, cells and purified biological molecules at high magnification by transmission electron microscopy. The tissues, cells and molecules to be imaged will be evaluated for their morphological and structural features. Application accepted by Commissioner of Customs: March 11, 2008.

Dated: March 28, 2008.

Faye Robinson,

Director Statutory Import Programs Staff.

[FR Doc. E8–6947 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce 14th and Constitution Ave., NW, Room 2104 Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce.

Docket Number: 08–008. Applicant: Rice University, 6100 Main Street, Houston, TX 77005. Instrument: Low Temperature Microscopy Scanning Probe. Manufacturer: Nano Magnetics Instruments, Ltd., Turkey. Intended Use: The instrument is intended to be used for imaging local magnetic field and change current distribution in semiconductor nanostructures. An essential feature of this instrument is that can supply 300mK scanning Hall probe microscopy with 50 NM special resolution. Application accepted by Commissioner of Customs: March 12, 2008.

Docket Number: 08–009. Applicant: University of Michigan, Department of Materials Science and Engineering, 2300 Hayward St., Ann Arbor, MI 48109–2136. Instrument: Heating Microscope Optical Dilatometer. Manufacturer: Expert System Solutions, Italy. Intended Use: This instrument will be used in a Defense Advanced Research Projects Agency (DARPA)-funded project on Direct Digital Manufacturing of Airfoils. The objective is to create a low–cost highly accurate method for manufacture of jet turbine engine airfoils for military aircraft. The Heating Microscope Optical Dilatometer hardware and software will be used for sintering shrinkage up to 1600 degrees centigrade,

thermal expansion down to room temperature and cristobalite transformation at 215 degrees centigrade. An essential feature of the equipment is that it perform a non–contact optical measurement. Application accepted by Commissioner of Customs: March 14, 2008.

Dated: March 28, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E8–6949 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–807

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 2, 2007 the Department of Commerce (the Department) published the preliminary results of the changed circumstances review and intent to reinstate Kolon Industries, Inc. (Kolon) in the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). *See Polythylene Terephthalate Film Sheet and Strip from the Republic of Korea: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Kolon Industries, Inc. in the Antidumping Order*, 72 FR 56048 (October 2, 2007) (*Preliminary Results*). On February 6, 2008 we extended the time frame for completion of this changed circumstances review by 60 days. *See Polythylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Extension of Time Limits for Final Results of Changed Circumstances Review*, 73 FR 6931 (February 6, 2008).

This review covers subject merchandise manufactured and exported by Kolon. The products covered by this order are all gauges of PET film, sheet and strip (*see* ''Scope of the Review'' section below). The period of review (POR) is July 1, 2005 through June 30, 2006. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. We determine that Kolon sold subject merchandise at less than normal value (NV) during the POR, and hereby reinstate Kolon in the order. The final weighted–average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: April 3, 2008.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2007, the Department published in the **Federal Register** the preliminary results of changed circumstances review and intent to reinstate Kolon in the antidumping order on PET film from Korea. *See Preliminary Results*. This review covers sales of subject merchandise by Kolon. The POR is July 1, 2005 through June 30, 2006.

We invited interested parties to comment on the preliminary results of review. On November 5, 2007, we received comments from Kolon and the petitioners (DuPont Teijin Films, Mitsubishi Polyester Film, Inc, and Toray Plastics (America) Inc.). On November 13, 2007, Kolon and the Petitioners filed rebuttal comments. At the request of Kolon, we held a hearing on this changed circumstances review on November 21, 2007. On February 6, 2008, we extended the time frame for completion of this changed circumstances review by 60 days. The Department has conducted this changed circumstances review in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.90 The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by Kolon and the Petitioners are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated March 30, 2008, which is adopted by this notice. A list of issues which parties have raised is in the Decision Memorandum and is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum which is on file in the Central Records Unit, Room 1117, of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memorandum and the Memorandum to the File from Michael J. Heaney dated March 31, 2007 (Analysis Memorandum). Specifically, for these final results:

1) We matched home market and U.S. sales of PET film by their actual thicknesses rather than by thickness ranges.
2) We made a deduction from CEP to account for bank and postal charges incurred by Kolon's U.S. affiliate.
3) We corrected a clerical error in our recalculation of variable cost of manufacture.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the period July 1, 2005 through June 30, 2006:

Manufacturer/Exporter	Margin
Kolon	1.53 percent

Since we have established that PET film from Korea manufactured and exported by Kolon is being sold at less than NV, Kolon is hereby reinstated in the antidumping order effective on the publication date of this notice. We will

advise the U.S. Customs and Border Protection to collect a cash deposit of 1.53 percent on all entries of the subject merchandise exported by Kolon that are entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review as to Kolon. There are no changes to the rates applicable to any other companies under this antidumping duty order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with the final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/disposition of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with section 751(b)(1) of the Act and 19 CFR 351.216.

Dated: March 28, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix–Comments in Decision Memo

1. Authority to reinstate Kolon in the antidumping Order≤
2. Whether Changed Circumstances Reviews Are a Suitable Vehicle for Reinstating Previously Revoked Respondents Within an Order
3. Whether Reinstating Revoked Respondents is Consistent with the Court's Decision on *Asahi Chemical*
4. Authority of Department to Require Kolon to Sign a Reinstatement Agreement≤
5. Whether Procedures Applicable to Reviews or Investigations Should Govern this Proceeding
6. Zeroing
7. Model–Match Methodology
8. Calculation of General and Administrative Expenses
9. Calculation of Variable Cost of Manufacture
10. Adjustment for Kolon's Bank and Postal Charges

[FR Doc. E8–6951 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG78

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Tautog Fishery

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

ACTION: Notice of cancellation of Federal moratorium.

SUMMARY: NMFS announces the cancellation of the Federal moratorium on fishing for tautog in the State waters of New Jersey. NMFS canceled the moratorium, as required by the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), based on the determination that New Jersey is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Tautog Interstate Fishery Management Plan (Plan).

DATES: Effective March 31, 2008.

ADDRESSES: Harold C. Mears, Director, State, Federal and Constituent Programs Office, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, NMFS, Northeast Region, (978) 281–9327, fax (978) 281–9117, e-mail *Bob.Ross@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Tautog (*Tautoga onitis*), often known by the common name ''blackfish,'' is a coastal fish species ranging from Nova Scotia to South Carolina, but most abundant from the southern Gulf of Maine (lower Massachusetts Bay and southern Cape Cod Bay) to Chesapeake Bay. The Commission manages this species according to its Tautog Plan. The Commission's Tautog Plan can be located at *http://www.asmfc.org*, (select ''Interstate Fishery Management,'' then select ''Tautog.'').

On February 7, 2008, the Commission voted the State of New Jersey out of compliance with the Commission's Tautog Plan. Specifically, the Commission found that New Jersey had not implemented management measures to achieve the required 25.6 percent reduction in tautog exploitation as was required by the Tautog Plan. The Commission forwarded the findings of their vote on February 7, 2008, in a formal non-compliance referral letter that the Secretary of Commerce (Secretary) received on February 11, 2008.

On March 10, 2008, upon a delegation of authority from the Secretary, NMFS completed its independent review of the Commission's findings and NMFS determined that the State of New Jersey was not in compliance with the Commission's Tautog Plan and that the measures New Jersey failed to implement and enforce are necessary for the conservation of the tautog fishery. New Jersey was notified by letter on March 11, 2008, that NMFS declared a Federal moratorium on fishing for, possession of, and landing of tautog by the recreational and commercial fishermen in New Jersey state waters effective April 1, 2008, if New Jersey has not complied with the Commission's Tautog Plan by that date. Details were provided in a **Federal Register** notice published on March 14, 2008 (73 FR 13864), and are not repeated here.

Activities Pursuant to the Atlantic Coastal Act

The Atlantic Coastal Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the state is determined to be in compliance, the moratorium shall be terminated. On March 26, 2008, NMFS received a letter from the Commission that New Jersey has taken corrective action to comply with the Tautog Plan, and that the Commission has withdrawn its determination of noncompliance.

Cancellation of the Moratorium

Based on the Commission's March 26, 2008, letter, information received from the State of New Jersey, and NMFS review of New Jersey's revised tautog regulations, which achieved the required 25.6–percent reduction in tautog exploitation as was required by the Tautog Plan, NMFS concurs with the Commission's determination that New Jersey is now in compliance with the Tautog Plan. Therefore, the moratorium on fishing for, possession of, and landing of tautog by the recreational and commercial fishermen within New Jersey waters is canceled.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: March 31, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1090 Filed 3–31–08; 3:59 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG87

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of a South Atlantic Deepwater Coral Teacher's Workshop.

SUMMARY: The South Atlantic Fishery Management Council, in partnership with NOAA Undersea Research Center, NOAA Fisheries, and Harbor Branch Oceanographic Institution is conducting a Deepwater Coral Teacher Workshop in Ft. Pierce, FL.

DATES: The workshop will take place April 19, 2008. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The workshop will be held at the Harbor Branch Oceanographic Institute at Florida Atlantic University, 5600 U.S. 1, North, Ft. Pierce, FL; telephone: (772) 465–2400.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Deepwater Coral Teacher's Workshop will take place from 8:30 a.m. - 5 p.m. on April 19, 2008.

The Workshop is designed for teachers and educators targeting high-school grade students to better increase their student's knowledge and awareness of these important marine ecosystems. The Workshop will include presentations on deepwater coral reefs found off of Florida, an overview of the Oculina Habitat Area of Particular Concern, deepwater coral research, mapping and monitoring, and management. The Workshop also includes a guided tour of the Smithsonian Marine Station in Ft. Pierce, FL. Registration for the Workshop is limited.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 31, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–6882 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG79

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will meet April 23, 2008 at the Alaska Fishery Science Center, National Marine Mammal Conference Room.

DATES: The meeting will be held on April 23, 2008, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Seattle, WA. It will also be held by teleconference at the National Marine Fisheries Service, 709 W 9th, Juneau, AK (8 a.m. AST).

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Non-Target Species Committee will consider possible priorities for breaking out different groups from the ''other species'' complexes in the BSAI and GOA groundfish fishery management plans. The need to set these priorities is to take quicker action for more vulnerable groups. The committee and have expressed concern that analyzing a broader set of alternatives (which addresses sharks, squids, sculpins, and octopuses in the GOA; sharks, skates, sculpins, and octopuses in the BSAI; and possibly grenadiers in the GOA and BSAI) in one analysis may result in an unmanageable decision making document. Management of these species groups (plus additional multiple sub-area, sub-allocation, and seasonal apportionments) poses numerous management and regulatory difficulties and may result in unintended consequences on fishing fleets. The proposed priorities for action include: (1) move BSAI and/or GOA squid into the forage fish category; (2) move BSAI and/or GOA octopus into the forage fish category or remove it from the FMPs and defer management to the State of Alaska; (3) delete an alternative to add grenadiers to the TAC specification process; and (4) separate the proposed alternatives into distinct BSAI and GOA amendment packages. The Committee will develop recommendations on these priority actions.

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 identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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 Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: March 31, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–6880 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG80

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Committee will meet.

DATES: The meeting will be held on April 29, 2008, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Swedish Culture Center, 1920 Dexter Avenue North, Seattle, WA 98109.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will have discussions on the following items: purpose and need statement; potential elements and options; crew proposal and alternatives to those proposals; data issues; community protections; possible emergency relief from regionalization; arbitration issues.

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 identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: March 31, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–6881 Filed 4–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Final Environmental Impact Statement for the Activities To Implement 2005 Base Realignment and Closure Actions at National Naval Medical Center, Bethesda, MD

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and the Department of the Navy (DON) NEPA regulation (32 CFR part 775), DON announces the availability of the Final Environmental Impact Statement (FEIS) for potential environmental impacts associated with implementing actions directed by the Defense Base Closure and Realignment (BRAC) Act of 1990, Public Law 101–510, as amended in 2005 (BRAC Law), at the National Naval Medical Center (NNMC) in Bethesda, MD.

DATES: The Wait Period (No Action Period) for the FEIS will end 30 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Officer in Charge—BRAC, National Naval Medical Center, 8901 Wisconsin Avenue, Bethesda, MD 20889 and Telephone: 301–319–4561.

FOR FURTHER INFORMATION CONTACT: Officer in Charge—BRAC, National Naval Medical Center, 8901 Wisconsin Avenue, Bethesda, MD 20889 and Telephone: 301–319–4561.

SUPPLEMENTARY INFORMATION: Under the BRAC law, the Walter Reed Army Medical Center (WRAMC) will realign all tertiary and complex health care services to the NNMC campus in Bethesda. The transfer and integration of these services with existing functions at NNMC will result by law in creation of a new premier military health care center to be named the Walter Reed National Military Medical Center (WRNMMC) at Bethesda, MD, and is to be accomplished by 15 September 2011.

The BRAC-directed realignment will bring additional patients and visitors requiring additional staff and facilities to be provided at NNMC. The FEIS provides information on the proposed new construction and facility alterations, current estimates of the additional staff that will be needed, and an assessment of the potential environmental impacts associated with implementation of these realignment actions at NNMC in Bethesda, MD.

The FEIS addresses three alternatives: Two alternatives that implement the BRAC-directed actions and a No Action Alternative. Both BRAC implementation alternatives provide the same facilities with some facility site changes and differences between new construction and renovation to obtain required facilities. The environmental impacts between the two BRAC alternatives are similar.

The Navy's Preferred Alternative would add approximately 1,144,000 square feet (SF) of new building construction, provide approximately 508,000 SF of renovation to existing building space at NNMC, and provide approximately 824,000 SF of new parking facilities. It would accommodate approximately 2,500 additional staff and an estimated 1,862 patients and visitors each weekday.

The new construction or improvements to existing facilities would provide medical care and administration additions and alterations, a National Intrepid Center of Excellence for traumatic brain injury and psychological health care, permanent and temporary lodging facilities (Bachelor Enlisted Quarters and Fisher Houses™), a new physical fitness center, additional parking, and road and utility improvements on the installation as needed to support the new facilities.

The FEIS finds that the Preferred Alternative would have minimal impacts to soil, water, or biological resources because the new facilities would be constructed on either existing development such as parking lots or on landscaped areas with only a small increase in impervious surfaces. No effects to rare, threatened, and endangered species would be expected under the Preferred Alternative.

Emissions of air pollutants from construction and operations of the Preferred Alternative would not exceed *de minimis* levels or ambient standards established by the U.S. Environmental Protection Agency for protection of the airshed and thus air quality impacts would not be significant. A short-term increase in noise levels would occur during construction that is typical of construction activities. Utility expansions would be required, but major issues are not anticipated.

The Navy is pursuing formal Section 106 consultation under the National Historic Preservation Act to resolve all adverse effects to historic properties.

The Preferred Alternative will add traffic to an area already experiencing

heavy traffic congestion. The FEIS provides a number of recommended improvements both on and off Base to address the effects of the traffic generated by the Preferred Alternative. The Navy is programming funds for improvements at gates and on Base and is submitting a request for Defense Access Road Program approval for some of these improvements off Base.

The FEIS finds all direct effects to land use to be within NNMC and consistent with NNMC plans; all actions take place within the NNMC boundaries. Off Base, the BRAC actions increase traffic on roads already experiencing traffic congestion. Community planners believe that the traffic congestion in the region could cause land development plans to be altered and the BRAC traffic volumes contribute to the congestion with heavier volumes than previously anticipated in their plans.

Economic impacts to the surrounding economy from the large investment in construction and renovation of facilities under the Preferred Alternative would be beneficial. Personnel relocating from WRAMC are not expected to change their off base residences and lodging being added for the increase in staff, patients and visitors is considered adequate; impacts to local housing, schools, or community services are expected to be minimal. Impacts to human health and safety are not expected.

The FEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and interested parties. The FEIS is also available at the following local libraries and public facilities: Bethesda Library, 7400 Arlington Road, Bethesda, MD, 20814; Chevy Chase Library, 8005 Connecticut Avenue, Chevy Chase, MD, 20815; Davis Library, 6400 Democracy Boulevard, Bethesda, MD, 20817; Kensington Park Library, 4201 Knowles Avenue, Kensington, MD, 20895; Rockville Library, 21 Maryland Avenue, Rockville, MD 20850; Bethesda-Chevy Chase Regional Services Center, 4805 Edgemoor Lane, Bethesda, MD, 20814; Bethesda Urban Partnership, Inc., 7700 Old Georgetown Road, Bethesda, MD, 20814; and Bethesda-Chevy Chase Chamber of Commerce, 7910 Woodmont Avenue, Suite 1204, Bethesda, MD, 20814.

The FEIS is also available at the following Web sites: *http://www.bethesda.med.navy.mil/Professional/Public_Affairs/BRAC/*; and *http://www.montgomerycountymd.gov/brac*.

Dated: March 28, 2008.

T.M. Cruz,

Lieutenant, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–6891 Filed 4–2–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 2, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to JoAnna Sellen, Office of International Regimes and Agreements (NA–243), National Nuclear Security Administration, 1000 Independence Ave., SW., Washington, DC 20585 or by fax at 202–586–1348, or by e-mail at *Joanna.Sellen@nnsa.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.* {enter ''New}; (2) *Information Collection Request* Title: U.S. Declaration under the Protocol Additional to the U.S.-IAEA Safeguards Agreement (''Additional Protocol''), and Collection of Information by the Department of Energy; (3) *Type of Review:* New; (4) *Purpose:* Develop Information for Inclusion by the Department of Energy in the United States Declaration to the International Atomic Energy Agency (IAEA) under the Additional Protocol to the U.S.-IAEA International Safeguards Agreement.

This proposed collection of information is pursuant to implementing the provisions of the Protocol Additional to the Agreement Between the United States of America and the IAEA for the Application of Safeguards in the United States of America (the ''Additional Protocol'' or ''AP''). The Additional Protocol is a supplement to the existing U.S.-IAEA Safeguards Agreement, which entered into force in 1980; once the U.S. AP enters into force, it will become part of the Safeguards Agreement. The United States signed the U.S. AP in 1998, President Bush submitted it to the Senate on May 9, 2002 for the Senate's advice and consent to ratification, and the Senate approved a resolution providing such advice and consent on March 31, 2004. Legislation to implement the U.S. AP was enacted on December 18, 2006. Entry into force of the U.S. AP will take place when the President deposits the instrument of ratification with the IAEA.

The Department of Energy is the Lead Agency for implementing the Additional Protocol at locations owned, operated, or leased by or for DOE, including Nuclear Regulatory Commission (NRC)-licensed or certified activities on DOE installations, and, in coordination with the Department of Defense, non-military locations on installations that store or process naval reactor fuel (collectively known as ''DOE Locations''). This collection of information affects only those persons performing activities at DOE Locations that would be declarable to the IAEA under the U.S. AP. The NRC is the Lead Agency for locations that are subject to the regulatory authority of the NRC, pursuant to the NRC's regulatory jurisdiction under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), with the exception of those NRC-licensed or certified activities at DOE Locations. The Department of Commerce (DOC) is the Lead Agency for all other locations in the United States, except U. S. Government locations and those locations for which the NRC is the Lead Agency. All persons, including DOE contractors performing declarable activities at locations other than those for which DOE is the Lead Agency,

would submit their declarations for these activities at non-DOE Locations to either the NRC or DOC, as appropriate.

The Department of Energy proposes to collect information that is required for submission under the U.S. AP. Collecting this information from those entities that are actually performing declarable activities at DOE Locations provides the most effective and efficient way for DOE to identify such declarable activities and the locations associated with such activities, and to assemble accurate and timely information on such activities.

All reporting requirements that are applicable to respondents making their declarations through DOE can be found in Article 2.a of the U.S. AP. These activities are considered to be funded, specifically authorized or controlled by, or carried out on behalf of, the United States, by virtue of the fact that the Department of Energy, as an agency of the U.S. Government, controls all activities, regardless of performer, that occur at its installations.

(5) *Respondents:* Respondents will primarily include DOE Management and Operations (M&O) contractors operating DOE installations and facilities. DOE estimates that 10–15 respondents will submit declarations under the U.S. AP; however, the number will fluctuate on an annual basis. Because any person performing a declarable activity at a location for which DOE is the Lead Agency must report that activity through DOE, and because the identity of such persons might change from year to year as declarable activities are initiated or terminated, DOE cannot estimate with certainty the total number of respondents subject to this collection of information. Likewise, it cannot estimate with certainty the number of small businesses, if any, that would be affected by this collection.

(6) *Estimated Number of Burden Hours:* The burden in person-hours of responding to the proposed collection of information will depend on the number of declarable activities at the respondent's location. This effort might range from as low as 40 hours, for a location with one or two declarable activities, to as many as 400 hours, for a location with 30–40 declarable activities. This effort includes annual effort expended in maintaining and training on using the software provided by DOE to assemble and report the information as well as making the declaration.

Statutory Authority: Public Law 109–401 (December 18, 2006).

Issued in Washington, DC on March 27, 2008.

Adam M. Scheinman,

Assistant Deputy Administrator for Nonproliferation and International Security.

[FR Doc. E8–6905 Filed 4–2–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Department-wide Printing and Publishing Activities, OMB Control Number 1910–0100. This information collection request covers information necessary to the Department for gathering and compiling data from its facilities nation-wide on the usage of in-house printing and duplicating facilities as well as all printing productions from external Government Printing Office vendors.

DATES: Comments regarding this collection must be received on or before May 5, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to: Dallas Woodruff, Lead Printing Specialist, U.S. Department of Energy, M/S MA–421, 1000 Independence Ave., SW., Washington, DC 20585; or by fax at 202–586–0753 or by e-mail at *dallas.woodruff@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: The individuals listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–0100; (2) *Information Collection Request Title:* Department-wide Printing and Publishing Activities; (3) *Purpose:* The information collected is reported to the Joint Committee on Printing (JCP). It provides the JCP a comprehensive overview of Department-wide printing and duplicating activities; (4) *Estimated Number of Respondents:* 163; (5) *Estimated Total Burden Hours:* 1607; (6) *Number of Collections:* The information collection request contains five (5) information and/or recordkeeping requirements.

Statutory Authority: See 44 U.S.C. 103, 501 & 504, and the Government Printing and Binding Regulations, Title IV; Joint Committee on Printing Report Forms.

Issued in Washington, DC on March 27, 2008.

Mary R. Anderson,

Director, Office of Administrative Management and Support.

[FR Doc. E8–6906 Filed 4–2–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–93–000]

Northern Natural Gas Company; Notice of Application

March 27, 2008.

Take notice that on March 19, 2008, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP08–93–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for permission and approval to abandon in-place compression facilities at its Kermit compressor station, located in Winkler County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Specifically, Northern proposes to abandon in-place two compressor units: A G.E. 9,300 horsepower unit and a Solar 1,080 horsepower unit and station piping at its Kermit compressor station. Northern states that the two units were damaged during a fire and explosion in the spring of 2003. Northern avers that no physical construction activities will occur to abandon the compressor units in-place since the units were severed from the station piping and disconnected after the fire and

explosion were contained. Northern declares that it will retain the compressor station yard along with the office building for Northern's personnel to utilize. Northern avers that a by-pass pipeline around the compressor station was constructed and is now in operation and service has been restored. Northern states that the abandonment would not impact any firm service obligations to Northern's existing shippers since the pipeline facilities, including the relocated by-pass pipeline, will have the capacity to continue full, uninterrupted service.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director of Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: April 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6864 Filed 4–1–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–94–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

March 27, 2008.

Take notice that on March 18, 2008, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP08–94–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for permission and approval to abandon the South Marsh Island Block 66 ''C'' Platform (SMI 66C Platform) and appurtenances, located in offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Transco proposes to abandon the SMI 66C Platform and appurtenant facilities. Transco states that it has not used the platform to provide transportation service at least since the abandonment of the compressors in 1986. Transco declares that the platform is no longer needed by Transco, was damaged in hurricanes Katrina and Rita in 2005, and should be removed. Transco avers that the abandonment of the platform will have no impact on the daily design capacity of, or operating conditions on, Transco's pipeline system, nor will the abandonment have any adverse impact on Transco's existing customers. Transco states that no customers have received service through the SMI 66C Platform since the abandonment of the compressors in 1986.

Any questions regarding this application should be directed to Ingrid Germany, Certificates & Tariffs, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, at (713) 215–4015.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: April 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6859 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1105–004]

Cedar Creek Wind Energy, LLC; Notice of Filing

March 27, 2008.

Take notice that on March 24, 2008, Cedar Creek Wind Energy, LLC, filed an amendment to its February 5, 2008, notice of non-material change in status in accordance to the Commission's March 7, 2008, request.

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 April 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6860 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4335–008]

GEN~SYS Energy; Notice of Filing

March 27, 2008.

Take notice that on July 24, 2006, GEN~SYS Energy filed a letter notifying the Commission that pursuant to amendments of Section 201(f) of the Federal Power Act, 16 U.S.C. 824(f), in the Energy Policy Act of 2005, it ceased to be a ''public utility'' as of August 8, 2005.

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 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 on April 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6858 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–451–000]

Plum Point Energy Associates, LLC; Notice of Issuance of Order

March 27, 2008.

Plum Point Energy Associates, LLC (Plum Point) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Plum Point also requested waivers of various Commission regulations. In particular, Plum Point requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Plum Point.

On March 6, 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 Plum Point, 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 7, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Plum Point 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 Plum Point, 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 Plum Point'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. E8–6862 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–354–000; ER08–354–001; ER08–354–002]

Wells Fargo Energy Markets, LLC; Notice of Issuance of Order

March 27, 2008.

Wells Fargo Energy Markets, LLC (Wells Fargo), filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Wells Fargo also requested waivers of various Commission regulations. In particular, Wells Fargo requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Wells Fargo.

On March 6, 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 Wells Fargo, 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 7, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Wells Fargo 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 Wells Fargo, 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 Wells Fargo'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. E8–6861 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–2–000]

Order on Technical Conference

Issued March 20, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Technical Conference.

SUMMARY: On December 11, 2008, the Federal Energy Regulatory Commission convened a technical conference on interconnection queuing practices. This order follows up that technical conference and directs Regional Transmission Organizations and Independent System Operators to file reports on the status of their efforts to improve the processing of their interconnection queues.

DATES: Reports are due April 21, 2008.

FOR FURTHER INFORMATION CONTACT:

Mary C. Morton, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8040.

Michael G. Henry (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order on Technical Conference

1. This order follows up on our December 11, 2007, technical conference (Technical Conference) on interconnection queuing practices. In this order, we direct the Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to file reports on the status of their efforts to improve the processing of their interconnection queues. We also provide guidance to assist the RTOs and ISOs and their stakeholders in those efforts.

Background

2. The Commission issued Order No. 2003 to standardize the agreements and procedures related to the interconnection of large generating facilities.[1] We found that ''[a] standard set of procedures as part of the [Open Access Transmission Tariff] for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.'' [2] Key to balancing these goals was queue management procedures, including timelines that Transmission Providers [3] must use reasonable efforts to meet.

3. In response to concerns about the effectiveness of queue management, the Commission held the Technical Conference. The Commission also issued a notice afterward inviting comments.[4] The speakers at the Technical Conference and the written comments confirm that some Transmission Providers are not processing their interconnection queues with the timeliness envisioned in Order No. 2003, in certain cases greatly exceeding the timelines in their tariffs. Surges in the volume of new generation development are taxing the current queue management approach in some regions. Additionally, the unprecedented demand in some regions for new types of generation, principally renewable generation, places further stress on queue management because such generation technologies can, for example, be brought online more quickly than traditional generation. Finally, some regions have capacity markets that did not exist when the current queue management approach was developed and are struggling with how to manage their queues to accommodate those new markets.

Discussion

4. The Commission is concerned about delays in processing interconnection queues. Although we are concerned about delays in all regions, the Technical Conference revealed that the delays are particularly significant in RTOs and ISOs that are attracting significant new entry. Many of the factors identified at the Technical Conference as contributing to delays are present for all Transmission Providers, independent and non-independent alike. For example, the need for restudy when multiple projects withdraw from a queue and the complexity of designing interconnections within a system with limited excess transmission capacity are not confined to RTOs and ISOs. All Transmission Providers should be evaluating whether changes are needed to their queue management practices to ensure the expediency called for by Order No. 2003. However, given the greater interest of new generation entrants in gaining access to RTO and ISO markets compared to other markets, the magnitude of the backlogs in RTO- and ISO-managed queues is particularly significant.

5. These backlogs not only deprive generation developers of needed business certainty, they also undermine other important public goals. As detailed by speakers at the Technical Conference, delays in interconnecting renewable generation in the footprints of the Midwest Independent Transmission System Operator, Inc. and the California Independent System Operator Corporation are creating additional challenges in meeting state renewable portfolio standards. In the ISO New England Inc. and PJM Interconnection, LLC regions, queue delays could prevent least cost resources from being available in new capacity markets auctions.

6. The Commission believes that over the long term, the improved transmission planning required under Order No. 890 [5] will address some of the causes of the current interconnection queue problems. In particular, the planning reforms adopted by Order No. 890 should increase the transparency of planning information to all customers, increase coordination among transmission owners in each region, and otherwise result in a more robust transmission system. These improvements, in turn, should enable developers to make fewer, more tailored interconnection requests and make it easier to interconnect with the transmission system. However, while the efforts currently under way to comply with Order No. 890 hold promise for the long-term processing of interconnection queues, we cannot afford to wait until those efforts are completed to address the queue management problem.

7. We note in particular the comments of the ISO/RTO Council on the scope and nature of the interconnection queue problems facing ISOs and RTOs. According to the ISO/RTO Council, the queue backlog has increased in many of the ISOs and RTOs because of the significant new entry that is occurring. The ISO/RTO Council states that prompt action is necessary to address these problems; however, the Council urges that the Commission allow each region to develop solutions that are tailored to its specific circumstances and contends that stakeholder processes to discuss reforms are already underway in several regions.

8. While the Commission could take action to impose solutions, and may need to do so if the RTOs and ISOs do not act themselves, we agree that we should allow each region the opportunity to propose its own solution. Although there are some common issues affecting all the regions, there are also significant differences in the nature and scope of the problem from region to region; there may, therefore, be no one right answer for how to improve queue management. Further, any solution involves a balancing of interests. Therefore, we urge the RTOs and ISOs to work with their stakeholders to develop consensus proposals.

9. While each of the RTOs and ISOs represented at the conference indicated

[1] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 76 U.S.L.W. 3454 (Feb. 25, 2008). *See also Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consol. Edison Co. of N.Y., Inc.* v. *FERC*, Nos. 06–1275 (*DC* Cir. filed July 14, 2006 and later); *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs. ¶ 31,186 (2005), *order on reh'g*, Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[2] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 11.

[3] ''Transmission Provider'' is a defined term under Order No. 2003. *See* Standard Large Generator Interconnection Procedures (''*pro forma* LGIP'') § 1.

[4] Notice Inviting Comments, Interconnection Queuing Practices, Docket Nos. AD08–2–000, *et al.* (Dec. 17, 2007).

[5] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890–A, 73 *FR* 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31, 261 (2007).

that it was evaluating its queue management, the RTOs and ISOs and their stakeholders must proceed more quickly, and the Commission intends to monitor their efforts. Thus, we direct each RTO and ISO to file a status report with the Commission within 30 days of the date of this order.[6] The report must describe the current size of the RTO's or ISO's interconnection queue (i.e., number of pending interconnection requests and total megawatts represented by those requests), the current projected timeframes for processing pending interconnection requests, and the nature and extent of any problems that have led to any such queue backlogs, including a discussion of how clustering has or has not alleviated those problems. The report must also explain the status of stakeholder discussions on queue reform and provide a schedule for selecting and implementing any necessary reforms, including a target date for filing any necessary tariff amendments or waivers. To assist stakeholders in their deliberations, we offer the guidance set forth below.

10. The reforms that can be implemented most quickly from a regulatory standpoint are those that do not require any revisions to an RTO's or ISO's current tariff. For example, no Commission filings are needed to increase the staff available to work on interconnection studies or adopt more efficient modeling for feasibility studies or system impact studies. Similarly, each of the RTO and ISO tariffs already provide an option for performing a single system impact study for a cluster of interconnection requests, so no further Commission filings would be necessary to take full advantage of the existing flexibility to cluster. Therefore, we urge the RTOs and ISOs when evaluating ways to improve their queue processing first to consider whether they have taken all effective steps under their current tariffs.

11. While there likely are reforms that can be implemented without the need for Commission filings, more may need to be done. Reforms necessitating tariff changes come in two forms: (1) Reforms that apply to future interconnection requests as well as existing interconnection requests that are still at an early stage in the interconnection process; and (2) reforms that affect existing interconnection requests that are in later stages of the process. The issues raised by these two classes of reforms may well differ.

12. With regard to reforms applicable to future and early-stage existing interconnection requests, we note that Order No. 2003 authorizes a number of options to streamline the interconnection process. For example, Order No. 2003 already allows for the feasibility study to be combined with the system impact study at the request of the customer.[7] Order No. 2003 permits Transmission Providers who perform system impact studies on a clustered basis to allocate the cost of common upgrades to members of a cluster without regard to queue position.[8] Further, Order No. 2003 authorizes the use of third party consultants to conduct interconnection studies.[9] When considering tariff changes applicable to future and early-stage existing interconnection requests, the RTOs and ISOs should first consider whether their current tariffs use all of the streamlining options already explicitly sanctioned under Order No. 2003.

13. If an RTO or ISO concludes that the options already identified in Order No. 2003 are inadequate to address its queue problems, it may consider proposing variations from Order No. 2003. Because RTOs and ISOs do not own generation and thus do not have an incentive to unduly discriminate, variations sought by an RTO or ISO are reviewed under the ''independent entity variation standard.'' This standard allows independent Transmission Providers flexibility in designing their interconnection procedures to accommodate regional needs.[10]

14. The Commission recognizes that the business of developing generation is very dynamic and requires the coordination of a whole host of factors beyond interconnection, many of which are outside the full control of the developer. In the absence of alternative sources of information about available transmission capacity, the interconnection-related study process may be the only reliable vehicle a customer has to evaluate the merits of different interconnection points and configurations. Thus, it is critical that reforms applicable to future and early-stage existing interconnection requests provide customers with enough flexibility and information to respond to business uncertainties. At the same time, the Commission realizes that the actions of one party in the queue can affect the interests of other parties in the queue. Thus, there needs to be a way to prioritize the processing of requests on a fair basis and to ensure that the flexibility for individual generators does not undermine the certainty and speed needed for the queue as a whole.

15. Order No. 2003 struck a balance by establishing that material modifications to an interconnection request will result in loss of queue position, while allowing a customer to make multiple interconnection requests for the same basic project, if it makes a relatively modest demonstration that it is serious about the project. These requests are then processed and allocated costs on a first-come, first-served basis.[11] While this approach made good sense at the time Order No. 2003 was issued and still works well in many situations, it has led to some unexpected consequences, particularly in transmission systems with numerous interconnection customers and limited excess transmission capacity. In markets with numerous interconnection customers, many of those customers may be competing for the same load, and not all will be needed. Further, in systems with limited excess transmission capacity, the first-come, first-served approach to cost allocation can result in great disparities between the costs faced by the customer whose request happens to trigger the need for a network upgrade as opposed to those in lower queue positions. Moreover, the relatively small deposit amounts, coupled with the incentives produced by a first-come, first-served approach to allocating capacity, provides an incentive for developers to secure a place in the queue even for projects that may not be commercially viable. These and other factors can result in large numbers of interconnection requests being ultimately withdrawn, which in turn slows down the process by necessitating more study and restudy. While the Commission is open to

[6] The reports will be noticed and subject to public comment.

[7] *Pro forma* LGIP § 6.1.

[8] *Id.* § 4.2.

[9] *Id.* § 13.4.

[10] Order No. 2003 at P 822–27; Order No. 2003–A at P 759. An RTO or ISO proposing a variation must demonstrate that the variation is just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003. *See, e.g., PJM Interconnection, LLC.*, 108 FERC ¶ 61,025, at P 7 (2004) (''[W]hen an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.''), *order denying reh'g*, 110 FERC ¶ 61,099 (2005); and *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order on reh'g*, 119 FERC ¶ 61,097, at P 7 (2007) (rejecting a proposed pricing variation because the RTO ''had not shown that the proposal would accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing'').

[11] As noted above, Order No. 2003 did allow for some flexibility in the first-come, first-served approach where a Transmission Provider performs a single system impact study for a cluster of interconnection requests.

considering a range of possible variations from Order No. 2003 with regard to future and early-stage existing interconnection requests, we believe that there are three types of variations that, individually or in combination, hold particular promise for speeding up queue processing while remaining faithful to the goals of Order No. 2003.

16. First, it may be appropriate to increase the requirements for getting and keeping a queue position. For example, it may be appropriate to increase the amount of the deposits required at the different stages of the process to more accurately reflect the cost of the necessary studies. Such a change would not only be consistent with traditional ratemaking principles, but would also increase the likelihood that only projects that are likely to be commercially viable (and hence willing to commit to the cost of such studies in advance) are in the queue. Such a change also would likely reduce the number of multiple interconnection requests made by the same customer for the purpose of speculating on the cost impacts of different locations. However, as discussed above, multiple requests for a single project can result from a legitimate desire to evaluate the merits of different interconnection points and configurations without having to go to the back of the queue. Therefore, the more stringent the requirements, the more important it is to ensure that customers have access to alternative sources of reliable information about available transmission capacity to help them tailor their interconnection requests more narrowly toward a single acceptable interconnection configuration. Further, the RTOs and ISOs should address the impact of any increases in the requirements on smaller customers or any other class of interconnection customers.

17. Second, elimination of the feasibility study as a separate step could reduce processing time without harming interconnection customers. Under Order No. 2003, the feasibility study is intended, in part, to provide preliminary information to assist developers in deciding whether it is even worth their while to pursue more detailed interconnection studies. Elimination of a separate feasibility study could streamline the study process and could reduce interconnection requests by screening out those customers who are not willing to pay the higher deposit required for a system impact study. However, elimination of a feasibility study phase, like increased requirements to obtain and retain a queue position, creates a greater need to develop alternative mechanisms through which customers can gather the information necessary to more narrowly tailor their interconnection requests toward a final acceptable configuration.

18. Third, there may be approaches to prioritizing queue processing that provide protection against discrimination comparable to the first-come, first-served approach, but that are more efficient. For example, there may be merit in a first-ready, first-served approach, whereby customers who demonstrate the greatest ability to move forward with project development are processed first. Further, the Commission is open to considering methods of clustering other than that provided in Order No. 2003. Order No. 2003's approach to clustering is fundamentally based on a first-come, first-served paradigm, as clusters are limited to requests filed within the same time frame, not to exceed 180 days.[12] Clustering that takes into account factors other than proximity of filing date may allow for more efficient studies and we are open to reviewing such proposals.

19. We note that reforms that would affect existing interconnection requests that are in later stages of the process create special circumstances that require careful consideration. Unlike reforms applicable to future and early-stage existing interconnection requests, any such reforms could significantly disrupt the activities of customers who may have taken action in reliance upon the existing process. Reforms of this sort could take the form of a filing to make generic revisions to the tariff, filings to modify individual interconnection-related agreements, or a request for a one-time waiver of the tariff.[13] These reforms could change both the timing and the cost allocation for a customer. Some customers may experience an overall benefit from a particular reform, while others may be disadvantaged by a reform. In still other cases, perhaps the majority, the difference between continued processing under the existing tariff provisions and processing under a reformed process may be speculative, including as to ultimate timing and cost allocation. In those cases, we would expect proponents of reform to have an easier time justifying such reform.[14] Whether and how a particular reform should apply to a late-stage request will depend on the specific facts. The Commission is open to considering such reforms. Further, while such reforms do pose more difficult issues than reforms applicable to future and early-stage existing requests, the Commission recognizes that they may be necessary in order to resolve current backlogs.

The Commission orders:

The RTOs and ISOs are hereby directed to file reports as discussed in the body of this order within 30 days of the date of this order.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–6606 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

[12] *See pro forma* LGIP § 4.2. *But see id.* § 4.1 (allowing allocation of cost of common upgrades for clustered interconnection requests without regard to queue position).

[13] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order on reh'g*, 119 FERC ¶ 61,097 (2007) (rejecting as unsupported proposed tariff amendments applicable to existing interconnection agreements but without prejudice to future filings to revise individual interconnection agreements); and *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226, *order on clarification*, 120 FERC ¶ 61,180 (2007) (granting one-time waiver of procedures for conducting clustered system impact studies despite application to protestor who had already undergone a system impact study).

[14] *See, e.g., New York Indep. Sys. Operator, Inc.*, 114 FERC ¶ 61,207 (2006) (granting one-time waiver of interconnection procedure noting that protestor's claim that it would incur higher costs due to potential loss of its queue position was speculative).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–685–000]

TransCanada Maine Wind Development Inc.; Notice of Filing

March 27, 2008.

Take notice that on March 17, 2008, TransCanada Maine Wind Development Inc submitted for filing an application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.

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 April 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6863 Filed 4–2–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8550–7]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in May 2008. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html*. MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, send a blank e-mail to *lists-mstrs@lists.epa.gov.*

DATES: Thursday, May 8, 2008 from 9 a.m. to 5 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel Crystal City-National Airport, 300 Army Navy Drive, Arlington, VA 22202–2891. Phone 703–416–4100. The hotel is located three blocks from the Pentagon City Metro station, and shuttle buses are available to and from both the Metro station and Washington Reagan National Airport.

FOR FURTHER INFORMATION CONTACT:

For technical information: John Guy, Designated Federal Officer, Transportation and Regional Programs Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Ph: 202–343–9276; e-mail: *guy.john@epa.gov.*

For logistical and administrative information: Ms. Cheryl Jackson, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; 202–343–4653; e-mail: *jackson.cheryl@epa.gov.*

Background on the work of the Subcommittee is available at: *http://www.epa.gov/air/caaac/mobile_sources.html*. Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. Guy at the address above by April 24, 2008. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Mr. Guy or Ms. Jackson (see above). To request accommodation of a disability, please contact Mr. Guy or Ms. Jackson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 28, 2008.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E8–6916 Filed 4–2–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Concepts Statement Exposure Draft Distinguishing Basic Information, Required Supplementary Information, and Other Accompanying Information and Scheduled Meeting Dates for 2009

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued a Concepts Statement Exposure Draft, *Distinguishing Basic Information, Required Supplementary Information, and Other Accompanying Information.*

The Concepts Statement Exposure Draft proposes amendments to Statement of Federal Financial Accounting Concepts 2, *Entity and Display*, to provide conceptual guidance for determining how information in financial reports should be categorized. The Concepts Statement Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by June 26th, 2008, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

Notice is also given that the FASAB will meet on the following dates in room 7C13 of the U.S. Government Accountability Office (GAO) Building (441 G Street, NW.) unless otherwise noted:

—Wednesday and Thursday, February 25 and 26, 2009.
—Wednesday and Thursday, April 22 and 23, 2009.
—Wednesday and Thursday, June 17 and 18, 2009.
—Wednesday and Thursday, August 26 and 27, 2009.
—Wednesday and Thursday, October 21 and 22, 2009.
—Wednesday and Thursday, December 16 and 17, 2009.

The purposes of the meetings are to discuss issues related to:

—FASAB's conceptual framework.
—Stewardship Reporting.
—Social Insurance.
—Natural Resources.
—Technical Agenda.
—Any other topics as needed.

A more detailed agenda can be obtained from the FASAB Web site (*http://www.fasab.gov*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building Security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: March 29, 2008.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E8–6809 Filed 4–2–08; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 26, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before June 2, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Leslie F. Smith via the Internet at *PRA@fcc.gov* or call (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1083.

Title: Request to Update Default Compensation Rate for Dial-Around Calls From Payphones, WC Docket No. 03–225.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 100 hours.

Obligation to Respond: Voluntary.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 1,000 hours.

Annual Cost Burden: $53,000.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Pursuant to Section 276(b)(1)(A) of the Act, the Commission is required to ensure that all payphone service providers are fairly compensated. In order to calculate fair compensation for the payphones that are not supported by Flex ANI, the Commission must obtain monthly payphone call volume data. Once the impacted entities (primarily the Regional Bell Operating Companies and the large interexchange companies) submit this data, the Commission will calculate an average monthly call volume as one of the key inputs required to establish per-payphone monthly compensation.

Federal Communications Commission.

William F Caton,

Deputy Secretary.

[FR Doc. E8–6663 Filed 4–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 27, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information 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: Persons wishing to comment on this information collection should submit comments June 2, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To

submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click 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 and (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, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0053.

Title: Application for Consent to Transfer Control of Corporation Holding Stations License.

Form No.: FCC Form 703.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 40 respondents; 40 responses.

Estimated Time per Response: 36 minutes.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 24 hours.

Annual Cost Burden: $2,400.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Applicants may request that information be withheld from public inspection pursuant to 47 CFR 0.459 of the Commission's rules. The request must be justified pursuant to 47 CFR 0.457.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. However, the regulatory fee has increased to $60.00 per application (a $5.00 increase since the last submission to the OMB).

Mandatory electronic filing of applications for Experimental Radio licenses, including FCC Form 703, commenced on January 1, 2004. Applicants for Experimental Radio Services are required by 47 CFR 5.59(e) of the Commission's rules to submit FCC Form 703 when they propose to change the control of a corporation holding a station license via a transfer of stock ownership or control of a station. The Commission uses the information to determine the eligibility for licenses, without which, violations of ownership regulations may occur.

OMB Control No.: 3060–0068.

Title: Application for Consent to Assign an Experimental Authorization.

Form No.: FCC Form 702.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 36 minutes.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 6 hours.

Annual Cost Burden: $600.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Applicants may request that information be withheld from public inspection pursuant to 47 CFR 0.459 of the Commission's rules. The request must be justified pursuant to 47 CFR 0.457.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Mandatory electronic filing of applications for Experimental Radio licenses, including FCC Form 702, commenced on January 1, 2004. Applicants for Experimental Radio Services are required by 47 CFR 5.59(d) of the Commission's rules to submit FCC Form 702 when the legal right to control the use and operation of a station is to be transferred, as a result of a voluntary act (contract or other agreement); of an involuntary act (death or legal disability) of the grantee of a station authorization; by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings or other court order; or by operation of law in any other manner. The regulatory fee has increased to $60.00 per application (an increase of $5.00 since the last submission to the OMB).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–6937 Filed 4–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 31, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). 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. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 2, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy

Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1115.

Title: DTV Consumer Education Initiative; Sections 15.124, 27.20, 54.418, 73.674, and 76.1630.

Form Number: FCC Form 388.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions, State, local or tribal governments.

Number of Respondent: 11,022 respondents.

Estimated time per Response: 1 minute–3 hours.

Frequency of Response: On occasion reporting requirement; Quarterly reporting requirement; Monthly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in sections 4(i), 303(r), 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 335, and 336.

Total Annual Burden: 156,069 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted on February 19, 2008, a Report and Order, *In the Matter DTV Consumer Education Initiative,* MB Docket 07–148, FCC 08–56. As the Nation transitions 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. By compressing television broadcasting into a smaller amount of the available spectrum, the digital transition has allowed the Commission to make valuable 700 MHz spectrum available for sale and use by wireless companies and public safety organizations. The transition 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.

In this Order, the Commission imposes the following information and disclosure requirements:

(a) Broadcaster Education and Reporting (47 CFR 73.674).

(i) On-air Education. Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs) or information crawls) to their viewers. Broadcasters must comply with one of three alternative sets of rules as provided in the Report and Order.

(ii) DTV Consumer Education Quarterly Activity Report, FCC Form 388. Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public Web site, they must post these reports on that Web site.

(b) Multichannel Video Programming Distributor (MVPD) Customer Bill Notices (47 CFR 76.1630). MVPDs, which include, for example (and are not limited to), cable operators, direct broadcast satellite (DBS) carriers, open video system operators, and private cable operators, must provide monthly notices about the DTV transition in their customer billing statements.

(c) Consumer Electronics Manufacturer Notices (47 CFR 15.124). Parties that manufacture, import, or ship interstate television receivers and devices designed to work with television receivers must provide notice to consumers of the transition's impact on that equipment. This information must be included with all devices shipped, beginning on the effective date of these rules, until March 31, 2009.

(d) DTV.gov Partner Consumer Education Reporting. DTV.gov Transition Partners must report their consumer education efforts, as a condition of continuing Partner status. They must begin filing these quarterly reports no later than April 10, 2008.

(e) Eligible telecommunications carriers (ETCs) Federal Universal Service Low-Income Program Participant Notices (47 CFR 54.418). ETCs that receive federal universal service funds must provide monthly notice of the transition to their low income customers and potential customers. This information must be provided beginning on the effective date of these rules, until March 31, 2009.

(f) 700 MHz Auction Winner Consumer Education Reporting (47 CFR 27.20). Winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission on a quarterly basis. These parties must file the first by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds.

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701 and 73.1943, Political Files.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for-profit institutions.

Number of Respondent: 52,285 respondents.

Estimated time per Response: 2.5–109 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,831,706 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted on February 19, 2008, a Report and Order, *In the Matter DTV Consumer Education Initiative,* MB Docket 07–148, FCC 08–56. The Report and Order adds a new recordkeeping requirement for full-power commercial and noncommercial educational TV broadcast stations (both analog and digital) for the contents of their public inspection files. Specifically, the rule requires these stations to retain in their public inspection file a copy of their DTV Consumer Education Quarterly Activity Report, FCC Form 388, on a quarterly basis. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. These Reports shall be retained in the public inspection file for one year. Broadcasters shall publicize in an appropriate manner the existence and location of these Reports.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–6938 Filed 4–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

March 28, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams via the internet at *PRA@fcc.gov* or by phone on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1115.

OMB Approval Date: March 27, 2008.

Expiration Date: September 30, 2008.

Title: DTV Consumer Education Initiative, Sections 15.124, 27.20, 54.418, 73.674 and 76.1630.

Form No.: FCC Form 388.

Estimated Annual Burden: 70,026 responses; 0.5 hours–85 hours per response; 156,069 hours total per year.

Obligation to Respond: Required to retain or obtain benefits; statutory authority for this collection of information is contained in sections 4(i), 303(r), 335, and 336, of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 335, and 336.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission adopted on February 19, 2008, a Report and Order, *In the Matter DTV Consumer Education Initiative,* MB Docket 07–148, FCC 08–56. As the Nation transitions 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. By compressing television broadcasting into a smaller amount of the available spectrum, the digital transition has allowed the Commission to make valuable 700 MHz spectrum available for sale and use by wireless companies and public safety organizations. The transition 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.

In this Order, the Commission imposes the following information and disclosure requirements:

(a) Broadcaster Education and Reporting (47 CFR 73.674).

(i) On-air Education. Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs) or information crawls) to their viewers. Broadcasters must comply with one of three alternative sets of rules as provided in the Report and Order.

(ii) DTV Consumer Education Quarterly Activity Report, FCC Form 388. Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public Web site, they must post these reports on that Web site.

(b) Multichannel Video Programming Distributor (MVPD) Customer Bill Notices (47 CFR 76.1630). MVPDs, which include, for example (and are not limited to), cable operators, direct broadcast satellite (DBS) carriers, open video system operators, and private cable operators, must provide monthly notices about the DTV transition in their customer billing statements.

(c) Consumer Electronics Manufacturer Notices (47 CFR 15.124). Parties that manufacture, import, or ship interstate television receivers and devices designed to work with television receivers must provide notice to consumers of the transition's impact on that equipment. This information must be included with all devices shipped, beginning on the effective date of these rules, until March 31, 2009.

(d) DTV.gov Partner Consumer Education Reporting. DTV.gov Transition Partners must report their consumer education efforts, as a condition of continuing Partner status. They must begin filing these quarterly reports no later than April 10, 2008.

(e) Eligible telecommunications carriers (ETCs) Federal Universal Service Low-Income Program Participant Notices (47 CFR 54.418). ETCs that receive federal universal service funds must provide monthly notice of the transition to their low income customers and potential customers. This information must be provided beginning on the effective date of these rules, until March 31, 2009.

(f) 700 MHz Auction Winner Consumer Education Reporting (47 CFR 27.20). Winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission on a quarterly basis. These parties must file the first by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds.

OMB Control Number: 3060–0214.

OMB Approval Date: March 27, 2008.

Expiration Date: September 30, 2008.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; sections 76.1701 and 73.1943, Political Files.

Form No.: Not applicable.

Estimated Annual Burden: 52,285 responses; 2.5 hours–109 hours per response; 1,831,706 hours total per year.

Obligation to Respond: Required to retain or obtain benefits; statutory authority for this collection of information is contained in 154(i), 303, and 308 of the Communications Act of 1934.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission adopted on February 19, 2008, a Report and Order, *In the Matter DTV Consumer Education Initiative,* MB Docket 07–148, FCC 08–56. The Report and Order adds a new recordkeeping requirement for full-power commercial and noncommercial educational TV broadcast stations (both analog and digital) for the contents of their public inspection files. Specifically, the rule requires these stations to retain in their public inspection file a copy of their DTV Consumer Education Quarterly Activity Report, FCC Form 388, on a quarterly basis. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. These Reports shall be retained in the public

inspection file for one year. Broadcasters shall publicize in an appropriate manner the existence and location of these Reports.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–6940 Filed 4–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–08–77–A (Auction 77); DA 08–543; AU Docket No. 08–32]

Closed Auction of Licenses for Cellular Unserved Service Areas Scheduled for June 17, 2008; Comment Sought on Competitive Bidding Procedures for Auction 77

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses for Cellular Unserved Service Areas, with bidding scheduled to commence on June 17, 2008 (Auction 77). This document also seeks comments on competitive bidding procedures for Auction 77.

DATES: Comments are due on or before April 4, 2008, and reply comments are due on or before April 11, 2008.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 08–32; DA 08–543. Comments may be filed electronically using the Internet by accessing the Federal Communications Commission's (Commission) Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/cgb/ecfs*. Filers should follow the instructions provided on the Web site for submitting comments. The Wireless Telecommunications Bureau (Bureau) requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction77@fcc.gov*. In addition, comments and reply comments may be submitted by any of the following methods:

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For auction legal questions: Sayuri Rajapakse at (202) 418–0660. For general auction questions: Roy Knowles or Barbara Sibert at (717) 338–2868. Mobility Division: For service rule questions: Erin McGrath (legal) or Gabriel Ubieta (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 77 Comment Public Notice released on March 21, 2008. The complete text of the Auction 77 Comment Public Notice, including Attachment A, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The Auction 77 Comment Public Notice and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 08–543. The Auction 77 Comment Public Notice and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/77/*, or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/*.

I. Licenses To Be Offered in Auction 77

1. By the Auction 77 Comment Public Notice, the Bureau announces an auction of licenses to provide cellular service in two different unserved areas (Auction 77), with bidding scheduled to commence on June 17, 2008. The spectrum to be auctioned is the subject of two groups of pending mutually exclusive long-form applications (FCC Forms 601) for unserved area licenses in the Cellular Radiotelephone Service. Participation in Auction 77 will be limited to those applicants identified in Attachment A of the Auction 77 Comment Public Notice. Licenses will be auctioned for each mutually exclusive applicant group (MX Group) identified in Attachment A of the Auction 77 Comment Public Notice. The winning bidder in each group will be licensed to serve only the unserved area proposed in its long-form application(s) for that MX Group.

2. In MX Group FGN001, one of the applicants, E.N.M.R. Telephone Cooperative (ENMR), has filed two applications that propose different Cellular Geographic Service Areas (CGSAs). ENMR was required by the Commission's rules to file two separate applications for these CGSAs. Because ENMR's applications are not mutually exclusive with each other, but each of these applications is mutually exclusive with the competing applicant in the MX Group, if ENMR qualifies to bid in the auction, it will submit one bid for the opportunity to have both of its applications processed in the event that it is the winning bidder in MX Group FGN001.

II. Bureau Seeks Comment on Auction Procedures

3. Consistent with the provisions of 47 U.S.C. 309(j)(3), the Bureau seeks comment on the following issues relating to Auction 77.

A. Auction Design

i. Single-Round Sealed-Bid Auction Design

4. The Bureau proposes to award the licenses included in Auction 77 using a single-round sealed-bid auction. The Bureau proposes to use the single-round format because the informational advantages of a simultaneous multiple-round auction are not necessary here. Because a bidder can only bid on a single cellular unserved area, bidders do not need the information afforded by a simultaneous multiple-round auction to consider valuations, alternative business

plans, or backup strategies. The Bureau seeks comment on this proposal.

B. Auction Structure

i. Round Structure

5. The Commission will conduct Auction 77 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders. The start and finish time of the bidding round will be announced in a public notice to be released at least one week before the start of the auction.

6. The single-round sealed-bid format will consist of one bidding round followed by the release of auction results. In the event of tied bids in an MX Group, the Commission will post an announcement in the FCC Auction System to announce an additional round of bidding for that MX Group. The Bureau seeks comment on this proposal.

ii. Information Relating to Auction Delay, Suspension, or Cancellation

7. For Auction 77, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau. The Bureau seeks comment on this proposal.

C. Bidding Procedures

i. Upfront Payments and Bidding Eligibility

8. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for the cellular unserved area licenses being auctioned. A bidder's upfront payment is a refundable deposit to establish eligibility to bid in the auction on the cellular unserved area license(s) for which the applicant submitted an application. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.

9. For Auction 77, the Bureau proposes to set the upfront payment at $500 for each applicant. The unserved areas and the proposed upfront payment are listed in Attachment A of the Auction 77 Comment Public Notice. The Bureau seeks comment on this proposal.

ii. Reserve Price or Minimum Bid

10. In light of 47 U.S.C. 309(j), the Bureau proposes to establish a minimum bid amount at $500 for each of the two cellular unserved areas in Auction 77. For each unserved area, the proposed minimum bid amount is listed in Attachment A of the Auction 77 Comment Public Notice. The Bureau seeks comment on this proposal.

11. If commenters believe that the proposed minimum bid amount is not a reasonable amount, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas. In establishing minimum bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the license or licenses being auctioned. The Bureau also seeks comment on whether, consistent with 47 U.S.C. 309(j), the public interest would be served by having no minimum bid amount or a higher minimum bid amount.

iii. Minimum Acceptable Bids

12. Eligible bidders will be able to place a bid in any whole dollar amount equal to or greater than the minimum bid for each cellular unserved area. Bidders will not be permitted to withdraw a bid. The Bureau seeks comment on this proposal.

iv. Provisionally Winning Bids and Tied Bids

13. At the end of the bidding round, the winning bid for each cellular unserved area will be determined based on the highest bid amount received for the area. The result will be announced shortly after the close of the bidding round.

14. In the event of identical high bid amounts being submitted in a cellular unserved area (i.e., tied bids), the Bureau proposes to allow an additional bidding round or rounds, if necessary, for bidders to submit higher bids for the cellular unserved area with tied bids. The minimum bid for the next round will be calculated by rounding the tied bid amount up to the next highest $100. The license(s) will be assigned to the bidder submitting the highest bid in the additional round. If no bids are placed in the additional round, the license(s) will be assigned to the bidder placing the tied bid in the previous round with the highest random number, a random number having previously been assigned to each bid. If there is a tie for the winning bid in the additional round, the FCC may add another tie-breaking round or rounds, or stop the auction without assigning the license(s).

15. The Commission will announce the schedule for a subsequent round via an announcement in the FCC Auction System, concurrent with the release of round results. The Bureau seeks comment on this proposal.

D. Considerations Relating to Certain Post-Auction Payment Rules

i. Additional Default Payment Percentage

16. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering substantially the same spectrum and geographic area is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

17. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend in part on the auction format ultimately chosen for a particular auction, if the license is subsequently reauctioned. In non-package auctions, the amount can range from three percent up to a maximum of 20 percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered.

18. For Auction 77, the Bureau proposes to establish an additional default payment of 20 percent. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. The Bureau proposes the maximum 20 percent default payment for Auction 77. Since

Auction 77 is being conducted strictly to resolve conflicts between entities in two cellular unserved areas that were unable to resolve their mutually exclusive applications, a default by the winning bidder would suggest that the bidder has not made a good-faith effort to abide by FCC license assignment procedures, thereby weakening the integrity of the auction process. The Bureau proposes to impose the maximum payment percentage to deter such behavior. The Bureau seeks comment on this proposal.

III. Commission's EX PARTE Rules

19. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200–1.1216. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E8–6956 Filed 4–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 201178.

Title: Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement.

Parties: The West Coast MTO Agreement; The City of Los Angeles, acting by and through its Board of Harbor Commissioners; and The City of Long Beach, acting by and through its Board of Harbor Commissioners.

Dated: March 28, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–6835 Filed 4–2–08; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Timothy A. Tierney, Madison, Wisconsin; as an individual, and as a group acting in concert with Mark R. Tierney, Superior, Wisconsin; David S. Tierney, Eden Prairie, Minnesota; the Robert V. Tierney Trust, Timothy Tierney as trustee, Madison, Wisconsin; and the Faith M. Tierney Trust, Timothy Tierney as trustee, Madison, Wisconsin; to acquire control of Superior Bancorporation LTD, Superior, Wisconsin, and thereby indirectly acquire control of Community Bank Superior, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, March 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–6926 Filed 4–2–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 2008.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Modern Bank Management LLC, Modern Bank Partners LLC, and Modern Financial Inc., all of New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of Modern Bank, N.A., New York, New York.

2. National Australia Bank Limited, National Equities Limited, both of Melbourne, Australia, and National Americas Investment, Inc., National Americas Holdings LLC, both of New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of Great Western Bancorporation, Inc., Omaha, Nebraska, and its subsidiary, Great Western Bank, Watertown, South Dakota. Comments regarding this application must be received not later than April 18, 2008.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Kirkwood Bancorporation Co., Bismark, North Dakota; to acquire 27.67 percent of the voting shares of Kirkwood Bancorporation of Nevada, Inc., and thereby indirectly acquire voting shares of Kirkwood Bank of Nevada, both of Las Vegas, Nevada, a *de novo* bank.

2. Kirkwood Bancorporation of Nevada, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Kirkwood Bank of Nevada, both of Las Vegas, Nevada, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–6925 Filed 4–2–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. E8–4013) published on page 11419 of the issue for Monday, March 3, 2008.

Under the Federal Reserve Bank of Richmond, the entry for Bank of America Corporation, Charlotte, North Carolins, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Bank of America Corporation, Charlotte, North Carolina; to acquire Countrywide Financial Corporation, Calabasas, California, and thereby indirectly acquire Countrywide Bank, FSB, Alexandria, Virginia, Countrywide Home Loans, Inc., Calabasas, California, Countrywide Financial Corporation, Calabasas, California, Countrywide Financial Holding Company, Inc., Calabasas, California, Effinity Financial Corporation, Alexandria, Virginia, Countrywide Tax Services Corporation, Simi Valley, California, CTC Real Estate Services, Calabasas, California, Countrywide Servicing Exchange, Calabasas, California, Countrywide Asset Management Corp., Calabasas, California, Landsafe Appraisal Services, Inc., Plano, Texas, Landsafe Credit, Inc., Richardson, Texas, Landsafe Flood Determination, Inc., Richardson, Texas, Landsafe Title of California, Inc., Rosemead, California, Landsafe Title of Texas, Inc., Rosemead, California, Landsafe Title of Florida, Inc., Calabasas, California, Countrywide Warehouse Lending, Calabasas, California, Countrywide Home Loans Servicing LP, Plano, Texas, Countrywide Mortgage Ventures, LLC, Calabasas, California, Countrywide Commercial Real Estate Finance, Inc., Calabasas, California, The Countrywide Foundation, Calabasas, California, Recontrust Company, National Association, Thousand Oaks, California, CWB Community Assets, Inc., Thousand Oaks, California, Countrywide Commercial Administration LLC, Calabasas, California, Recontrust Company (Nevada) Thousand Oaks, California, Countrywide KB Home Loans, LLC, Thousand Oaks, California, CWB Mortgage Ventures, LLC, Thousand Oaks, California, Landsafe Services of Alabama, Inc., Rosemead, California, Landsafe Title of Maryland, Inc., Calabasas, California and thereby engage in (1) operating a savings association; (2) operating a nondepository trust company; (3) community development activities; (4) extending credit and servicing loans; (5) real estate and personal property appraising; (6) credit bureau services; (7) asset management, servicing, and collection activities; (8) acquiring debt in default; and (9) providing tax services for residential mortgage transaction pursuant to sections 225.28(b)(1), 225.28(b)(2), 225.28(b)(4), 225.28(b)(5), 225.28(b)(6) and 225.28(b)(12) of Regulation Y.

In connection with this proposal Bank of America Corporation, has applied to acquire from Bank of America, National Association, Charlotte, North Carolina, 20,000 shares of Series B Non–Voting Convertible Preferred Stock of Countrywide Financial Corporation, Calabasas, California, which is convertible at the option of the holder into approximately 15.7 percent of the voting common stock of Countrywide Financial Corporation.

Comments on this application must be received by April 29, 2008.

Board of Governors of the Federal Reserve System, March 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–6924 Filed 4–2–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 052 3094]

Reed Elsevier Inc. and Seisint, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 28, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Reed Elsevier and Seisint, File No. 052 3094,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at *http://secure.commentworks.com/ftc-ReedElsevierSeisint*. To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

FOR FURTHER INFORMATION CONTACT: Alain Sheer, FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 27, 2008), on the World Wide Web, at *http://www.ftc.gov/os/2008/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Reed Elsevier Inc. (''REI'') and Seisint, Inc. (''Seisint'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's proposed complaint alleges that REI (through its LexisNexis division) and Seisint are data brokers. REI acquired Seisint on September 1, 2004 and has continued to operate Seisint under the Seisint name; REI also uses Seisint's technologies and facilities in REI's LexisNexis data broker business. In connection with Seisint's business, proposed respondents collect, and store in electronic databases, information about millions of consumers, including names, current and prior addresses, dates of birth, driver's license numbers, and Social Security numbers (''SSNs''). They also sell products customers use to retrieve information from the databases, including products to locate assets and people, authenticate identities, and verify credentials. Until at least mid-2005, access to information in Seisint databases was controlled using only user IDs and passwords (''credentials''). Seisint customers include insurance companies, debt collectors, employers, landlords, law firms, and law enforcement and other government agencies.

The complaint further alleges that REI and Seisint engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for sensitive consumer information stored in Seisint databases. In particular, they: (1) failed to make credentials hard to guess; (2) failed to require periodic changes of credentials (such as every 90 days, for customers with access to sensitive consumer information); (3) failed to suspend credentials after a certain number of unsuccessful log-in attempts; (4) allowed customers to store their credentials in a vulnerable format in cookies on their computers; (5) failed to require customers to encrypt or otherwise protect credentials, search queries, and/or search results in transit between customer computers and Seisint websites; (6) allowed customers to create new credentials without confirming that the new credentials were created by customers rather than identity thieves; (7) permitted users to share credentials; (8) did not adequately assess the vulnerability of Seisint's web application and computer network to commonly known or reasonably foreseeable attacks, such as ''Cross-Site Scripting'' attacks; and (9) did not implement simple, low-cost, and readily available defenses to such attacks. As a result, an attacker could easily guess or intercept the user credentials of legitimate customers and use them to access sensitive information—including SSNs—about millions of consumers.

The complaint alleges that on multiple occasions since January 2003, identity thieves exploited these vulnerabilities to obtain the credentials of legitimate Seisint customers. The thieves then used the credentials to make thousands of unauthorized searches for consumer information in Seisint databases. These breaches disclosed sensitive information about more than 300,000 consumers, including, in many instances, names, current and prior addresses, dates of birth, and SSNs. In some instances, the thieves opened new credit accounts in the names of consumers whose information was disclosed and made purchases on the new accounts. In other instances, they used the information to activate newly-issued credit cards stolen from legitimate cardholders and then made fraudulent purchases on the cards. Although some of these breaches occurred before REI acquired Seisint on September 1, 2004, they continued for at least 9 months after the acquisition, during which time Seisint was under REI's control.

The proposed order applies to nonpublic information sold by Seisint and LexisNexis, as well as by any other business within REI to the extent that the business sells products that include an SSN, driver's license number; date of birth; or bank, credit card, or other financial account number or information. The order also contains provisions designed to prevent respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order requires each respondent to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of nonpublic personal information collected from or about consumers. The security programs must contain administrative, technical, and physical safeguards appropriate to the respondent's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires each respondent to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly

test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

- Develop and use reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from the respondent, and require service providers by contract to implement and maintain appropriate safeguards.
- Evaluate and adjust its information security programs in light of the results of testing and monitoring, any material changes to operations or business arrangements, or any other circumstances that it knows or has reason to know may have material impact on its information security program.

Part II of the proposed order requires each respondent to obtain within 180 days, and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) it has in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires respondents to retain documents relating to their compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, respondents must retain the documents for a period of three years after the date that each assessment is prepared. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that each respondent submit a compliance report to the FTC within 180 days, and periodically thereafter as requested. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

This is the Commission's nineteenth case to challenge the failure by a company to implement reasonable information security practices. Each of the Commission's cases to date has alleged that a number of security practices, taken together, failed to provide reasonable and appropriate security to prevent unauthorized access to consumers' information. The practices challenged in the cases have included, but are not limited to: (1) creating unnecessary risks to sensitive information by storing it on computer networks without a business need to do so; (2) storing sensitive information on networks in a vulnerable format; (3) failing to use readily available security measures to limit access to a computer network through wireless access points on the network; (4) failing to adequately assess the vulnerability of a web application and computer network to commonly known or reasonably foreseeable attacks; (5) failing to implement simple, low-cost, and readily available defenses to such attacks; and (6) failing to use readily available security measures to limit access between computers on a network and between such computers and the Internet. This proposed action against REI and Seisint is the first to challenge alleged security failures involving the security of passwords. Passwords are a critical part of a reasonable and appropriate security program because passwords are typically the first (and are often the only) method used to authenticate (or authorize) users to access resources, such as programs and databases, available on a computer network or online.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–6952 Filed 4–2–08: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

[File No. 072 3055]

The TJX Companies, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 28, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''TJX, File No. 072 3055,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at *http://secure.commentworks.com/ftc-TJX*. To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

FOR FURTHER INFORMATION CONTACT: Alain Sheer or Molly Crawford, FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326–2252.

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[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 27, 2008), on the World Wide Web, at *http://www.ftc.gov/os/2008/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from The TJX Companies, Inc. (''TJX'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

According to the Commission's complaint, TJX is an off-price retailer selling apparel and home fashions in over 2,500 stores worldwide. Consumers may pay for purchases at these stores with credit and debit cards (collectively, ''payment cards''), cash, or personal checks. In selling its products, TJX routinely uses its computer networks to collect personal information from consumers to obtain authorization for payment card purchases, verify personal checks, and process merchandise returned without receipts (''unreceipted returns''). Among other things, it collects: (1) account number, expiration date, and an electronic security code for payment card authorization; (2) bank routing, account, and check numbers and, in some instances, driver's license number and date of birth for personal check verification; and (3) name, address, and drivers' license or military or state identification number (''personal ID numbers'') for unreceipted returns (collectively, ''personal information''). This information is particularly sensitive because it can be used to facilitate payment card fraud and other consumer harm.

The Commission's proposed complaint alleges that since at least July 2005, TJX engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for personal information on its computer networks. Among other things, TJX: (a) created an unnecessary risk to personal information by storing it on, and transmitting it between and within, in-store and corporate networks in clear text; (b) did not use readily available security measures to limit wireless access to its networks, thereby allowing an intruder to connect wirelessly to in-store networks without authorization; (c) did not require network administrators and other users to use strong passwords or to use different passwords to access different programs, computers, and networks; (d) failed to use readily available security measures to limit access among computers and the internet, such as by using a firewall to isolate card authorization computers; and (e) failed to employ sufficient measures to detect and prevent unauthorized access to computer networks or to conduct security investigations, such as by patching or updating anti-virus software or following up on security warnings and intrusion alerts.

The complaint alleges that the breach compromised tens of millions of payment cards as well as the personal information of approximately 455,000 consumers who had made unreceipted returns. The complaint further alleges that issuing banks have claimed tens of millions of dollars in fraudulent charges on some of these payment card accounts. Issuing banks also have cancelled and re-issued millions of payment cards, and according to the complaint, consumers holding these cards were unable to use them to access their credit and bank accounts until they received the replacement cards. Additionally, the complaint alleges that some consumers have obtained or will have to obtain new personal ID numbers, such as new drivers' licenses.

The proposed order applies to personal information TJX collects from or about consumers. It contains provisions designed to prevent TJX from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order requires TJX to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to TJX's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires TJX to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- Develop and use reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from respondents, require service providers by contract to implement and maintain appropriate safeguards, and monitor their safeguarding of personal information.
- Evaluate and adjust its information security program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of their information security program.

Part II of the proposed order requires that TJX obtain, covering the first 180 days after the order is served, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that (1) it has in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order; and (2) its security program is operating with sufficient

effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires TJX to retain documents relating to its compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, TJX must retain the documents for a period of three years after the date that each assessment is prepared. Part IV requires dissemination of the order now and in the future to principals, officers, directors, and managers having responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that TJX submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

This is the Commission's twentieth case to challenge the failure by a company to implement reasonable information security practices. Each of the Commission's cases to date has alleged that a number of security practices, taken together, failed to provide reasonable and appropriate security to prevent unauthorized access to consumers' information. The practices challenged in the cases have included, but are not limited to: (1) creating unnecessary risks to sensitive information by storing it on computer networks without a business need to do so; (2) storing sensitive information on networks in a vulnerable format; (3) failing to use readily available security measures to limit access to a computer network through wireless access points on the network; (4) failing to adequately assess the vulnerability of a web application and computer network to commonly known or reasonably foreseeable attacks; (5) failing to implement simple, low-cost, and readily available defenses to such attacks; (6) failing to use readily available security measures to limit access between computers on a network and between such computers and the internet, and (7) failing to use strong passwords to authenticate (or authorize) users to access programs and databases on computer networks or online.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–6950 Filed 4–2–08: 8:45 am]

[BILLING CODE 6750–01–S]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Assessment of the Emergency Severity Index (ESI).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 22nd, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 5, 2008.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer). Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

''Proposed Project—Assessment of the Emergency Severity Index (ESI)''

AHRQ is proposing to examine uptake and use of an emergency room triage tool, the Emergency Severity Index (ESI). The hospital emergency department (ED) represents a critical point in care delivery for patients across the United States. Over the past decade, however, the dramatic influx of patients into EDs has seriously challenged the ability of these departments to deliver timely, quality, and safe emergency healthcare services. Moreover, with most emergency departments operating at or over capacity it may prove difficult for them to respond to the surge in emergency room demand created by natural and man-made disasters. Development of increasingly refined and validated triage methods is one potential key to addressing overcrowding by speeding up the care delivery to the most acute ED patients while helping hospitals assess, carefully allocate and plan the amount of human and other resources needed to care for all patients.

In response to a need to standardize the triage process and improve the flow of patients, Richard C. Wuerz, MD, (Department of Emergency Medicine at the Brigham and Women's Hospital and the Harvard Medical School) and David R. Eitel, MD, (Department of Emergency Medicine, The York Hospital WellSpan Health System) initiated development of the Emergency Severity Index (ESI) in 1995. The ESI is unique in its focus on appropriate resource allocation and its consideration of necessary resource utilization in assigning acuity. To encourage adoption of the ESI, AHRQ developed an implementation handbook (Emergency Severity Index, Version 4) and companion DVDs. These materials are intended to provide hospitals and triage nurses with background on why they might want to implement the ESI as a triage tool, and offers recommendations on the implementation process and staff training.

This project will assess the product's acceptance by emergency departments and others involved in addressing medical surges to better understand the usefulness of the ESI compared to other similar tools. It will focus on the satisfaction with the product's presentation, content, and clarity; extent to which the product has improved emergency services and surge preparation; and the improvements users would like to see in the next version of this product. This will be accomplished through (1) developing and implementing an electronic and paper-based survey targeting emergency department professionals assessing the satisfaction with the ESI's content, clarity and actual use of the system in everyday emergency departments, and (2) convening focus groups of ED professionals to identify characteristics that might predict uptake and use of this

system in participating emergency departments.

Method of Collection

Survey: An equal-probability sample of 507 ED professionals from the database AHRQ maintains of individuals and organizations that requested a copy of the ESI tools will be contacted to participate in the survey. Where a phone number has been provided, we will do a reverse telephone number search to identify the mailing address of the requester and conduct a mail survey with telephone follow-up. For those who have provided an e-mail address, we will send a link to a Web survey. Telephone and e-mail prompts will be sent after two weeks to those who have not yet completed the questionnaire, followed by two additional reminders sent three weeks apart. The expected response rate of 80 percent will result in 405 respondents to the survey with approximately 70% ED nurses, 20% ED medical and health services managers, and 10% ED physicians.

Focus Groups: Focus groups will be conducted to gauge ED managers' and clinicians' awareness of the ESI tool as well as AHRQ's role in ED surge planning and preparation. To the extent that we are able to identify a subgroup of ED representatives who are aware of the ESI tool but have chosen not to utilize it in their emergency departments, focus groups may also be useful to gather information on why these organizations opted not to employ the ESI. In order to facilitate communication among focus group participants and ensure that responses address the key issues identified in the focus group guide, we will limit participation in each focus group meeting to between six and eight individuals. A total of four focus group meetings will be held, including two meetings each with ED medical directors, ED triage nurses, and ED medical and health services managers.

Estimated Annual Respondent Burden

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection effort	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
ED professionals survey	405	1	20/60	135
ED professionals focus groups	32	1	1.5	48
Total	437	na	na	183

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Data collection effort	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
ED professionals survey	405	135	$33.70	$4,549.50
ED professionals focus groups	32	48	36.62	1,757.76
Total	437	183	na	6,307.26

*Total cost burden for the survey is based upon the weighted average of 13 physicians at $58.76/hr, 95 nurses at $29.10/hr, and 27 medical and health services managers at $37.82/hr. Total cost burden for the focus groups is based on the weighted average of 6 ED physicians at $58.76/hr, 21 nurses at $29.10/hr, and 21 medical and health services managers at $37.82/hr. National Compensation Survey: Occupational wages in the United States 2006, "U.S. Department of Labor, Bureau of Labor Statistics."

This information collection will not impose a cost burden on respondents beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Annual Costs to the Federal Government

Developing and implementing the survey—$183,305.

Developing and conducting focus groups—$69,669.

Analyzing the data and report production—$26,172.

Associated personnel costs—$17,073.

The total cost to the government for this activity is estimated to be $296,219.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection.

All comments will become a matter of public record.

Dated: March 25, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–6757 Filed 4–2–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project, ''Reducing Healthcare Associated Infections (HAI): Improving patient safety through implementing multidisciplinary training.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 2, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project—''Reducing Healthcare Associated Infections (HAI): Improving Patient Safety Through Implementing Multi-Disciplinary Training''

The goal of the HAI project is to identify factors associated with the implementation of training that can assist hospitals in successfully reducing and sustaining the reduction of infections associated with the process of care. The project is being carried out pursuant to AHRQ's statutory mandates under 42 U.S.C. 299b(b) and 299(b)(1)(G) to disseminate research findings to community settings for practice improvement and to support research on determinants of practitioner use and development of best practices. The findings from the HAI project will be shared publicly to assist other healthcare organizations in their efforts to improve infection safety.

For the HAI project, AHRQ will use the Accelerating Change and Transformation in Organizations and Networks (ACTION) which is a program of task order contracts to support field-based partnerships for conducting applied research. In order to understand the challenges of infection prevention and patient safety at the point of care, AHRQ has funded five ACTION partnerships, each of which has experience with implementing interventions and tools to improve the processes of care and the safety and quality of healthcare delivery. These ACTION partnerships will be working collaboratively with 34 hospitals, ranging from large academic teaching hospitals to community hospitals, in 11 states. At each of these hospitals, multi-disciplinary teams will implement clinician training that uses AHRQ-supported evidence-based tools to improve infection safety. Through the HAI project, these hospitals will focus on barriers and challenges to implementing infection prevention training and how to sustain lessons learned in order to help other hospitals achieve success.

The project involves six activities: (1) Implement training focused on mitigating infections, particularly with respect to blood stream infections (BSI), central line insertions, ventilator associated pneumonia (V AP) and chest tube insertions; (2) catalogue infection rates before and after the training; (3) analyze the opinions of hospital staff about their hospital's infection prevention and patient safety activities; (4) analyze the trainees' evaluation of the infection prevention and patient safety training and materials; (5) determine the impact of the implementation of infection prevention training and the hospitals' participation in the HAI project on their ability to mitigate and sustain infection safety improvements; and (6) make publicly available case studies focusing on the hospitals' experiences of the training and their success with infection reduction and sustainability.

In order to support the healthcare organizations and hospitals, AHRQ will be issuing a contract to coordinate the assessment aspects of the HAI program. The objective of the HAI assessment contract is to facilitate the collection of infection information across the HAI project hospitals including providing technical assistance and support for the administration of the common data collection instruments. In addition, the assessment contractor will assist AHRQ in sharing the lessons learned about the successes, barriers, and challenges in implementing and sustaining infection safety interventions and tools. Each of the 34 participating hospitals will be responsible for securing clearance from their own Institutional Review Boards for their activities as part of the HAI project, including administration of the proposed data collection instruments. The data collection will be conducted in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR parts 160 and 164, and with the Protection of Human Subjects regulations, 45 CFR Part 46. Identifiable data for provider organizations and individuals will only be used for the above-stated purposes and will be kept confidential.

Methods of Collection

The infection prevention training will be implemented at 34 hospitals over a 6 month period at the end of 2008 through 2009. The data collection instruments will be administered at each hospital before, during and after the training. Respondents include both medical and administrative personnel. These instruments will be a key input to AHRQ understanding the challenges and barriers to implementing training and improving infection safety. The proposed paper-based data collection instruments are:

Pre-Training Infection Prevention and Safety Assessment.

Post-Training Infection Prevention and Safety Assessment.

Baseline Infection Rates Summary.

Follow-up Infection Rates Summary.

Infection Prevention and Patient Safety Activities Catalogue.

Training Evaluation.

In addition to the 34 hospitals which will implement the training and fully participate in the HAI project, there will be a control group consisting of 102 rural hospitals. At each of the control group hospitals, an infection prevention staff member will complete the Post-Training Infection Prevention and Safety Assessment, Follow-up Infection Rate Summary, and the Infection Prevention and Patient Safety Activities Catalogue. In addition to providing a baseline measure, the control group hospitals will provide additional insights on the challenges of and barriers to infection prevention and patient safety at rural hospitals.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours to the respondents for providing all of the data needed to meet the study's objectives. For both the Pre-Training and Post-Training Infection Prevention and Safety Assessment instruments, the number of respondents is based on an estimate of 20 respondents at each of the 34 implementation hospitals. In addition, one respondent at each of the 102 hospitals in the control group will complete the Post-Training instrument. For both the Baseline and Follow-up Infection Rate Summary instrument, the number of respondents is based on an estimate of one respondent at each of the 34 implementation hospitals. In addition, one respondent at each of the 102 control group hospitals will complete the Follow-Up instrument. For

the Infection Prevention and Patient Safety Activity Catalogue, the number of respondents is based on an estimate of 1 respondent at each of the 34 implementation hospitals and the 102 control group hospitals. Finally, the number of respondents for the Training Evaluation instrument is based on an estimate of 25 respondents at each of the 34 implementation hospitals.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to participate in this project. There will be no cost burden to the respondent other than that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

EXHIBIT 1. ESTIMATED ANNUALIZED BURDEN HOURS

Data collection instrument	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Pre-Training Infection Prevention and Safety Assessment	34	20	30/60	340
Post-Training Infection Prevention and Safety Assessment	136	5.75	45/60	587
Baseline Infection Rate Summary	34	1	30/60	17
Follow-up Infection Rate Summary	136	1	40/60	91
Infection Prevention and Patient Safety Activity Catalogue	136	1	1.00	136
Training Evaluation	34	25	10/60	141
Total	136	na	na	1,312

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Data collection instrument	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Pre-Training Infection Prevention and Safety Assessment	34	340	$41.75	$14,195
Post-Training Infection Prevention and Safety Assessment	136	587	41.75	24,507
Baseline Infection Rate Summary	34	17	28.99	493
Follow-up Infection Rate Summary	136	91	28.99	2,638
Infection Prevention and Patient Safety Activity Catalogue	136	136	39.02	5,307
Training Evaluation	34	141	49.04	6,915
Total	136	1,312	na	54,055

* Based on the planned respondents, the average hourly rates are the average of the mean hourly wage estimates for the following occupational groups: Epidemiologists, health care support aides, medical and health services managers, pharmacists, physicians, physician assistants, registered nurses, and respiratory therapists. The wage estimates are derived from the National Occupational Employment and Wage Estimates, Bureau of Labor Statistics, May 2006.

Estimated Annual Costs to the Federal Government

This data collection effort is one aspect of a larger effort focused on reducing healthcare associated infections. The cost of developing the data collection instruments by a onetime statistical support task order is $25,000. The costs of implementing the data collection instruments and analyzing and publishing the results are $108,650 annually.

Finally, the estimated costs for federal staff time for supporting the common data collection efforts are $24,000 annually. Thus, the estimated annual cost to the federal government is $145,150.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 25, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–6761 Filed 4–2–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–08–07BO]

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

State of Pennsylvania Fire and Life Safety Public Education Survey—New—

Division of Unintentional Injury, National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project will involve conducting a statewide survey of Pennsylvania fire departments to identify current fire and life safety education programs, resources, and training needs. Survey findings will be used to develop an inventory of programs and resources, and to inform Pennsylvania's fire and life safety educators during future training programs. In the United States each year, there are approximately 400,000 residential fires, with 14,000 non-fatal and 3,000 fatal civilian injuries. The National Center of Injury Prevention and Control (NCIPC), in line with Healthy People 2010 objectives, work to reduce and eliminate non-fatal and fatal injuries from residential fires.

The survey will be conducted with fire departments in Pennsylvania. The 2007 National Directory of Fire Chiefs & EMS Administrators lists all fire departments in Pennsylvania along with their contact information. A stratified random sampling strategy will be used to generate a study sample that includes all career and combination (career/volunteer) fire departments and a proportion of all volunteer fire departments. An initial mailing will be sent to the current postal addresses and existing e-mail addresses of selected fire departments' Fire Chiefs. This mailing will include a brief description of the study and instructions on how to submit the survey. Fire departments will be asked to participate in a 35-item survey. Completed surveys will be returned either on-line, through the mail, or by fax. Non-responding fire departments will be telephoned to confirm receipt of the survey and to encourage participation. The telephone script for this group is approximately 3 minutes. It is estimated that 260 out of the 654 initially contacted fire departments will complete the 30 minute survey, which is designed to collect information on the scope and content of educational programs and activities, training needs, and barriers to fire and life safety education.

There are no costs to respondents except for their time to participate in the surveys.

The total estimated annualized burden hours are 163.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Pennsylvania Fire Chiefs	Telephone Script/ Follow-up	654	1	3/60
	Pennsylvania Fire and Life Safety Education Survey.	260	1	30/60

Dated: March 28, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–6894 Filed 4–2–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Division of HIV/AIDS Prevention Laboratory Branch Intramural Research Programs

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Times and Dates: 8 a.m.–4 p.m., June 19, 2008 (Closed). 8:30 a.m.–4 p.m., June 20, 2008 (Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Road NE., Bldg 18 Room 2–102, Atlanta, GA 30333 telephone 404–639–4976.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of ''Division of HIV/AIDS Prevention Laboratory Branch Intramural Research Programs.''

Contact Person for More Information: Jeffrey A. Johnson, Ph.D., Designated Federal Officer, National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention, CDC, 1600 Clifton Road NE., Mailstop G45, Atlanta, GA 30333, Telephone 404–639–4976.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 26, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–6885 Filed 4–2–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Montana State Plan Amendment (SPA) 07–004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on May 20, 2008, at the CMS Denver Regional Office, 1600 Broadway, Suite #700, Vail Conference Room, Denver, Colorado 80202, to reconsider CMS' decision to disapprove Montana SPA 07–004.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by April 18, 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 Montana SPA 07–004 which

was submitted on May 24, 2007, and disapproved on January 4, 2008.

Under this SPA, the State proposed to eliminate cost sharing with respect to Medicaid services for enrolled members of federally recognized American Indian Tribes. CMS requested additional information from Montana that would describe how the State's proposal was consistent with the Equal Protection Clause of the Fourteenth Amendment of the Constitution and Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin in federally assisted programs). The State submitted a response, but that response did not establish such consistency.

The proposed amendment was disapproved because it is inconsistent with section 1902(a)(10)(B) of the Social Security Act (Act). That provision requires that all categorically eligible individuals receive the same benefit package, and that all individuals within a covered eligibility group receive the same benefit package. CMS concluded that the proposed exemption from cost sharing by enrolled members of Tribes would not be consistent with section 1902(a)(10)(B) because it would result in a greater amount, duration, and scope of medical assistance available to Indians than to other similarly situated non-Indians. Moreover, CMS concluded that the State had not demonstrated that the proposed amendment was consistent with sections 1902(a)(4) and 1902(a)(19) of the Act, because the State had not demonstrated that it was consistent with the Equal Protection Clause and Title VI of the Civil Rights Act. Sections 1902(a)(4) and 1902(a)(19) of the Act require methods of administration necessary for the ''proper and efficient'' operation of the plan and provision of care and services in a manner ''consistent with the best interests of beneficiaries.''

The hearing will involve the following issues:

- Whether the State's proposed amendment would result in a different amount, duration, and scope of medical assistance available for some categorically eligible individuals than other similarly situated individuals, and in a different amount, duration, and scope of medical assistance for some individuals in an eligibility group than for others in the same group. The State's proposed amendment would provide a greater amount of medical assistance to Indians than non-Indians because the medical assistance for Indian beneficiaries would be increased by the amount that would otherwise be collected through the imposition of cost sharing.
- Whether the State has demonstrated that the proposed amendment is consistent with the Equal Protection Clause of the Constitution and Title VI of the Civil Rights Act of 1964. Although the State asserted that it only needed to show a ''rational basis,'' the State did not demonstrate that this test has been applied in the same circumstance by reviewing courts. Instead, it appears that the applicable test is ''strict scrutiny'' and the State did not demonstrate the necessary ''compelling State interest'' and that the proposed action was narrowly tailored to meet that interest.

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 Montana announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. John Chappuis, State Medicaid Director, Montana Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604–4210.

Dear Mr. Chappuis:

I am responding to your request for reconsideration of the decision to disapprove the Montana State plan amendment (SPA) 07–004, which was submitted on May 24, 2007, and disapproved on January 4, 2008.

Under this SPA, the State proposed to eliminate cost sharing with respect to Medicaid services for enrolled members of federally recognized American Indian Tribes. CMS requested additional information from Montana that would describe how the State's proposal was consistent with the Equal Protection Clause of the Fourteenth Amendment of the Constitution and Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin in federally assisted programs). The State submitted a response, but that response did not establish such consistency.

The proposed amendment was disapproved because it is inconsistent with section 1902(a)(10)(B) of the Social Security Act (the Act). That provision requires that all categorically eligible individuals receive the same benefit package, and that all individuals within a covered eligibility group receive the same benefit package. CMS concluded that the proposed exemption from cost sharing by enrolled members of Tribes would not be consistent with section 1902(a)(10)(B) because it would result in a greater amount, duration, and scope of medical assistance available to Indians than to other similarly situated non-Indians. Moreover, CMS concluded that the State had not demonstrated that the proposed amendment was consistent with sections 1902(a)(4) and 1902(a)(19) of the Act, because the State had not demonstrated that it was consistent with the Equal Protection Clause and Title VI of the Civil Rights Act. Sections 1902(a)(4) and 1902(a)(19) of the Act require methods of administration necessary for the ''proper and efficient'' operation of the plan and provision of care and services in a manner ''consistent with the best interests of beneficiaries.''

The hearing will involve the following issues:

- Whether the State's proposed amendment would result in a different amount, duration, and scope of medical assistance available for some categorically eligible individuals than other similarly situated individuals, and in a different amount, duration, and scope of medical assistance for some individuals in an eligibility group than for others in the same group. The State's proposed amendment would provide a greater amount of medical assistance to Indians than non-Indians because the medical assistance for Indian beneficiaries would be increased by the amount that would otherwise be collected through the imposition of cost sharing.
- Whether the State has demonstrated that the proposed amendment is consistent with the Equal Protection Clause of the Constitution and Title VI of the Civil Rights Act of 1964. Although the State asserted that it only needed to show a ''rational basis,'' the State did not demonstrate that this test has been applied in the same circumstance by reviewing courts.

Instead, it appears that the applicable test is ''strict scrutiny'' and the State did not demonstrate the necessary ''compelling State interest'' and that the proposed action was narrowly tailored to meet that interest.

I am scheduling a hearing on your request for reconsideration to be held on May 20, 2008, at the CMS Denver Regional Office, 1600 Broadway, Suite #700, Vail Conference Room, Denver, Colorado 80202, in order to reconsider the decision to disapprove SPA 07–004. 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. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program)

Dated: March 26, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–6867 Filed 4–2–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Loan Repayment; Submission for OMB Review; Comment Request; National Institutes of Health Loan Repayment Programs

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Division of Loan Repayment, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 26, 2007, and allowed 60 days for public comment. No responses to the notice were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0361, expiration date 06/30/08). *Form Numbers:* NIH 2674–1, NIH 2674–2, NIH 2674–3, NIH 2674–4, NIH 2674–5, NIH 2674–6, NIH 2674–7, NIH 2674–8, NIH 2674–9, NIH 2674–10, NIH 2674–11, NIH 2674–12, NIH 2674–13, NIH 2674–14, NIH 2674–15, NIH 2674–16, NIH 2674–17, NIH 2674–18, and NIH 2674–19. *Need and Use of Information Collection:* The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., PhD., Pharm.D., D.D.S., D.M.D., D.P.M., D.C., and N.D. degree holders, or the equivalent, who perform biomedical or biobehavioral research in NIH intramural laboratories or as extramural grantees for a minimum of 2 years (3 years for the General Research LRP) in research areas supporting the mission and priorities of the NIH.

The AIDS Research Loan Repayment Program (AIDS–LRP) is authorized by Section 487A of the Public Health Service Act (42 U.S.C. 288–1); the Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR–LRP) is authorized by Section 487E (42 U.S.C. 288–5); the General Research Loan Repayment Program (GR–LRP) is authorized by Section 487C of the Public Health Service Act (42 U.S.C. 288–3); the Loan Repayment Program Regarding Clinical Researchers (LRP–CR) is authorized by Section 487F (42 U.S.C. 288–5a); the Pediatric Research Loan Repayment Program (PR–LRP) is authorized by Section 487F (42 U.S.C. 288–6); the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds (ECR–LRP) is authorized by an amendment to Section 487E (42 U.S.C. 288–5); the Contraception and Infertility Research LRP (CIR–LRP) is authorized by Section 487B (42 U.S.C. 288–2); and the Health Disparities Research Loan Repayment Program (HD–LRP) is authorized by Section 485G (42 U.S.C. 287c–33).

The Loan Repayment Programs can repay up to $35,000 per year toward a participant's extant eligible educational loans, directly to lenders, in addition to salary and benefits. The information proposed for collection will be used by the Division of Loan Repayment to determine an applicant's eligibility for participation in the program. *Frequency of Response:* Initial application and annual renewal application. *Affected Public:* Applicants, research supervisors, recommenders, organizational contacts and financial institutions. *Type of Respondents:* Physicians, other scientific or medical personnel, and institutional representatives. The annual reporting burden is as follows:

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Intramural LRPs:				
Initial Applicants	30	1	10.11	303.30
Advisors/Supervisors	30	1	.5	15.00
Recommenders	90	1	.33	29.70
Financial Institutions	10	1	1.25	12.50
Subtotal	160			360.50
Extramural LRPs:				

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Initial Applicants	1900	1	10.35	19,665.00
Advisors/Supervisors	1750	1	.5	875.00
Recommenders	5700	1	.33	1881.00
Financial Institutions	300	1	1.25	375.00
Subtotal	9650			22,796.00
Intramural LRPs:				
Renewal Applicants	60	1	7.42	445.20
Advisors/Supervisors	60	1	1.33	79.80
Subtotal	120			525.00
Extramural LRPs:				
Renewal Applicants	1225	1	8.58	10,510.50
Advisors/Supervisors	925	1	1.00	925.00
Recommenders	3675	1	.33	1212.75
Subtotal	5825			12,648.25
Total	15,755			36,329.75

The annualized cost to respondents is estimated at $1,298,341. The annualized cost to the Federal Government for administering the Loan Repayment Programs is expected to be $1,794,667.48. This cost includes administrative support by the Division of Loan Repayment and $440,039 for the continuing development and maintenance of the LRP Management Information System/Online Application System (MIS/OAS).

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Suman King, PhD., Director, Division of Loan Repayment, National Institutes of Health, 6011 Executive Blvd., Room 206 (MSC 7650), Bethesda, Maryland 20892–7650. Dr. King may be contacted via e-mail at *SKing1@od.nih.gov* or by calling 301–594–3234.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 27, 2008.

Raynard S. Kington,

Deputy Director, NIH.

[FR Doc. E8–6857 Filed 4–2–08; 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.

HPV Virus-Like Particles for Delivery of Gene-Based Vaccines

Description of Technology: The invention describes methods of eliciting immune responses and treating disease based on novel vaccine compositions and vaccination strategies employing human papilloma virus (HPV) virus-like particles (VLPs), comprising L1 and L2 proteins. These VLPs have the capacity to incorporate up to 8 kb of DNA into the shell and express only the target antigen. These compositions are effective at eliciting an immune response to the transgene product expressed by the DNA when administered at epithelial surfaces including the mucosa (e.g. nasal or respiratory passages or genital tract) or skin in conjunction with disruption of the epithelial layer. It is typically difficult to elicit an immune response in

the genital tract, so this technology overcomes a previous deficiency. Robust B and T cell responses were elicited in mice using the subject technology with representative DNA expressing M/M2 from respiratory syncytial virus (RSV). This technology could be used in a prime-boost vaccination regimen as well to enhance the immune response.

Applications: Vaccines against a number of pathogens, including HPV, HIV, HSV, HCV, and RSV.

Advantages:

Novel, non-invasive vaccine strategy to elicit both systemic and mucosal immunity in typically poorly inductive sites.

Packaging system that can accommodate up to 8 kb of DNA.

No expression of viral genes.

Potential for multivalent vaccine development against heterologous pathogens.

Development Status: Animal (mouse) data available.

Inventors: Barney S. Graham et al. (NIAID) and John T. Schiller et al. (NCI).

Publications:

1. Meeting abstract from the Keystone Symposium on Viral Immunity 2008 can be provided upon request.

2. CB Buck, DV Pastrana, DR Lowy, JT Schiller. Efficient intracellular assembly of papillomaviral vectors. J. Virol. 2004 Jan;78(2):751–757.

Patent Status: U.S. Provisional Application No. 61/022,324 filed 19 Jan 2008 (HHS Reference No. E–077–2008/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301–435–5515, *anos@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID/OTD is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HPV Virus-Like Particles for Delivery of Gene-Based Vaccines. Please contact either Cecelia Pazman or Barry Buchbinder at 301–496–2644 for more information.

Avian Influenza Vaccine

Description of Technology: Sustained outbreaks of highly pathogenic avian influenza H5N1 in avian species increase the risk of reassortment and adaptation to humans. The ability to contain its spread in birds would reduce this threat and help maintain the capacity for egg-based vaccine production.

This technology describes DNA vaccines against avian influenza. These vaccines were used to elicit antibodies in animals that were effective against homologous and heterologous H5 challenge studies. One vaccine, a trivalent combination of H5 immunogens, was particularly effective in conferring protection. These vaccines can be delivered intramuscularly or through needle-free delivery mechanism.

Applications: Avian influenza vaccine specifically designed for poultry and other avian species.

Advantages: Protects against homologous and heterologous challenges; Needle-free delivery elicits robust immune response.

Development Status: Animal (mouse and chicken) data available.

Inventors: Gary Nabel, Srinivas Rao, Wing-pui Kong, Zhi-yong Yang, and Chih-jen Wei (VRC/NIAID).

Patent Status:

U.S. Provisional Application No. 61/021,586 filed 16 Jan 2008 (HHS Reference No. E–050–2008/0–US–01).

U.S. Provisional Application No. 61/023,341 filed 24 Jan 2008 (HHS Reference No. E–050–2008/1–US–01).

U.S. Patent No. 7,094,598 issued 22 Aug 2006 (HHS Reference No. E–241–2001/1–US–01) and associated foreign rights (CMV/R vector).

Licensing Status: Available for exclusive or non-exclusive licensing; CMV/R vector is available on a non-exclusive basis only.

Licensing Contact: Susan Ano, Ph.D.; 301–435–5515; *anos@mail.nih.gov.*

Codon Optimized Genes for Subunit Vaccines

Description of Technology: Available for licensing from the NIH are gene constructs that express immunogenic proteins based on viral genes that have been optimized for expression in mammalian cells. Using vaccine vectors expressing respiratory syncytial virus (RSV) proteins from the optimized genes, this technology was shown to result in a potent RSV-specific cellular immune responses with favorable phenotypic patterns. This technology was shown to generate a superior immune (both humoral and cellular) response when utilized as part of a heterologous vector prime-boost regimen. Such optimized genes could be an important component of an effective RSV vaccine. Further, this optimization could have possible application of to other viral genes and their respective vaccines.

Applications: Vaccines; Improved protein expression.

Development Status: Animal (mouse) data available.

Inventors: Barney S. Graham and Teresa R. Johnson (VRC/NIAID).

Patent Status:

U.S. Provisional Application No. 60/872,071 filed 30 Nov 2006 (HHS Reference No. E–326–2006/0–US–01).

PCT Application No. PCT/US2007/024625 filed 30 Nov 2007 (HHS Reference No. E–326–2006/1–PCT–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301–435–5515; *anos@mail.nih.gov.*

Dated: March 25, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–6893 Filed 4–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID; AIDS Vaccine Research Subcommittee.

Date: May 30, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss the implication of recent vaccine trial results for future HIV vaccine development.

Place: Betheda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: James A. Bradac, PhD, Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6711 Filed 4–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 invasions of personal privacy.

Notice of Committee: Center for Scientific Review Emphasis Panel; Urology PAR Applications.
Date: April 17, 2008.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology Applications PAR06–113.
Date: April 21, 2008.
Time: 4 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oncology Area.
Time: 11:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lambratu Rahman, PhD, Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Multiscale Modeling.
Date: May 21, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 111 30th Street, NW., Washington, DC 20007.
Contact Person: Malgorzata Kloesk, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, 301–435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience; Integrated Review Group, Cognitive Neuroscience Study Section.
Date: May 27–28, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.
Date: May 28–29, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Drake Hotel, 140 East Walton Place, Chicago, IL 60611.
Contact Person: Carol Hamelink, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, 301–435–1328, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropsychiatric Mechanisms, Models and Pharmacology.
Date: May 29, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.392, 93.893, National Institutes of Health, HHS)

Dated: March 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6713 Filed 4–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Resource Related Research Project (U24).
Date: April 22, 2008.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, 301–435–0288, *haggertp@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathway to Independence Award (K99).
Date: April 29, 2008.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William J. Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and

Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6702 Filed 4–2–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States.

DATES: This Notice is effective on April 3, 2008.

Determination and Waiver: I have a mandate to achieve and maintain operational control of the borders of the United States. Public Law 109–367, § 2, 120 Stat. 2638, 8 U.S.C. 1701 note. Congress has provided me with a number of authorities necessary to accomplish this mandate. One of these authorities is found at section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, Section 564, 121 Stat. 2090 (Dec. 26, 2007). In Section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In Section 102(b) of IIRIRA, Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border, including priority miles of fencing that must be completed by December 2008. Finally, in section 102(c) of the IIRIRA, Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

I determine that the areas in the vicinity of the United States border described on the attached document, which is incorporated and made a part hereof, are areas of high illegal entry (collectively ''Project Areas''). These Project Areas are located in the States of California, Arizona, New Mexico, and Texas. In order to deter illegal crossings in the Project Areas, there is presently a need to construct fixed and mobile barriers (such as fencing, vehicle barriers, towers, sensors, cameras, and other surveillance, communication, and detection equipment) and roads in the vicinity of the border of the United States. In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in the IIRIRA in the Project Areas, which are areas of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended.

Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the Project Areas, all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)), the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (33 U.S.C. 1251 *et seq.*)), the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 *et seq.*)), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Archeological Resources Protection Act (Pub. L. 96–95, 16 U.S.C. 470aa *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Noise Control Act (42 U.S.C. 4901 *et seq.*), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), the Archaeological and Historic Preservation Act (Pub. L. 86–523, 16 U.S.C. 469 *et seq.*), the Antiquities Act (16 U.S.C. 431 *et seq.*), the Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 *et seq.*), the Wild and Scenic Rivers Act (Pub. L. 90–542, 16 U.S.C. 1281 *et seq.*), the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), the Coastal Zone Management Act (Pub. L. 92–583, 16 U.S.C. 1451 *et seq.*), the Wilderness Act (Pub. L. 88–577, 16 U.S.C. 1131 *et seq.*), the Federal Land Policy and Management Act (Pub. L. 94–579, 43 U.S.C. 1701 *et seq.*), the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 16 U.S.C. 668dd–668ee), the Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 16 U.S.C. 742a, *et seq.*), the Fish and Wildlife Coordination Act (Pub. L. 73–121, 16 U.S.C. 661 *et seq.*), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Otay Mountain Wilderness Act of 1999 (Pub. L. 106–145), Sections 102(29) and 103 of Title I of the California Desert Protection Act (Pub. L. 103–433), 50 Stat. 1827, the National Park Service Organic Act (Pub. L. 64–235, 16 U.S.C. 1, 2–4), the National Park Service General Authorities Act (Pub. L. 91–383, 16 U.S.C. 1a–1 *et seq.*), Sections 401(7), 403, and 404 of the National Parks and Recreation Act of 1978 (Pub. L. 95–625), Sections 301(a)–(f) of the Arizona Desert Wilderness Act (Pub. L. 101–628), the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Eagle Protection Act (16 U.S.C. 668 *et seq.*), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*), the American Indian Religious Freedom Act (42 U.S.C. 1996), the Religious Freedom Restoration Act (42 U.S.C. 2000bb), the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528–531).

This waiver does not supersede, supplement, or in any way modify the previous waivers published in the **Federal Register** on September 22, 2005 (70 FR 55622), January 19, 2007 (72 FR

2535), and October 26, 2007 (72 FR 60870).

I reserve the authority to make further waivers from time to time as I may determine to be necessary to accomplish the provisions of section 102 of the IIRIRA, as amended.

Dated: April 1, 2008.

Michael Chertoff,

Secretary.

[FR Doc. 08–1095 Filed 4–1–08; 2:03 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States.

DATES: This Notice is effective on April 3, 2008.

Determination and Waiver: The Department of Homeland Security has a mandate to achieve and maintain operational control of the borders of the United States. Public Law 109–367, Section 2, 120 Stat. 2638, 8 U.S.C. 1701 note. Congress has provided the Secretary of Homeland Security with a number of authorities necessary to accomplish this mandate. One of these authorities is found at section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, Section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, Section 564, 121 Stat. 2090 (Dec. 26, 2007). In Section 102(a) of the IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In Section 102(b) of the IIRIRA, Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border, including priority miles of fencing that must be completed by December of 2008. Finally, in section 102(c) of the IIRIRA, Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of the IIRIRA.

I determine that the area in the vicinity of the United States border as described in the attached document, hereinafter the Project Area, which is incorporated and made a part hereof, is an area of high illegal entry. In order to deter illegal crossings in the Project Area, there is presently a need to construct fixed and mobile barriers and roads in conjunction with improvements to an existing levee system in the vicinity of the border of the United States as a joint effort with Hidalgo County, Texas. In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in the IIRIRA in the Project Area, which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended. Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the Project Area, all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)), the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884) (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (33 U.S.C. 1251 *et seq.*), the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 *et seq.*)), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Archeological Resources Protection Act (Pub. L. 96–95, 16 U.S.C. 470aa *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Noise Control Act (42 U.S.C. 4901 *et seq.*), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), the Archaeological and Historic Preservation Act (Pub. L. 86–523, 16 U.S.C. 469 *et seq.*), the Antiquities Act (16 U.S.C. 431 *et seq.*), the Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 *et seq.*), the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), the Coastal Zone Management Act (Pub. L. 92–583, 16 U.S.C. 1451 *et seq.*), the Federal Land Policy and Management Act (Pub L. 94–579, 43 U.S.C. 1701 *et seq.*), the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 16 U.S.C. 668dd–668ee), the Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 16 U.S.C. 742a, *et seq.*), the Fish and Wildlife Coordination Act (Pub. L. 73–121, 16 U.S.C. 661 *et seq.*), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Eagle Protection Act (16 U.S.C. 668 *et seq.*), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*), the American Indian Religious Freedom Act (42 U.S.C. 1996), the Religious Freedom Restoration Act (42 U.S.C. 2000bb), and the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6303–05).

I reserve the authority to make further waivers from time to time as I may determine to be necessary to accomplish the provisions of section 102 of the IIRIRA, as amended.

Dated: April 1, 2008.

Michael Chertoff,

Secretary.

[FR Doc. 08–1096 Filed 4–1–08; 2:03 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0123]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, prevention through people, and recreational boating safety strategic planning will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Friday, April 25, 2008, from 7:30 a.m. to 1 p.m. and on Sunday, April 27, 2008, from 7:30 a.m. to 12 p.m. The Boats and Associated Equipment Subcommittee will meet on Friday, April 25, 2008, from 2 p.m. to 5:30 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on Saturday, April 26, 2008 from 8 a.m. to 12 p.m. The Prevention through People Subcommittee will meet on Saturday, April 26, 2008, from 1 p.m. to 4:30 p.m. These meetings may close early if all business is finished. On Saturday, April 26th, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early.

ADDRESSES: NBSAC will meet at the The Samoset, 220 Warrenton Street, Rockport, ME 04856. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Ludwig, Executive Secretary of NBSAC, Commandant (CG–54221), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://www.regulations.gov* or at the Web site for the Boating Safety Division at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, Executive Secretary of NBSAC, telephone 202–372–1061, fax 202–372–1932.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC):

(1) Remarks—Mr. James P. Muldoon, NBSAC Chairman;

(2) Chief, Boating Safety Division Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(3) Executive Secretary's report.

(4) Chairman's session.

(5) TSAC Liaison's report.

(6) NAVSAC Liaison's report.

(7) National Association of State Boating Law Administrators report.

(8) Report on upcoming national boating survey.

(9) Prevention through People Subcommittee report.

(10) Boats and Associated Equipment Subcommittee report.

(11) Recreational Boating Safety Strategic Planning Subcommittee report.

A more detailed agenda can be found at: *http://www.uscgboating.org/nbsac/nbsac.htm,* after April 10, 2008.

Prevention Through People Subcommittee: Discuss current regulatory projects, grants, contracts, and new issues affecting the prevention of boating accidents through outreach and education of boaters.

Boats and Associated Equipment Subcommittee: Discuss current regulatory projects, grants, contracts, and new issues affecting boats and associated equipment.

Recreational Boating Safety Strategic Planning Subcommittee: Discuss current status of the strategic planning process and any new issues or factors that could impact, or contribute to, the development of the strategic plan for the recreational boating safety program.

Procedural

All meetings are open to the public. These meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Secretary of your request no later than Friday, April 4, 2008. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 30 copies to the Executive Secretary no later than Friday, April 4, 2008. If you would like written material to be distributed at the meeting, please submit at least 60 copies to the Executive Secretary no later than Friday, April 18, 2008.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Secretary as soon as possible.

Dated: March 27, 2008.

F.J. Sturm,

Captain, U.S. Coast Guard, Deputy for Prevention Policy.

[FR Doc. E8–6877 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning April 1, 2008, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* April 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the

first-month period of the previous quarter.

In Revenue Ruling 2008–10, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2008, and ending June 30, 2008. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning July 1, 2008, and ending September 30, 2008.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5

Dated: March 28, 2008.

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. E8–6845 Filed 4–2–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–18]

Requirement for Contractors To Provide Certificates of Insurance for Capital Program Projects

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This collection is fundamental to the ongoing operations of the Congregate Housing Services Program (CHSP). The Department monitors the proper use of grant funds according to statutory, regulatory, and administrative requirements. The Grantees must meet annual requirements.

DATES: *Comments Due Date:* May 5, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0046) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Requirement for Contractors to provide Certificates of Insurance for Capital Program Projects.

OMB Approval Number: 2577–0046.

Form Numbers: None.

Members of affected public: Business or other for profit.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies must obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing project or the modernization of an existing project. The certificates of insurance provide evidence that worker's compensation and general liability, automobile ability insurance are in force before any construction work is started.

Frequency of Submission: Quarterly, semi-annually, annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,200		4		0.47		6,000

Total Estimated Burden Hours: 6,000.

Status: Extension of a currency approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–6930 Filed 4–2–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Gaming Amendment.

SUMMARY: This notice publishes an Approval of the Amendment to Interim Compact between the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana regarding Class III Gaming on the Rocky Boy's Reservation.

EFFECTIVE DATE: April 3, 2008.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment increases the overall limit of allowable Class III machines and increases the maximum payout per machine. The Amendment is approved.

Dated: March 25, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–6884 Filed 4–2–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Skokomish Indian Tribe, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 0.94 acres of land into trust for the Skokomish Indian Tribe of Washington on March 14, 2008. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: George Skibine, Director, Office of Indian Gaming, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On March 14, 2008, the Assistant Secretary—Indian Affairs decided to accept approximately 0.94 acres of land into trust for the Skokomish Indian Tribe of Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 0.94 acre parcel is located within the exterior boundaries of the Skokomish Indian Tribe in Mason County, Washington. The parcel is currently used for the Tribe's gaming facility. No change in the use is anticipated following conveyance of the parcel to the United States in trust for the Tribe. The property is located adjacent/contiguous to the location of the Lucky Dog Casino and its parking lot, which are already held in trust. The legal description of the property is as follows:

All that portion of the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) AND of Indian Lot twenty-three (23), all in Section two (2), township twenty-one (21) North, Range four (4) West, W.M., particularly described as follows:

Beginning at a point 16.20 chains East of the quarter Section post on the West line of said Section two (2), which point is a post 30 feet East of the center of US Highway 101; thence North 2° 15′ East, 175 feet; thence west 235 feet; thence South 2° 15′ West, 175 feet; thence West, 235 feet to the point of beginning.

Excepting therefrom right-of-way for U.S. Highway 101.

Parcel No. 42102 23 00012.

Together with and *subject to* a perpetual, non-exclusive easement for ingress, egress, drainage and utilities, 20 feet in width, as described in instrument recorded January 30, 1979, Auditor's File No. 356506. Situated in Mason County, Washington. Containing 0.94 acres, more or less.

Dated: March 25, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–6878 Filed 4–2–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–110–1610–DG–053D–DBG081008]

Notice of Intent To Prepare a Resource Management Plan for the Four Rivers Field Office (Idaho) and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and Section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) Four Rivers Field Office (FRFO), Boise, Idaho intends to prepare a RMP with an associated EIS for the Four Rivers Planning Area. Publication of this notice also initiates a public scoping period to extend until 15 days after the last public scoping meeting. RMPs are the basic land use documents used by the BLM that guide land use decisions and management actions on public lands. RMP level decisions establish goals and objectives (i.e. desired future conditions), the measures needed to achieve those goals and objectives and the parameters for resource use on BLM lands. This RMP will replace the 1988 Cascade RMP and portions of the 1983 Kuna Management Framework Plan (MFP) and the 1987 Jarbidge RMP. The Snake River Birds of Prey National Conservation Area (NCA), located in the FRFO, is being addressed in a separate, comprehensive RMP currently available as a Final EIS.

DATES: The BLM will announce public scoping meetings pursuant to 43 CFR 1610.2 (BLM Planning Regulations) and 40 CFR 1501.7 (NEPA Regulations) to identify relevant issues. Meetings will be announced through local news media, newsletters and the Idaho BLM Web site (listed below) at least 15 days prior to the first meeting once specific dates and locations are finalized. Throughout the planning process, the public will be given opportunities to participate through workshops and open house meetings. Workshops will provide the public an opportunity to work with BLM in (1) identifying the full range of issues to be addressed in the RMP/EIS and (2) developing the alternatives to be analyzed in the EIS. BLM will also provide an opportunity for public review upon publication of the Draft RMP/EIS.

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

- Web site: *http://www.blm.gov/id/st/en/fo/four_rivers/Planning/four_rivers_resource.html*.
- E-mail: *Four_Rivers_RMP@blm.gov*.
- Fax: 208–384–3493.
- Mail: Bureau of Land Management, Attn: RMP Project Manager, Four Rivers Field Office, 3948 Development Avenue, Boise, ID 83705.

Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses and individuals identifying themselves as representatives of organizations or businesses will be made available for public inspection in their entirety. Documents pertinent to this proposal may be examined at the Four Rivers Field Office at the above address.

FOR FURTHER INFORMATION: For further information and/or to have your name added to the mailing list, contact Jonathan Beck, FRFO RMP Project Manager, Four Rivers Field Office, at the address above. Telephone: 208–384–3300 or e-mail: *Four_Rivers_RMP@blm.gov*.

SUPPLEMENTARY INFORMATION: The planning area is located in southwestern Idaho's Ada, Adams, Boise, Canyon, Elmore, Gem, Payette, Valley and Washington counties, encompassing approximately 783,000 public land acres administered by the BLM. The planning area includes all of the FRFO located outside the Snake River Birds of Prey National Conservation Area (NCA), and encompasses an area extending north of the Snake River from approximately Glenns Ferry in the

southeast, west to Weiser, and north to McCall. Much of the planning area is comprised of interspersed sections of public, private, State or Forest Service lands. While the FRFO includes the approximately one half million acre NCA, along about 81 miles of the Snake River, the NCA is managed under its own comprehensive RMP. The Four Rivers RMP will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA) and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions best suited to local, regional and national needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria, in writing, to the BLM at any public scoping meeting or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit formal scoping comments within 15 days after the last public meeting.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and individuals and user groups. They represent BLM's knowledge to date regarding existing issues and concerns with current land management. The preliminary issues that will be addressed in this planning effort include: land tenure adjustments, lands and realty management, special status species management, recreation management, public access and transportation, livestock grazing management, wild and scenic river evaluations, riparian-wetland management, upland vegetation management, noxious weed management, wildfire management, social and economic sustainability of local communities, and mineral and energy exploration and development.

In addition, the BLM also requests public input for nominations considered worthy of Area of Critical Environmental Concern (ACEC) designation. To be considered as a potential ACEC, an area must meet the criteria of relevance and importance as established and defined at 43 CFR 1610.72. There are nine ACECs and six ACEC/Research Natural Areas within the Four Rivers Planning Area. All ACEC nominations within the planning area will be evaluated during RMP development. After gathering public comments on which issues the plan should address, the suggested issues will be evaluated for their applicability to the planning process and categorized into one of following categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

This evaluation and categorization will be described in the plan with associated rationale. In addition to the issues to be resolved in the plan, a number of management questions and concerns will also be addressed. The public is encouraged to help identify these questions and concerns during the scoping period.

The BLM will use an interdisciplinary approach to develop the plan. In order to consider the variety of resource issues and concerns identified, specialists with expertise in the disciplines corresponding to the issues listed above will be represented and utilized in the planning process.

Dated: March 27, 2008.

David Wolf,

Associate District Manager.

[FR Doc. E8–6901 Filed 4–2–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–08–1220–DA]

Notice of Intent To Name a Geographic Location the Craig Thomas Little Mountain Special Management Area, Big Horn County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) announces its intent to name an area of the public lands administered by the Cody Field Office. These lands include the Little Mountain Area of Critical Environmental Concern (ACEC), a portion of the West Slope Special Recreation Management Area (SRMA), and recently acquired lands near Little Mountain. In recognition of the late United States Senator Craig Thomas' support and assistance in furthering public land management in the area administered by the BLM Cody Field Office, this notice announces that those public lands collectively will be known as the ''Craig Thomas Little Mountain Special Management Area''.

DATES: This naming will be in effect the date this notice appears in the **Federal Register**.

ADDRESSES: Additional information regarding the naming and the public lands affected by it may be obtained by written request to the BLM Cody Field Office, P.O. Box 518, Cody, Wyoming 82414; or by visiting the BLM Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming, during its business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays).

FOR FURTHER INFORMATION CONTACT: Mike Stewart, Field Manager, BLM, Cody Field Office, P.O. Box 518, 1002 Blackburn Avenue, Cody, Wyoming 82414. Mr. Stewart may also be contacted by telephone at (307) 578–5900.

SUPPLEMENTARY INFORMATION: In June 2003, the BLM acquired approximately 8,200 acres of land on and near Little Mountain, approximately 15 miles east of Lovell, Wyoming. The land was previously part of the Devils Canyon Ranch. Acquisition of the land improved access to thousands of acres of State, BLM-administered public, and National Forest System lands on the western slope of the Bighorn Mountains. Funding for the first phase of the acquisition was made through a $4 million congressional appropriation from the Land and Water Conservation Fund Act and by a $100,000 donation from the Rocky Mountain Elk Foundation. An additional 3,000 acres are being held by the Trust for Public Land, a national land conservation group, for transfer to the BLM at a later date. When the transfer occurs, these lands would automatically become part of the Craig Thomas Little Mountain Special Management Area.

The area proposed for naming offers a variety of recreational and educational opportunities and sites of historic, cultural, and paleontological interest. Portions of the area lie within the Little Mountain ACEC and the West Slope SRMA, as established in the Cody Resource Management Plan (RMP). The RMP restricts vehicular travel to designated roads and trails within the area administered by the Cody Field Office. The specific routes designated for travel were established by an Activity Plan and its implementation is currently in progress.

The following described lands are included: Approximately 69,253 acres of BLM-managed public land in Townships 56 through 58 North, and Ranges 92 through 94 West, 6th Principal Meridian lying north of U.S. Highway Alternate 14 (14A), south of the Montana state line, east of the

Bighorn Canyon National Recreation Area, and west of the Bighorn National Forest.

James K. Murkin,

Acting Associate State Director.

[FR Doc. E8–6936 Filed 4–2–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, June 11 and 12, 2008, in Weaverville, California. On June 11, the council convenes at 10 a.m. in the parking area of the Weaverville Victorian Inn, 2051 Main St., and departs for a field tour of Trinity County public lands managed by the BLM Redding Field Office. On June 12, the meeting begins at 8 a.m. in the Conference Room of the Weaverville Victorian Inn. The council will take public comments at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Rich Burns, BLM Ukiah Field Office manager, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics include a discussion of shooting area management, support for BLM's use of California Conservation Corps crews, an update on access issues at South Cow Mountain, land use planning at Lack's Creek and an update on management of the Sacramento River Bend Area of Critical Environmental Concern. Members will also hear status reports on activities in the Arcata, Redding and Ukiah field offices' areas of jurisdiction. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: March 28, 2008.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E8–6888 Filed 4–2–08; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–619]

In the Matter of Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion to Amend the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 25) issued by the presiding administrative law judge (''ALJ'') in the above-referenced investigation granting complainant's motion to amend the notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2007, based on a complaint filed by SanDisk Corporation. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory controllers, drives, memory cards, media players, and products containing the same by reason of infringement of various claims of five United States patents. The complaint names nearly fifty respondents.

On March 6, 2008, complainant SanDisk filed an unopposed motion to amend the notice of investigation to correct the names of certain respondents pursuant to Commission Rule 210.14(b). SanDisk asserts that there is no dispute as to which parties are named in the notice of investigation, but that the following three errors should be corrected with regard to the names of the respondents in the notice of investigation: ''Chipsbank Technology (Shenzhen) Co., Ltd.'' should be changed to ''Chipsbank Technologies (Shenzhen) Co., Ltd.;'' ''Chipsbank Microelectronics Co., Ltd.'' should be changed to ''Shenzhen Chipsbank Microelectronics Co., Ltd.;'' and ''Dane-Elec Memory S.A.'' should be changed to ''Dane Memory S.A., d/b/a Dane-Elec Memory S.A.''

On March 12, 2008, the ALJ granted SanDisk's motion, finding good cause to amend the notice of investigation to reflect the corrected corporate names. No petitions for review were filed.

The Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: March 28, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–6869 Filed 4–2–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 28, 2008, a proposed Consent Decree in *United States* v. *Atlanta Gas Light Company, et al.*, Civil Action No. 6:08–cv–00442–ACC–GJK (M.D. Fla.), was lodged with the United States District Court for the Middle District of Florida. The proposed Consent Decree resolves the United States' claims against: Atlanta Gas Light Company; City of Sanford; Florida Power & Light Company; Florida Power Corporation; and Florida Public Utilities Company (collectively the ''Settling Defendants''), for cost recovery and injunctive relief under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the release or threatened release of hazardous substances into the environment at or from the Sanford Gasification Plant Superfund Alternative Site (''Site'') located in Sanford, Seminole County, Florida.

The Consent Decree requires Settling Defendants to undertake the remedial action selected by the United States Environmental Protection Agency for the Site and to reimburse the United States for all of the government's past cost and future oversight cost incurred or to be incurred, plus interest, in connection with the remedial action at the Site. The estimated value of the cash payments and work performed by the Settling Defendants that the United States will receive under the terms of the Consent Decree is $12,703,224.58.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Atlanta Gas Light Company, et al.*, D.J. Ref. 90–11–2–07157.

The proposed Consent Decree may be examined at the United States Attorney's Office, 500 W. Church Street, Suite 300, Orlando, FL 33805, and the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, GA 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) for a copy exclusive of appendices, or $110.75 (25 cents per page reproduction cost) for a copy including appendices payable to the ''U.S. Treasury'' or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–6854 Filed 4–2–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Procedure for Application for Exemption From the Prohibited Transaction Provisions of Section 408(a) of the Employee Retirement Security Act (ERISA)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). 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 Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions included in the procedure for applications for exemption from the prohibited transaction provisions of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 CFR 2570.30, *et seq.*). A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice or at *http://www.RegInfo.gov*.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 2, 2008.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, Fax (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 408(a) of ERISA provides that the Secretary may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA and directs the Secretary to establish an exemption procedure with respect to such provisions. In this regard, the Department previously issued a regulation which describes the procedures that must be followed in filing for such exemptions (29 CFR 2570.30 *et seq.*). Under section 408(a) of ERISA, in order for the Secretary to grant an exemption, it must be determined that such exemption is ''(1) Administratively feasible; (2) in the interests of the plan and its participants and beneficiaries; and (3) protective of the rights of participants and beneficiaries.'' In order to make such determination, the Department requires full information regarding all aspects of the transaction, including the specific circumstances surrounding the transaction, and the parties and assets involved. Thus, sections 2570.34 and 2570.35 of the exemption procedures regulation lists the information that must be supplied by the applicant. This information includes: Identifying information (name, type of plan, EIN number, etc.); an estimate of the number of plan participants; a detailed description of the transaction and the parties for which an exemption is requested; statements regarding what section of ERISA is thought to be in violation and whether the transaction(s) involved have already been entered into; a statement of whether the transaction is customary in the industry; a statement of the hardship or economic loss, if any, which would result if the exemption were denied; a statement

explaining why the proposed exemption would be administratively feasible, in the interests of the plan and protective of the rights of plan participants and beneficiaries; and several other statements. In addition, the applicant must certify that the information supplied is accurate and complete.

Section 408(a) of ERISA requires that before granting an exemption from 406(a) the Secretary ''shall require that adequate notice be given to interested parties, and shall afford interested persons opportunity to present views.'' Thus, section 2570.43 of the exemption procedures regulation requires that the applicant for an exemption provide interested persons with a copy of the **Federal Register** notice containing the proposed exemption and a statement which informs them of their right to comment on the proposed exemption.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on July 31, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Procedure for Application for Prohibited Transaction Exemption Regulation pursuant to 29 CFR 2570.30, *et seq*.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0060.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 84.

Responses: 143.

Average Response time: 25 hours.

Estimated Total Burden Hours: 0.

Estimated Total Burden Dollars: $373,000.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E8–6767 Filed 4–1–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request for the Unemployment Insurance (UI) State Quality Service Plan (SQSP); Comment Request

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance 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 a provision of the Paperwork Reduction Act of 1995 at 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 Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the State Quality Service Plan (SQSP).

Guidelines for completion and submittal of the SQSP are contained in ETA Handbook 336, 18th Edition. Fiscal year-specific information such as DOL's strategic goals and program areas that warrant special attention will be provided in an advisory that will initiate the planning process each year. The requirements of the reporting and data collection process itself remain unchanged from year to year.

Copies of the SQSP Handbook may be obtained by contacting the addressee below. The Handbook is also available electronically at *http://www.workforcesecurity.doleta.gov.*

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Submit comments to the office listed in the addressee section below on or before June 2, 2008.

ADDRESSES: Submit comments to Delores A. Mackall, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202–693–3183 (this is not a toll-free number), fax: 202–693–3975 or by e-mail: *mackall.delores@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: As part of UI Performs, a comprehensive performance management system implemented in 1995 for the UI program, SQSP is the principal vehicle that state UI agencies use to plan, record and manage program improvement efforts as they strive for excellence in service. The SQSP which serves as the State Plan for the UI program is also the grant agreement. The statutory basis for the SQSP is Title III, section 302 of the Social Security Act, which authorizes the Secretary of Labor to provide funds to administer the UI programs, and sections 303(a)(8) and (9) which govern the expenditures of those funds. The SQSP represents an approach to tie program performance with the budget and planning process.

II. Desired Focus of Comments: Currently, the Department of Labor is soliciting comments concerning the proposed extension collection of the UI SQSP. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions: ETA proposes to extend this clearance with no change in burden hours. States will describe in a single narrative: Performance related to the Government Performance Results Act (GPRA) goals; results of any customer satisfaction surveys (optional), and actions planned to correct deficiencies in program performance, reporting, Benefits Accuracy Measurement (BAM), and the Tax Performance System (TPS). Actions planned to correct deficiencies for Secretary Standards, Core Measures, and the Data Validation (DV) program are expected to be addressed in corrective action plans. States are requested to submit the SQSP and the required signature page electronically.

Type of Review: Extension, without change.

Agency: Employment and Training Administration.

Title: Unemployment Insurance State Quality Service Plan (SQSP).

OMB Number: 1205–0132.

Affected Public: State Workforce Agencies (SWAs).

Total Respondents: 53.

Frequency: Annually.

Average Time per Response: 3.14 hours.

Number of Annual Responses: 583.

Estimated Total Burden Hours: 1829 hours.

Estimated Total Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 4, 2008.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E8–6890 Filed 4–2–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Office of the Assistant Secretary for Veterans' Employment and Training; The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app. II). The ACVETEO's authority is codified in Title 38 U.S. Code, section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the Department of Labor meet these needs; and assisting in carrying out outreach to employers seeking to hire veterans.

The Advisory Committee on Veterans' Employment, Training and Employer Outreach will meet on Wednesday, May 21st, from 8 a.m. to 4 p.m. at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The committee will discuss programs assisting veterans seeking employment and raising employer awareness as to the advantages of hiring veterans with special emphasis on the guard/reserve and transition programs.

Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by May 9, 2008.

Signed in Washington, DC, this 27th day of March 2008.

John M. McWilliam,

Deputy Assistant Secretary, Veterans Employment and Training.

[FR Doc. E8–6754 Filed 4–2–08; 8:45 am]

BILLING CODE 4510–79–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28227]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

March 28, 2008.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March, 2008. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 22, 2008, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Skyline Funds [File No. 811–5022]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 2007, applicant transferred its assets to Skyline Special Equities Portfolio, a series of Managers AMG Funds, based on net asset value. Expenses of $393,155 incurred in connection with the reorganization were paid by Managers Investment Group LLC, the acquiring fund's investment adviser, and Skyline Asset Management, L.P., applicant's investment adviser.

Filing Dates: The application was filed on March 7, 2008, and amended on March 26, 2008.

Applicant's Address: 311 South Wacker Dr., Suite 4500, Chicago, IL 60606.

Excelsior Private Equity Fund II, Inc. [File No. 811–8149]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 29, 2007, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $475,230 incurred in connection with the liquidation were paid by applicant and UST Advisers, Inc., applicant's investment adviser.

Filing Dates: The application was filed on January 29, 2008, and amended on March 26, 2008.

Applicant's Address: 225 High Ridge Rd., Stamford, CT 06905.

The Munder @Vantage Fund [File No. 811–9937]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 14, 2007, applicant transferred its assets to Munder Internet Fund, a series of Munder Series Trust, based on net asset value. Expenses of approximately

$155,530 incurred in connection with the reorganization were paid by Munder Capital Management, applicant's investment adviser. Applicant has retained approximately $14,200 in cash to pay certain outstanding liabilities.

Filing Dates: The application was filed on March 3, 2008, and amended on March 26, 2008.

Applicant's Address: 480 Pierce St., Birmingham, MI 48009.

Dreyfus Balanced Fund, Inc. [File No. 811–7068]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 17, 2004, applicant transferred its assets to Dreyfus Premier Balanced Opportunity Fund, a corresponding series of Dreyfus Premier Manager Funds II, based on net asset value. Expenses of $64,000 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Dates: The application was filed on January 30, 2008, and amended on March 20, 2008.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

SEI Index Funds [File No. 811–4283]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 14, 2007, applicant transferred its assets to S&P 500 Index Fund, a series of SEI Institutional Managed Trust, based on net asset value. Expenses of $148,500 incurred in connection with the reorganization were paid by applicant and SEI Investment Management Corporation, applicant's investment adviser.

Filing Date: The application was filed on March 3, 2008.

Applicant's Address: One Freedom Valley Dr., Oaks, PA 19456.

HBI Equity Trust, Series 1 [File No. 811–8184]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On May 15, 2001, applicant made a liquidating distribution to its unitholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on February 19, 2008.

Applicant's Address: 222 South Riverside Plaza, 7th Floor, Chicago, IL 60606.

Private Asset Management Fund [File No. 811–21049]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 27, 2007, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $2,540 incurred in connection with the liquidation were paid by Private Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on February 25, 2008.

Applicant's Address: 11995 El Camino Real, Suite 303, San Diego, CA 92130.

Alliance All-Market Advantage Fund, Inc. [File No. 811–8702]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 1, 2008, applicant transferred its assets to AllianceBernstein Large Cap Growth Fund, Inc., based on net asset value. Expenses of $260,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on February 21, 2008.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Oppenheimer Emerging Technologies Fund [File No. 811–9845]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 26, 2007, applicant transferred its assets to Oppenheimer Capital Appreciation Fund, based on net asset value. Expenses of approximately $102,108 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on March 11, 2008.

Applicant's Address: 6803 South Tucson Way, Centennial, CO 80112.

Fortress Pinnacle Investment Fund LLC [File No. 811–21232]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 27, 2007, applicant distributed to its preferred shareholders cash payments equal to the face amount of their securities plus preferred dividends accrued. On January 22, 2008, applicant made a liquidating distribution to its common shareholders, based on net asset value. Expenses of $195,000 incurred in connection with the liquidation will be paid by applicant. Applicant has retained approximately $260,159 in cash to cover the outstanding expenses. After these expenses have been paid, remaining monies will be distributed pro rata to the common shareholders.

Filing Dates: The application was filed on January 30, 2008, and amended on March 11, 2008.

Applicant's Address: c/o Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Sq., New York, NY 10036.

Atlas Insurance Trust [File No. 811–8041]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 26, 2007, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on December 19, 2007, and amended on January 31, 2008.

Applicant's Address: 794 Davis Street, San Leandro, CA 94577.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6873 Filed 4–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28228; 812–13368]

Kohlberg Capital Corporation; Notice of Application

March 28, 2008.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Kohlberg Capital Corporation (''Kohlberg Capital''), requests an order approving the proposal to grant stock options to directors who are not also employees or officers of Kohlberg Capital (the ''Non-Employee Directors'') under its 2008 Non-Employee Director Plan (the ''Plan'').

FILING DATES: The application was filed on February 27, 2007, and amended on February 13, 2008, and March 21, 2008. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2008, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant, 295 Madison Avenue, 6th Floor, New York, NY, 10017.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone 202–551–5850).

Applicant's Representations

1. Kohlberg Capital, a Delaware corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Kohlberg Capital provides debt and equity growth capital to privately-held middle market companies and its investment objective is to generate current income and capital appreciation from the investments made by those companies in senior secured term loans, mezzanine debt and selected equity investments. Kohlberg Capital may also invest in loans to larger, publicly traded companies, high-yield bonds, distressed debt securities and debt and equity securities issued by collateralized debt obligation funds. Kohlberg Capital's business and affairs are managed under the direction of its board of directors (''Board''). Kohlberg Capital does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Kohlberg Capital requests an order under section 61(a)(3)(B) of the Act that would approve the proposal under the Plan to issue stock options to Non-Employee Directors to purchase shares of Kohlberg Capital's common stock, $0.01 par value per share (''Common Stock''). Kohlberg Capital has a seven member Board, four of whom are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (''Disinterested Directors''). The Non-Employee Directors are all Disinterested Directors, but it is possible that Kohlberg Capital may have Non-Employee Directors in the future who are interested persons of Kohlberg Capital.[2] The Board approved the Plan on February 5, 2008. Kohlberg Capital's shareholders will vote on the Plan at its 2008 annual meeting of shareholders.

3. Kohlberg Capital's Non-Employee Directors are eligible to receive stock options under the Plan. The Plan provides for the issuance of a maximum of 75,000 shares of Kohlberg Capital's Common Stock, in the aggregate, to Non-Employee Directors. The Plan also provides that each Non-Employee Director will automatically be granted options to purchase 5,000 shares of Kohlberg Capital's Common Stock on the date of each annual meeting of shareholders of Kohlberg Capital during the term of the Plan. One-half of the grant of options will vest immediately and the remaining one-half of the grant of options will vest on the earlier of (a) the first anniversary of the date of the grant, or (b) the date immediately preceding the next annual meeting of shareholders. A Non-Employee Director who is appointed to serve on the Board outside the annual election cycle will automatically be granted options for a number of shares of Common Stock equal to the product of (x) the number of full months remaining until the next annual meeting of shareholders divided by 12 and (y) 5,000. One-half of the pro-rata grant will vest immediately and the remaining one-half of the pro-rata grant on the earlier of (a) the first anniversary of the preceding annual meeting of shareholders, or (b) the date immediately preceding the next annual meeting of shareholders.

4. Under the terms of the Plan, the exercise price of an option will not be less than the current market value of, or if no such market value exists, the current net asset value per share of, Kohlberg Capital's Common Stock on the date of the issuance of the option.[3] Options granted under the Plan will expire within ten years from the date of grant and may not be assigned or transferred other than by will or the laws of descent and distribution.

5. Kohlberg Capital's officers and employees have been eligible to receive options under Kohlberg Capital's 2006 equity incentive plan under which Non-Employee Directors are not entitled to participate (the ''Employee Plan''). As of December 31, 2007, Kohlberg Capital had 18,017,699 shares of Common Stock outstanding.[4] The 75,000 shares of Kohlberg Capital's Common Stock that may be issued to Non-Employee Directors under the Plan represent 0.42% of Kohlberg Capital's outstanding voting securities as of December 31, 2007. As of the same date, Kohlberg Capital had no outstanding warrants or rights to purchase its voting securities and the amount of voting securities that would result from the exercise of all outstanding options issued to Kohlberg Capital's officers and employees under the Employee Plan would be 1,315,000 shares of Common Stock, or approximately 7.30% of Kohlberg Capital's outstanding voting securities.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Each Non-Employee Director receives an annual fee of $25,000, $500 for each committee meeting attended, and reimbursement of reasonable out-of-pocket expenses incurred in attending Board meetings. Each Non-Employee Director who serves as chairperson of a Board committee receives an additional $5,000 per year, except that the chairperson of the audit committee receives $10,000 per year.

[3] Under the Plan, ''current market value'' is the closing price of the Common Stock on the NASDAQ Global Select Market on the date the option is granted.

[4] Kohlberg Capital's Common Stock constitutes the only voting security of applicant currently outstanding.

gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Kohlberg Capital represents that its proposal to grant certain stock options to Non-Employee Directors under the Plan meets all the requirements of section 61(a)(3)(B). Kohlberg Capital states that the Board is actively involved in the oversight of its affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, Kohlberg Capital states that the Non-Employee Directors provide guidance and advice on operational matters, asset valuation and strategic direction, as well as serving on committees. Kohlberg Capital believes that the availability of options under the Plan will provide significant at-risk incentives to Non-Employee Directors to remain on the Board and devote their best efforts to ensure Kohlberg Capital's success. Kohlberg Capital states that the options will provide a means for the Non-Employee Directors to increase their ownership interests in Kohlberg Capital, thereby ensuring close identification of their interests with those of Kohlberg Capital and its shareholders. Kohlberg Capital asserts that by providing incentives such as options, it will be better able to maintain continuity in the Board's membership and to attract and retain the highly experienced, successful and dedicated business and professional people who are critical to Kohlberg Capital's success as a BDC.

4. Kohlberg Capital states that the amount of voting securities that would result from the exercise of all outstanding options issued to its officers and employees under the Employee Plan would be 1,315,000 shares of Kohlberg Capital's Common Stock, or approximately 7.30% of its outstanding voting securities as of December 31, 2007, which is below the percentage limitations in the Act. Kohlberg Capital asserts that, given the relatively small amount of Common Stock issuable to Non-Employee Directors upon their exercise of options under the Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of Kohlberg Capital's Common Stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6876 Filed 4–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57576; File No. SR–CBOE–2008–33]

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 the Penny Pilot Program

March 28, 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 25, 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, II, and III below, which Items have been substantially prepared by the CBOE. On March 27, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to implement the second phase of the expansion of the industry-wide Penny Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the CBOE's Office of the Secretary, 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 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 its rules in connection with the second phase of the expansion of the industry-wide Penny Pilot Program on March 28, 2008. The Penny Pilot Program commenced on January 26, 2007, and was later expanded (Phase I) on September 27, 2007 with the addition of twenty-two option classes. Currently, thirty-five option classes participate in the Penny Pilot Program.[6]

Phase II of the expansion will begin on March 28, 2008, last for one year until March 27, 2009, and add the following twenty-eight option classes to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In connection with Amendment No. 1 the Exchange submitted a Regulatory Circular that CBOE disseminated on March 25, 2008, identifying the twenty-eight option classes being added to the Penny Pilot on March 28, 2008. The circular constitutes changes to the text of CBOE's rules.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] CBOE also quotes and trades two index option classes, XSP and DJX, in the same minimum increments as the Pilot classes (except for options on the QQQQs, in which the minimum increment is $0.01 for all option series).

the Pilot Program.[7] These twenty-eight new classes will be among the most active, multiply-listed option classes.

Goldman Sachs Group, Inc. (GS)
Countrywide Financial Corporation (CFC)
Bank of America Corporation (BAC)
iShares MSCI Emerging Mkts. Index Fund (EEM)
Merrill Lynch & Co., Inc. (MER)
Vale (RIO)
EMC Corporation (EMC)
Exxon Mobil Corporation (XOM)
Wal-Mart Stores, Inc. (WMT)
The Home Depot, Inc. (HD)
Valero Energy Corporation (VLO)
Alcoa Inc. (AA)
Dell Inc. (DELL)
SanDisk Corporation (SNDK)
The Bear Stearns Companies, Inc. (BSC)
Pfizer Inc (PFE)
eBay Inc. (EBAY)
Halliburton Company (HAL)
Lehman Brothers Holdings Inc. (LEH)
JPMorgan Chase & Co. (JPM)
Washington Mutual, Inc. (WM)
Ford Motor Company (F)
Target Corporation (TGT)
American International Group, Inc. (AIG)
Newmont Mining Corporation (NEM)
Verizon Communications Inc. (VZ)
Mini-NDX Index Options (MNX)
Starbucks Corporation (SBUX)

The minimum increments for all classes in the Penny Pilot Program, except for the QQQQs, will continue to be $0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, the minimum increment will remain $0.01 for all option series. CBOE intends to continue to implement the quote mitigation strategies that it previously identified in its rule filings relating to the Penny Pilot Program.

Finally, CBOE intends to submit to the Commission reports analyzing the Penny Pilot Program for the following time periods:

- February 1, 2008–July 31, 2008
- August 1, 2008–January 31, 2009

CBOE anticipates that its reports will assess the impact of penny pricing on market quality and options systems capacity. CBOE's reports should be submitted within one month following the end of the period being analyzed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[10] and Rule 19b–4(f)(1) thereunder,[11] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.[12]

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–CBOE–2008–33 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-CBOE–2008–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2008–33 and should be submitted on or before April 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6872 Filed 4–2–08; 8:45 am]

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[7] CBOE issued a Regulatory Circular, which is published on its Web site, identifying these twenty-eight option classes.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 27, 2008, the date on which CBOE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57572; File No. SR–FINRA–2008–010]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Establish New Procedures for Arbitrators To Follow When Considering Requests for Expungement Relief

March 27, 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 13, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing Rule 12805 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rule 13805 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to establish new procedures that arbitrators must follow when considering requests for expungement relief under Rule 2130.

Below is the text of the proposed rule change. All the text is new.

* * * * *

12805. Expungement of Customer Dispute Information Under Rule 2130

In order to grant expungement of customer dispute information under Rule 2130, the panel must:

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800 even if a customer did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2130 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2130 grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief. 13805. Expungement of Customer Dispute Information under Rule 2130

In order to grant expungement of customer dispute information under Rule 2130, the panel must:

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 13800 even if a claimant did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2130 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2130 grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend its Customer Code and Industry Code to establish new procedures that arbitrators must follow when considering requests for expungement relief under Rule 2130. The procedures are designed to: (1) Make sure that arbitrators have the opportunity to consider the facts that support or weigh against a decision to grant expungement; and (2) ensure that expungement occurs only when the arbitrators find and document one of the narrow grounds specified in Rule 2130.

Proposed Rules 12805 and 13805 would require arbitrators considering an expungement request to hold a recorded hearing session by telephone or in person, provide a brief written explanation of the reasons for ordering expungement, and, in cases involving a settlement, review the settlement documents to examine the amount paid to any party and any other terms and conditions of the settlement that might raise concerns about the associated person's involvement in the alleged misconduct before awarding expungement. The proposed rule change would provide that the panel must assess forum fees for hearing sessions held solely for the purpose of considering expungement against the parties requesting the relief.

The proposed rule change would not affect FINRA's current practice of permitting expungement, without judicial intervention, of information from the Central Registration Depository (''CRD'') system as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged.[3]

Background

The CRD system, an online registration and licensing system, contains information regarding broker-dealers and their associated persons. It contains administrative information (e.g., personal, educational, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In its original filing with the Commission proposing Rule 2130 (*see* SR–NASD–2002–168), FINRA (then known as NASD) explained in Footnote 2 that ''NASD may execute, without a court order, arbitration awards rendered in disputes between registered representatives and firms that contain expungement directives in which the arbitration panel states that expungement relief is being granted because of the defamatory nature of the information. These expungements are not covered by the moratorium and will not be covered by the proposed rules and policies.'' In Amendment No. 1 to that filing (at page five), FINRA reiterated this point by stating ''NASD may execute, without a court order, an arbitration award rendered in a dispute between a member and a current or former associated person that contains an expungement directive in which the arbitration panel states that expungement relief is being granted based on the defamatory nature of the information.'' *See also NASD Notice to Members 04–16* (March 2004) n. 4.

employment history) and disclosure information (e.g., criminal matters, regulatory and disciplinary actions, civil judicial actions, and information relating to customer disputes). Members of the securities industry, state and federal regulators, and self-regulatory organizations use the CRD system. Although public investors do not have access to the CRD system, much of the information in that system is available to investors through FINRA BrokerCheck and individual state disclosure programs.[4] FINRA recognizes that accurate and complete reporting in the CRD system is an important aspect of investor protection.

FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association (NASAA). FINRA works with the SEC, NASAA, other members of the regulatory community, and broker-dealer firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system.

In December 2003, the SEC approved NASD Rule 2130, which contains procedures for expungement of customer dispute information from the CRD System.[5] It requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.

Under Rule 2130, FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (i) The claim, allegation, or information is factually impossible or clearly erroneous; (ii) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (iii) the claim, allegation, or information is false. If expungement relief is based on a judicial or arbitral finding other than as enumerated immediately above, FINRA may also waive the requirement to be named as a party if it determines that the expungement relief and accompanying findings on which it is based are meritorious and that expungement would not have a material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

Proposed new Rules 12805 and 13805 would set forth procedures that arbitrators must follow before recommending expungement of information related to arbitration cases from an associated person's CRD record. If the arbitrators do not fully adhere to these procedures, FINRA may determine not to waive the obligation under Rule 2130 to be named as a party to an expungement proceeding.

Sometimes, arbitrators will order expungement at the conclusion of an evidentiary hearing on the merits of the case. More often, however, arbitrators will order expungement at the request of a party to facilitate settlement of the dispute. For example, customers may receive monetary compensation as part of a settlement, the terms of which require the customer to consent to (or not oppose) the entry of a stipulated award containing an order of expungement. In such cases, FINRA expected that arbitrators would examine the amount paid to any party and any other terms and conditions of the settlement that might raise concerns about the associated person's behavior before awarding expungement.[6] Contrary to this expectation, however, arbitrators often did not inquire into the terms of settlement agreements.

In order for arbitrators to perform the critical fact finding necessary before granting expungement, the proposed rule change would require arbitrators to hold a recorded hearing session by telephone or in person. The requirement of a hearing session would ensure that arbitrators consider the facts that support or weigh against a decision to grant expungement. In cases involving settlements, the proposal would require arbitrators to review the settlement documents, consider the amount paid to any party, and consider any other terms and conditions of the settlement that might raise concerns about the associated person's involvement in the alleged misconduct before awarding expungement.

The proposed rule change would require arbitrators to indicate which of the Rule 2130 grounds for expungement serve as the basis for their expungement order, and provide a brief written explanation of the reasons for ordering expungement under Rule 2130. This new requirement would address issues concerning judicial confirmation of awards containing orders of expungement, as demonstrated in a recent state court case[7] in which the court expressed concern that the arbitrators did not describe ''a single fact or circumstance''[8] for their conclusion that the claims were factually impossible or clearly erroneous (one of the grounds for expungement enumerated in Rule 2130). As a result, the court ordered the arbitrators to conduct a hearing to clarify the facts and circumstances that led them to order expungement. The proposed requirement of a written explanation would provide regulators with additional insight into why arbitrators awarded expungement based on what might appear to be questionable facts and circumstances (e.g., cases involving payment of significant monetary compensation to the customer).[9]

The proposed rule change also would require the arbitrators to assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief. In cases that settle, industry parties often seek expungement. In such cases, parties generally present arguments solely on the issue of expungement. In these circumstances, FINRA believes the fee for that hearing session should not be assessed against a customer.[10]

In cases administered under Rule 12800 or Rule 13800 (Simplified Arbitration), a hearing on the merits normally is held only at the request of a customer or claimant, respectively. The proposed rule change would clarify that if parties request expungement relief in such cases, a hearing session would be held to determine the appropriateness of the request even if a hearing on the merits was not requested. Any forum fees for hearing sessions associated with a request for expungement would be assessed against the parties making the request.

As noted above, the proposed rule change would not affect FINRA's current practice of permitting

[4] FINRA BrokerCheck is a free online tool to help investors check the background of current and former FINRA-registered securities firms and brokers.

[5] Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003). Rules 2130 applies to all cases filed on or after April 12, 2004; *see NASD Notice to Members 04–16* (March 2004).

[6] *See NASD Notice to Members 04–43* (June 2004).

[7] *Matter of Sage, Rutty & Co., Inc.* v. *Salzberg,* Index No. 2007–01942 (N.Y. Sup. Ct. May 30, 2007).

[8] *Id.* at 4.

[9] In such cases, the payment may be based on the behavior of someone other than the associated person who is seeking expungement.

[10] In those situations where the issue of expungement does not constitute the sole topic considered by the arbitrators during a hearing session, the panel will determine the hearing session fee that each party must pay. See Rules 12902(a) and 13902(a).

expungement, without judicial intervention, of information from the CRD system as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged. In allowing expungement relief without judicial intervention under such circumstances, FINRA believes that it is fairly balancing the interests of the brokerage community and others in expunging defamatory statements with FINRA's interests in investor protection and the integrity of the CRD system.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, [11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The new procedures would enhance the integrity of the information in the CRD system and would ensure that investor protection is not compromised when arbitrators order expungement of information related to arbitration cases from an associated person's CRD record.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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–FINRA–2008–010 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–FINRA–2008–010. 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 FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–010 and should be submitted on or before April 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6870 Filed 4–2–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78o–3(b)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57575; File No. SR–Phlx–2008–06]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to U.S. Dollar-Settled FCO Spot Prices

March 28, 2008.

I. Introduction

On January 28, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of Spot Price so that the Exchange may use certain bid and ask prices (''Thomson Quotes'') provided by Tenfore Systems Limited (''Tenfore'') through Thomson Financial LLC (''Thomson'') as Spot Prices in determining applicable margin requirements and strike prices for the Exchange's U.S. dollar-settled foreign currency options (''FCOs''). On February 19, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 27, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Phlx proposes to amend the definition of Spot Price to permit the Exchange to use the Thomson Quotes to calculate the Spot Prices in connection with the Exchange's determination of strike prices and margin requirements for its U.S. dollar-settled FCOs.[4] Under Phlx

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57361 (February 20, 2008), 73 FR 10503.

[4] The Exchange is also proposing to substitute the term ''Spot Prices'' for the defined term ''Spot Sales Prices'' in Rule 1000(b)(16), as a clarification that

Rule 1012, ''Series of Options Open for Trading,'' the Exchange is required to refer to the spot prices of foreign currencies in determining strike prices for U.S. dollar-settled FCOs. Further, Phlx Rule 722, ''Margin Accounts,'' requires the Exchange to establish margin requirements for FCO transactions based upon the spot price of the foreign currency underlying the option.

Currently, the Exchange receives Spot Prices that are contributor bank quotes from Reuters in real-time and takes the weighted average of the various quotes to determine the Phlx's foreign currency spot price.[5] The Exchange now seeks to amend the definition of Spot Prices to include foreign currency quotes of entities other than commercial banks, so that the Exchange can use the Thomson Quotes to calculate Spot Prices for the setting of margin requirements and strike prices and for any other necessary purposes in connection with Phlx's FCO contracts. Thomson Quotes are not limited to quotes from banks but also include quotes from other foreign currency market participants.

Under the proposal, the Exchange will receive the latest Thomson Quotes from Thomson, which in turn obtains this data from Tenfore.[6] With the exception of the Japanese yen, the Exchange will then calculate the average of the bid and ask received to determine the current spot market price that the Exchange will use for purposes of calculating margin requirements and strike prices with respect to U.S. dollar-settled FCOs. Because the Thomson Quote is expressed differently for the Japanese yen than for the other currencies (in foreign currency units per U.S. dollar rather than in U. S. dollars per unit of foreign currency), the spot price that Phlx will use for the Japanese yen will be the inverse of the average of the Thomson Quote bid and ask (that is, one divided by the average of the Thomson Quote bid and ask).

The Exchange will not disseminate the current spot market value it calculates based upon the Thomson Quotes. However, the Exchange currently does, and will continue to, disseminate its modified spot value, which is also based upon the Thomson Quotes, real-time over Network B of the Consolidated Tape Association.[7] The Exchange states that this modified spot value is more widely distributed, carried by more vendors, and more easily accessible than the Exchange's current foreign currency spot market price calculated on the basis of the bank quotes provided by Reuters.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[9]

The Commission believes that Exchange's use of Thomson Quotes for determining Spot Prices for the setting of margin requirements and strike prices for Phlx's U.S.-dollar settled FCOs is reasonable and should result in Phlx Spot Prices that are representative of foreign currency spot market prices. Although the Exchange will not disseminate the current Spot Prices it calculates based upon the Thomson Quotes, the Commission believes that sufficient venues exist for obtaining reliable information on the foreign currencies so that investors in U.S. dollar-settled FCOs can monitor the underlying spot market, including the Exchange's dissemination of a modified spot rate for foreign currencies at least once every fifteen seconds while the Exchange is open for trading. The Commission also notes that the Exchange has represented that it believes that the new method of calculating Phlx Spot Prices should, over time, produce only minor differences from the current method of determining Spot Prices. Accordingly, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2008–06), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6871 Filed 4–2–08; 8:45 am]

BILLING CODE 8011–01–P

this defined term includes both bids and offers made by participants in the foreign currency markets (as opposed to offers only). In addition, the Exchange is proposing to amend Rule 722 such that the current spot market price of an underlying foreign currency shall be determined using spot prices at 4 (the close of trading for U.S. dollar-settled FCOs) rather than 2:30 (the close of trading for physical delivery FCOs).

[5] Until March 14, 2008, in connection with its physical delivery FCOs, when the Exchange received the bid and ask from the Reuters feed, the Exchange computed the average and distributed that value as the foreign currency spot value over the facilities of the Options Price Reporting Authority (''OPRA'') to vendors and individual customers. The Exchange ceased disseminating this foreign currency spot value after March 14, 2008, in connection with the planned delisting of its physical delivery FCO contracts.

[6] Tenfore has more than 21 contributors reporting, consisting of banks, spot currency portals, the European Central Bank, and brokers. Tenfore's bid and ask Spot Prices are at any given point in time the latest bid and ask supplied to Tenfore by the last in time of any Tenfore contributor to report.

[7] The Exchange currently disseminates, over the facilities of the Consolidated Tape Association at least once every fifteen seconds while the Exchange is open for trading, a modified spot rate for currencies underlying U.S. dollar-settled FCOs. The Exchange does not propose to change the modified spot rate in this proposed rule change. *See* Securities Exchange Act Release Nos. 55513 (March 22, 2007), 72 FR 14636 (March 28, 2007) (SR–Phlx–2007–28) and 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR–Phlx–2007–34).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11202]

Arkansas Disaster #AR–00019

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 Arkansas (FEMA–1751–DR), dated 03/26/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 and continuing.

DATES: *Effective Date:* 03/26/2008.

Physical Loan Application Deadline Date: 05/27/2008.

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 03/26/2008, 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: Baxter, Benton, Boone, Carroll, Clay, Conway, Craighead, Crawford, Faulkner, Franklin, Fulton, Greene, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lawrence, Logan, Madison, Marion, Nevada, Newton, Pope, Randolph, Scott, Searcy, Sharp, Stone, Van Buren, Washington, White, Woodruff, Yell.

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 11202.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–6944 Filed 4–2–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11203 and #11204]

Missouri Disaster #MO–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of MISSOURI (FEMA–1749–DR), dated 03/27/2008.

Incident: Severe Storms and Flooding.

Incident Period: 03/17/2008 and continuing.

DATES: *Effective Date:* 03/27/2008.

Physical Loan Application Deadline Date: 05/27/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2008.

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 03/27/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Bollinger, Carter, Christian, Franklin, Greene, Iron, Jasper, Jefferson, Maries, Newton, Oregon, Phelps, Pulaski, Reynolds, St. Francois, Stone, Texas, Washington, Wayne.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Barry, Barton, Butler, Camden, Cape Girardeau, Crawford, Dade, Dallas, Dent, Douglas, Gasconade, Howell, Laclede, Lawrence, Madison, Mcdonald, Miller, Osage, Perry, Polk, Ripley, Saint Louis, Sainte Genevieve, Shannon, St. Charles, Stoddard, Taney, Warren, Webster, Wright.

Arkansas: Carroll, Fulton, Randolph, Sharp.

Illinois: Monroe.

Kansas: Cherokee, Crawford.

Oklahoma: Ottawa.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11203B and for economic injury is 112040.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–6942 Filed 4–2–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meeting will be held on Tuesday, April 15, 2008 at 1 p.m. EST.

ADDRESSES: This meeting will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss following issues pertaining to the SBDC Advisory Board:

—Roles and Responsibilities.

—Mission Statement.

—Association of Small Business Development Centers (ASBDC) Fall Conference.

—Entrepreneurial Development's Annual Report.

FOR FUTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Board must contact Alanna Falcone by Friday, April 11, 2008, by fax or e-mail in order to be placed on the agenda. Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, e-mail, *alanna.falcone@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Cherylyn H. Lebon,

Committee Management Officer.

[FR Doc. E8–6886 Filed 4–2–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2008–0018]

Retirement Research Consortium Request for Applications (RFA) Program Announcement No. SSA–ORES–08–01

AGENCY: Social Security Administration (SSA).

ACTION: Request for Applications for a Cooperative Agreement to Re-Compete a Retirement Research Consortium (RRC).

SUMMARY: The growing share of older Americans in the population has profound long term effects on Social Security. Social Security's Board of Trustees projects that the program will be in poor fiscal shape over the long term at currently legislated payroll tax and benefit levels as a result of demographic changes. Through education and research efforts, the Social Security Administration (SSA) is committed to addressing these difficulties and ensuring responsive programs and sustainable solvency. SSA's research efforts will support informed public discussion and creative thinking that relates the principles of the program to economic and demographic realities and changing needs and preferences of American households.

As authorized under section 1110 of the Social Security Act, SSA announces the solicitation of applications for a cooperative agreement to re-compete a Retirement Research Consortium to help inform the public and policymakers about Social Security issues. In the first year, the Consortium will be composed of one or more research centers. The centers will have a combined annual budget of approximately $7.5 million. SSA expects to fund the centers for a period of 5 years, contingent on an annual review process and continued availability of funds.

DATES: The closing date for submitting applications under this announcement is June 9, 2008. Letters of Intent are due by May 9, 2008.

ADDRESSES: SSA requires that applicants submit an electronic application through *www.grants.gov* for Funding Opportunity Number SSA–ORES–08–1. The *www.grants.gov,* ''Get Registered'' Internet page is available to help explain the registration and application submission process. In addition, new Federal grant applicants may find the Grants.gov ''Registration Brochure'' on the above noted Internet page to be helpful. If you experience problems with the steps related to registering to do business with the Federal Government or application submission, your first point of contact is the Grants.gov support staff at *support@grants.gov,* 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Gary Stammer, 410–965–9501; Audrey Adams, 410–965–9469; or Mary Biddle, 410–965–9503. If extenuating circumstances prevent you from submitting an application through *www.grants.gov,* please contact the SSA Grants Management Team for possible prior approval to download, complete and submit an application by mail. Should SSA grant such approval, the downloadable application package will be available at *www.ssa.gov/oag.* Please fax inquiries regarding the application process to the Grants Management Team at 410–966–9310 or mail to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–ORES–08–1, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. To ensure receipt of the proper application package, please include program announcement number SSA–ORES–08–1 and the date of this announcement.

FOR FURTHER INFORMATION CONTACT: For nonprogrammatic information regarding the announcement or application package, contact: SSA, Office of Acquisition and Grants, Grants Management Team, 7111 Security Blvd., 1st Floor—Rear Entrance, Baltimore, MD 21244. Contact persons are: Gary Stammer, Grants Management Officer, telephone (410) 965–9501, (e-mail: *Gary.Stammer@ssa.gov*); or Mary Biddle, Grants Management Officer, telephone (410) 965–9503, e-mail: *Mary.Biddle@ssa.gov.* The fax number is (410) 966–9310.

For information on the program content of the announcement/application, contact: Sharmila Choudhury, SSA, Office of Retirement and Disability Policy, 500 E St., SW., Room 913, Washington, DC 20254. The fax number is (202) 358–6187. The telephone number is (202) 358–6261 (e-mail: *sharmila.choudhury@ssa.gov*).

SUPPLEMENTARY INFORMATION:

Table of Contents

Part I. Funding Opportunity Description
A. Purpose
B. The Role of the Center(s)
a. Priority Research Areas (PRA)
1. Social Security and Retirement
2. Macroeconomic Analyses of Social Security
3. Wealth and Retirement Income
4. Program Interactions
5. International Research
6. Demographic Research
b. Tasks
1. Research, Evaluation, and Data Development
2. Dissemination
3. Training and Education
4. Reporting
C. Responsibilities
1. Center Responsibilities
2. SSA Responsibilities
Part II. Award Information
A. Type of Award
B. Availability and Duration of Funding
C. Letter of Intent
Part III. Eligibility Information
A. Eligible Applicants
B. Cost Sharing or Matching
C. Other
Part IV. Application and Submission Information
A. Overview
B. Availability of Application Forms
C. Content and Organization of Technical Application
D. Components of a Complete Application
E. Guidelines for Application Submission
F. Submission Date and Times
G. Funding Restrictions
H. Other Submission Requirements
Part V. Application Review Information
A. Review Process and Funding
B. Selection Process and Evaluation Criteria
Part VI. Award Administration Information
A. Notification
B. Award Notices
C. Administration and National Policy Requirements
Part VII. Agency Contacts
Part VIII. Other

Part I. Funding Opportunity Description

A. Purpose

As authorized under section 1110 of the Social Security Act, SSA announces the solicitation of applications for a cooperative agreement to re-compete a Retirement Research Consortium (RRC). SSA seeks applications in support of the RRC that will continue to serve as a national resource fostering high quality research, communication, and education on matters related to retirement policy. The Consortium may consist of one or more research centers. The Consortium's program purpose is to benefit the public through the following:

(1) Research, evaluation, and data development. SSA expects the RRC to plan, initiate, and maintain a multi-disciplinary research program of high quality that will broadly cover retirement and Social Security program issues. A portion of the research effort can focus on the development of research data sources and providing opportunities to use non-publicly available data that can be accessed at restricted-use data sites, subject to the rules and requirements of those sites.

(2) Dissemination. The RRC will disseminate policy research findings

using a variety of media to inform the academic community, policymakers, and the public.

(3) Training and education. The RRC will train and provide funding support for graduate students and postgraduates to conduct research on retirement policy related matters.

B. The Role of the Center(s)

a. Priority Research Areas (PRAs)

The successful applicant shall develop and conduct a research and evaluation program that also appropriately balances dissemination and training activities directed toward understanding retirement policy. SSA has identified six priority research areas within the realm of retirement income policy. Reviewers will score favorably applications that feature high quality research projects that address the priority areas. The priority research areas are:

1. Social Security and Retirement: Here we seek to understand how Social Security's programs influence the nature and timing of retirement and the claiming of benefits, and the impact of changes in Social Security program rules on Trust Fund solvency. Examples of research topics for this area include new insights on claiming behavior, demand and supply of older workers, health and functional capacity of older workers with an emphasis on whether older workers can work longer given longer life expectancies, early retirement and the disability program, retirement decisions of married couples, effects of voluntary individual accounts, and implications of changes in the Social Security retirement ages and other parameters of the Social Security program (e.g., tax rate, benefit amount, benefit computation.)

2. Macroeconomic Analyses of Social Security: This includes the macroeconomic and financial effects of Social Security and changes in policy on national saving, investment, and economic growth. Macroeconomic analysis also includes, but is not limited to, the intertemporal effects on capital formation, retirement savings, and the unified budget. Examples of research topics include the study of demographic change on saving, effects of national tax policy on Social Security Trust funds, and the impact on financial markets of Social Security reform.

3. Wealth and Retirement Income: This area considers the role of Social Security in retirement income and wealth accumulation. This area also includes analyses of other sources of retirement income and private savings such as employer-provided pensions, individual assets, earnings from continued employment, etc. Examples of research topics include the role of financial literacy in wealth accumulation/decumulation, the optimal design of retirement investment vehicles, effects of 401(k) and 403(b)plans on retirement wealth, measuring retiree well-being, and the distribution of retirement income sources among subgroups of interest.

4. Program Interactions: This covers interactions between current Old Age and Survivors' Insurance (OASI) and other public or private programs, like Disability Insurance (DI), Supplemental Security Income (SSI), and Medicare, as well as private pension plans and personal saving. Examples of research topics include interactions between Veterans' Disability Insurance, SSI and Social Security, reforms to promote work among the disabled, understanding retirees' take up of Medicare Part D, and in general how changes in the Social Security program (e.g., retirement ages, tax rates, benefit amounts, benefit computation) might influence applications to the DI or SSI programs.

5. International Research: The aim here is to learn from other countries' social insurance experiences. This includes cross-country comparisons of social, demographic, and institutional characteristics as well as studies of specific countries as they institute reform. Examples of research topics include cross-national comparisons of retirement policy reform, health insurance and retirement behavior, and pension reform in various countries.

6. Demographic Research: This area includes changes in mortality, fertility, immigration, health, and marital status, and their implications for retirement policy. Also included in this area are differences in the effects of Social Security policy alternatives among workers and beneficiaries by age, race/ethnicity, sex, and occupation. Examples of research topics include trends in fertility and mortality, labor market behavior of immigrants, marital histories and retirement income security, and health limitations and retirement behavior.

SSA realizes competent analysis of all priority research areas may be beyond the capacity of any one center and thus each center may wish to focus their individual resources and expertise on a subset of the areas listed above. Similarly, a center may choose to concentrate on a few aspects of the priority research areas more strongly than others. SSA expects each center to describe its quality assurance process. The goal of the Consortium as a whole is to produce high-quality research covering the range of objectives discussed above, across the separate priority areas.

b. Tasks

Each center will perform the following tasks:

1. Research, evaluation, and data development. Each center will be expected to plan, initiate, and maintain a research program that meets the highest standards of rigor and objectivity.

Joint research between Consortium and SSA researchers is encouraged, as is collaboration with other organizations interested in retirement income policy. Federal employees can not receive any funding support for collaborations. Planning and execution of the research program shall always consider the policy implications of research findings. However, SSA also considers it appropriate, for example, to engage in activities to make advances in research techniques, where these are related to primary objectives of the Consortium.

SSA recognizes the value of high-quality comprehensive micro-data for conducting policy research. The RRC should work to facilitate the development of micro-data sources as well as provide researchers with opportunities to use non-publicly available data for research purposes under secure conditions. Such efforts must adhere to clear privacy protection requirements. For example, RRC researchers may be allowed to access SSA administrative data, including administrative data files that have been linked to surveys sponsored by SSA or other Federal agencies, at SSA sites by following the requirements of SSA and those other Federal agencies. They may be subject to background checks and fingerprinting in accordance with SSA personnel suitability requirements. SSA will distribute the necessary forms and consents for completion to awardees interested in accessing administrative data at SSA sites. RRC researchers can also access restricted data at other federal agency restricted data sites, such as those of the Census Bureau and the National Center for Health Statistics, subject to the rules and restrictions of those sites. Restricted data from the Health and Retirement Study can be obtained after meeting their requirements for approval.

Examples of data improvement efforts include improving the quality of existing data sources and their documentation; aiding researchers to use administrative data extracts at SSA sites for policy-relevant research projects; developing sophisticated

statistical techniques to mask micro-data; and developing new sources of data for retirement policy analysis.

In order to ensure the policy relevance, utility, and scope of the centers' research, evaluation, and data development goals, a group of nationally recognized scholars and practitioners (See Part I, Section C, Center Responsibilities) shall periodically review the center's activities.

2. Dissemination. Another important feature of each center's responsibilities is making knowledge and information available to the academic and policy communities and the public. The RRC will facilitate the process of translating basic behavioral and social research theories and findings into practical policy alternatives. The centers will be expected to maintain a dissemination system of quarterly newsletters, research papers, and policy briefs. These products should be accessible to the public via the Internet on a center-maintained Web site. In addition, the centers will be expected to organize conferences, workshops, lectures, seminars, or other ways of sharing current research activities and findings. The Consortium will hold an annual conference on issues related to retirement income policy, with organizational responsibility rotating among the centers. The centers will work with SSA to produce a conference agenda. The conference will be held in Washington, DC. The hosting center will also have the responsibility for preparing and distributing a bound volume of conference papers and related materials to conference participants.

SSA encourages applicants to propose creative methods of disseminating data and information. Applications should show sensitivity to alternative dissemination strategies that may be appropriate for different audiences, such as policymakers, practitioners, the public, advocates, and academics. The research and dissemination will be nonpartisan and of value to all levels of policymaking. SSA reserves the right to review all publications created using Consortium funding.

3. Training and education. The RRC is expected to both train new scholars and to educate academics and practitioners on new techniques and research findings on issues of retirement policy. SSA expects each center to develop and expand a diverse corps of scholars/researchers who focus their analytical skills on research and policy issues central to the Consortium's mission.

SSA expects the centers to financially support the training and research of young scholars or scholars new to the field of retirement research. The RRC should allocate funding in two ways: Dissertation fellowships to support graduate students and small research grants to support postdoctoral researchers and junior scholars. Applications solicited widely and nationally are encouraged. Graduate students working with RRC researchers on funded projects as research assistants will be included in the research budget, not in the training budget. The centers will conduct educational seminars for government analysts and policymakers on the Consortium's research findings and methodological advancements.

To assure the quality of its research, dissemination, and training, each center should establish and maintain a formal tie with a university, including links with appropriate departments within that university. Each center must have a major presence at a single site; however, alternative arrangements among entities and with individual scholars are encouraged and may be proposed.

4. Reporting. Every three months during the award period, the grantee will produce a quarterly report of progress. The grantee's quarterly progress reports should provide a concise summary of the progress being made toward completion of activities in the annual work plan. The grantee should pay particular attention in the reports to achieving any milestones set forth in the work plan, delays in achieving milestones and the impact of delays on the final product. Details regarding the format of quarterly progress reports will be provided in the RRC Terms and Conditions at the time of award.

C. Responsibilities

1. Center Responsibilities: The centers have the primary and lead responsibility to define objectives and approaches; plan research, conduct studies, and analyze data; and publish results, interpretations, and conclusions of their work.

Occasionally, SSA will request Quick Turnaround projects from the RRC. These projects include commenting on SSA research plans, providing critical commentary on research products, composing policy briefs, performing statistical policy analyses, and other activities designed to inform SSA's research, evaluation, and policy analysis function. Funding for these as well as other related activities should be included in the budget narrative at a level of $40,000. The agency can raise the ceiling above $40,000 for quick turnaround projects if both need and funds exist.

Jointly with SSA, each center will select approximately six nationally recognized scholars and practitioners who are unaffiliated with any center to provide assistance in formulating the center's research agenda and advice on implementation. Each center shall select three scholars/practitioners, and SSA will select three scholars/practitioners. Efforts will be made in selecting the scholars/practitioners to assure a broad range of academic disciplines and political viewpoints. Funded under this agreement, the scholars/practitioners must meet once a year at the RRC Annual Conference in Washington, DC. On occasion, all centers' scholars/practitioners will meet jointly to evaluate and provide advice on Consortium objectives and progress. Further, the centers may contact the scholars/practitioners throughout the year for suggestions regarding center activities. The SSA Project Officer or representative will participate in all meetings.

2. SSA Responsibilities: SSA will be involved with the Consortium in jointly establishing research priorities and deliverable dates to accomplish the objectives of this announcement. SSA, or its representatives, will provide the following types of support to the Consortium:

a. Consultation and technical assistance in planning, operating and evaluating the Consortium's activities.

b. Information about SSA programs, policies, and research priorities.

c. Assistance in identifying SSA information and technical assistance resources pertinent to the centers' success.

d. Review of Consortium activities and collegial feedback to ensure that objectives and award conditions are being met. SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, if the awardee materially fails to comply with the terms and conditions of the cooperative agreement, technical performance requirements are not met, or the project is no longer relevant to the Agency. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination together with the effective date. SSA reserves the right to suspend funding for individual projects in process or in previously approved research areas or tasks after awards have been granted.

In general, SSA seeks organizations with demonstrated capacity for providing quality policy research and training, and working with government policymakers.

Part II. Award Information

A. Type of Award

All awards made under this program will be made in the form of a cooperative agreement. A cooperative agreement, as distinct from a grant, anticipates substantial involvement between SSA and the awardee during the performance of the project. A comprehensive annual review process will allow SSA to evaluate, recommend changes, and approve each center's activities. SSA's involvement may include collaboration or participation in the activities of the centers as determined at the time of award. The terms of award are in addition to, not in lieu of, otherwise applicable guidelines and procedures, and will be issued along with notice of award.

The grantee must apply to continue the cooperative agreement in order to receive funds in subsequent years of the 5-year agreement. The grantee will produce a continuation application, subject to review and approval by SSA. The continuation application should clearly describe a set of research, training, and dissemination activities that best address the priorities of SSA. SSA will engage in a dialogue with grantees throughout the award period regarding research topics. Based on that dialogue, SSA will provide the grantee with guidance (in writing) on the agency's research priorities for the subsequent continuation cycle.

B. Availability and Duration of Funding

1. Up to $7.5 million will be available to fund the initial 12-month budget period of a proposed five-year cooperative agreement(s) pursuant to the announcement.
2. Applicants must include detailed budget estimates for the first year.
3. The amount of funds available for the cooperative agreement in future years has not been established. Legislative support for continued funding of the Consortium cannot be guaranteed and funding is subject to future appropriations and budgetary approval. SSA expects, however, that the Consortium will be supported during future fiscal years at an annual level of up to $7.5 million.
4. Nothing in this announcement states that the annual funds will be divided proportionately among the centers.
5. Additional funds may become available from SSA or other Federal agencies in support of Consortium projects.
6. Initial awards, pursuant to this announcement, will be made on or about September 15, 2008.

Although up to three awards are anticipated, nothing in this announcement restricts SSA's ability to make more or fewer awards, to make an award of lesser amount, or to add additional centers to the RRC in the future. Further, SSA is not required to fund all proposed Consortium activities in any year. SSA will review all proposed activities annually and award up to $2.75 million per center per year.

C. Letter of Intent

Prospective applicants are asked to submit by May 9, 2008, a letter of intent that includes (1) this program announcement number and title; (2) a brief description of the proposed center; (3) the name, postal and e-mail addresses, and the telephone and fax numbers of the Center Director; and (4) the identities of the key personnel and participating institutions. The letter of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The sole purpose of the letter of intent is to allow SSA staff to estimate the potential review workload and avoid conflicts of interest in the review. The letter of intent should be sent to: Sharmila Choudhury, RRC Letter of Intent, Office of Retirement and Disability Policy, Social Security Administration, 500 E St., SW., ITC Room 913, Washington, DC 20254–0001. E-mail: *Sharmila.Choudhury@ssa.gov*.

Part III. Eligibility Information

A. Eligible Applicants

SSA seeks applications from domestic Institutions of Higher Education, Hospitals, Non-Profit organizations, Commercial organizations, Federal and State Governments, and Native American tribal organizations. Each center need not be limited by geographical boundaries. A research team may consist of investigators or institutions that are geographically distant, to the extent that the research design requires and accommodates such arrangements. Nothing in this announcement precludes non-academic entities from being affiliated with an applicant.

No cooperative agreement funds may be paid as profit to any cooperative agreement recipient. For-profit organizations may apply with the understanding that no funds may be paid as profit. Profit is considered as any amount in excess of the allowable costs of the award recipient.

In accordance with an amendment to the Lobbying Disclosure Act, popularly known as the Simpson-Craig Amendment, those entities organized under section 501(c)4 of the Internal Revenue Code that engage in lobbying are prohibited from receiving Federal cooperative agreement awards.

B. Cost Sharing

SSA will not provide a center's entire funding. Recipients of an SSA cooperative agreement are required to contribute a non-Federal match of at least 5 percent toward the total approved cost of each center. The total approved cost of the project is the sum of the Federal share (maximum of 95 percent) and the non-Federal share (minimum of 5 percent). The non-Federal share may be cash or in-kind (property or services) contributions.

C. Other

Each center director must have a demonstrated capability to organize, administer, and direct the center. The director will be responsible for the organization and operation of the center and for communication with SSA on scientific and operational matters. The director must also have a minimum time commitment of 25 percent to Consortium activities. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as directors. A list of previous grants and cooperative agreements held by the director shall be submitted including the names and contact information of each grant's and cooperative agreement's administrator. In addition to the director, skilled personnel and institutional resources capable of providing a strong research and evaluation base in the specified priority areas must be available. The institution must show a strong commitment to the Consortium's support. Such commitment may be provided as dedicated space, salary support for investigators or key personnel, dedicated equipment or other financial support for the proposed center.

Part IV. Application and Submission Information

A. Overview

This part contains information on the preparation of an application for submission under this announcement and the forms necessary for submission. Potential applicants should read this part carefully in conjunction with the information provided in Part I.

SSA anticipates that the applicant will have access to additional sources of funding for some projects and arrangements with other organizations and institutions. The applicant (including the center Director and other

key personnel) shall make all current and anticipated related funding arrangements (including contact information for grant/contract/cooperative agreement administrators) explicit in an attachment to the application (Part IV, Section D). As part of the annual review process, this information will be updated and reviewed to limit duplicative funding for center projects.

B. Availability of Application Forms

The application kit is available at *www.grants.gov*. For information regarding the application package, contact: SSA, Office of Acquisition and Grants, Grants Management Team, 7111 Security Blvd., 1st Floor Rear Entrance, Baltimore, MD 21244. Contact persons are: Gary Stammer, Grants Management Officer, telephone (410) 965–9501, (e-mail: *Gary.Stammer@ssa.gov*); or Mary Biddle, Grants Management Officer, telephone (410) 965–9503, e-mail: *Mary.Biddle@ssa.gov*. The fax number is (410) 966–9310. To request an application kit for those without Internet access or for those experiencing extenuating circumstances preventing the submission of an electronic application, contact the Grants Management Office as mentioned above.

When requesting an application kit, the applicant should refer to the program announcement number SSA–ORES–08–1 and the date of this announcement to ensure receipt of the proper application kit.

C. Content and Organization of Technical Application

The application must begin with the required application forms and a three-page (double-spaced) overview and summary of the application. Staff resumes should be included in a separate appendix.

Budget Narrative: In addition to providing an explanation of the budget categories specified in the required forms, the budget narrative must also link the research, training, dissemination, and administration to the center's funding level. The special instructions attachment of the application kit provides information on the distribution and presentation of budget data. Though SSA believes that all three of the stated goals and objectives are important, it is expected that the substantial majority of funds will support Research, Evaluation, and Data Development. Funding should also be allocated to address occasional SSA requested activities (described in Part I, Section C–1).

The availability, potential availability or expectation of other funds (from the host institution, universities, foundations, other Federal agencies, etc.) and the uses to which they would be put, should be documented in this section. When additional funding is contemplated, applicants shall note whether the funding is being donated by the host institution, is in-hand from another funding source, or will be applied for from another funding source. Formal commitments for the 5 percent, non-federal, minimum budget share should be highlighted in this section.

Seeking additional support from other sources is encouraged. However, funds pertaining to this announcement must not duplicate those received from other funding sources.

Project Narrative: The core of the application must contain five sections, presented in the following order:

(1) A brief (not more than 10 pages) background analysis of the key retirement policy issues and trends with a focus on the primary research themes of the proposed center. The analysis should discuss concisely, but comprehensively, important priority research issues and demonstrate the applicant's grasp of the policy and research significance of recent and future social, economic, political, and demographic issues.

(2) A research and evaluation prospectus for a five-year research agenda, outlining the major research themes to be investigated over the next five years. In particular, the prospectus will describe the activities planned for the priority research areas and other additional research topics proposed by the applicant. The prospectus should discuss the kind of research activities that are needed to both address current Social Security issues and anticipate future policy debates. The prospectus should follow from the background analysis section. It may, of course, also discuss research areas and issues that were not mentioned in the analysis if the author(s) of the application feel there have been gaps in past research, or that new factors have begun to affect or soon will begin to affect national retirement policy. If a center intends to enhance data for retirement research purposes, they should include a discussion of the technical expertise of center staff and proposed mechanisms to facilitate the sharing of data.

The prospectus shall include detailed descriptions of individual research projects that will be expected in the center's first year of operation. The special instructions attachment of the application kit provides guidelines for project proposals. The prospectus should be specific about long-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that contains an ad hoc categorization of an unstructured set of research projects, rather than a set of projects that strike a coherent theme, will be judged unfavorably.

Note: Once a successful RRC applicant has been selected, SSA will review the RRC research agenda and determine research priorities. This may include the addition, modification, or removal of proposed research projects. After review, each center will submit to SSA a revised research plan and budget. The research plan will be periodically reviewed and revised as necessary. The application should discuss how the centers select research projects to propose, including involvement of the outside scholars/practitioners, SSA, and other advisors and participants in the consortium.

(3) A prospectus for dissemination, including ways to reach a broad audience of researchers, policymakers, and the public. Dissemination plans should detail proposed publications and conferences.

(4) A prospectus for training and education, including proposed training and educational strategies to meet the goals described in Part I, Section B-b, Task 3.

(5) A staffing and organization proposal for the center, including an analysis of the types of background needed among staff members, the center's organizational structure, and linkages with the host institution and other organizations. In this section, the applicant should specify how it will assure an effective approach to research, and where appropriate, identify the necessary links to university departments, other organizations and scholars engaged in research and government policy making.

The applicant should identify the center Director and key senior research staff. Full resumes of proposed staff members must be included as a separate appendix to the application. The time commitment to the center and other commitments for each proposed staff member shall be indicated. The application should specify how administrative arrangements would be made to minimize start-up and transition delays. Note that once the cooperative agreement has been awarded, changes in key staff will require prior approval from SSA. The kinds of administrative and tenure arrangements, if any, the center

proposes to make should also be discussed in this section. In addition, the authors of the application and the role that they will play in the proposed center must be specified.

This section shall discuss the financial arrangements for supporting research assistants, dissertation fellowships, affiliates, resident scholars, etc. The discussion should include the expected number and type of scholars to be supported and the level of support anticipated.

If the applicant envisions an arrangement of several universities or entities, this section should describe the specifics of the relationships, including leadership, management, and administration. The staffing proposal should pay particular attention to discussing how a focal point for research, training, and scholarship will be maintained given the arrangement proposed.

The application also should discuss the role, selection procedure, and expected contribution of the outside scholars/practitioners (See Part I, Section C–1).

The application should provide an organizational experience summary of past work at the institution proposed as the location (or the host) of the center that relates directly or indirectly to the research priorities of this request. This discussion should include more than a listing of the individual projects completed by the individuals who are included in the application. The discussion should provide a sense of institutional commitment to policy research on issues involving retirement policy. The application must list in an appendix appropriate recent or current research projects, with a brief research summary, contact person, references, and address and telephone numbers of references. This section should also discuss the experience of the research staff in working with the government agencies and their demonstrated capacity to provide policy relevant support to these agencies.

D. Components of a Complete Application

A complete application package consists of one electronic application. It should include the following items:

1. Project Abstract/Summary (not to exceed three pages);
2. Table of Contents;
3. Part I (Face Sheet)—Application for Federal Assistance (Standard Form 424);
4. Part II—Budget Information—
a. Form SF–424A—Sections A through F
b. Form SSA SF–424 Section G—Personnel
5. Budget Narrative for Section B—Budget Categories;
6. Copy of the applicant's approved indirect cost rate agreement, if appropriate;
7. Part III—Project Narrative. The project narrative should be organized in five sections:
(1) Background Analysis,
(2) Research, Evaluation, and Data Development Prospectus,
(3) Dissemination Prospectus,
(4) Training and Education Prospectus,
(5) Staffing Proposal Including Staff Utilization, Staff Background, and Organizational Experience.
8. Assurances—Form SF–424B;
9. Disclosure of Lobbying Activities, Form SF–LLL, if applicable.
10. Any appendices/attachments.

E. Guidelines for Application Submission

These guidelines should be followed in submitting applications:

—All applications requesting SSA funds for cooperative agreement projects under this announcement must be submitted on the standard forms provided in the application kit.
—The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.
—Length: Applications should be as brief and concise as possible, but assure successful communication of the applicant's proposal to the reviewers. The Project Narrative portion of the application may not exceed 150 double spaced pages (excluding the resume and outside funding appendices), equivalent to being typewritten on one side using standard (8½″ x 11″) size paper and 12 point font. Attachments that support the project narrative count within the 150 page limit. Attachments not applicable to the project narrative do not count toward this page limit.
—Attachments/Appendices, when included should be used only to provide supporting documentation.
—On all applications developed by more than one organization, the application must identify only one institution as the lead organization and the official applicant. The other(s) can be included as sub grantees or subcontractors.

F. Submission Dates and Times

Applicants must submit applications through *www.grants.gov* by the closing date of June 9, 2008. However, when the SSA Grants Management Team approves the submission of a mailed application due to extenuating circumstances, applications may be mailed or hand-delivered to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–ORES–08–1, 1st Floor-Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

- Received from Grants.gov on or before the deadline date; or
- Received at the above address on or before the deadline, when a mailed application has been authorized by the Grants Management Team; or
- Postmarked by June 9, 2008 when a mailed application has been authorized by the Grants Management Team.

Packages approved for mailing must be sent through the U.S. Postal Service or by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. SSA will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants. SSA will notify each late applicant that its application will not be considered.

Letters of intent, which are optional, are requested by May 9, 2008. See Part II, Section C for details.

G. Funding Restrictions

There will be limitations concerning allowable construction expenses. Submitted budgets may include minor construction expenses, such as alterations and renovations. This could include work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and large scale permanent improvements.

Awards will not allow reimbursement of pre-award costs.

H. Other Submission Requirements

SSA requires applicants to submit an electronic application through *www.grants.gov* for Funding Opportunity Number SSA–ORES–08–1. If you experience problems with application submission, your first point of contact is the Grants.gov support staff at *support@grants.gov*, 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Gary Stammer, 410–965–9501; Audrey Adams, 410–965–9469; or Mary Biddle, 410–965–9503. If extenuating circumstances prevent you from submitting an application through *www.grants.gov*, please contact the SSA Grants Management Team for possible prior written approval to download, complete and submit an application by mail. When such approval is granted, the downloadable application package will be available at *www.ssa.gov/oag*. The address for pre-approved mailed applications is: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–ORES–08–1, 1st Floor-Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. To ensure receipt of the proper application package, please include program announcement number SSA–ORES–08–1 and the date of this announcement.

Part V. Application Review Information

A. Review Process and Funding

In addition to any other reviews, a review panel consisting of at least three qualified persons will be formed. Each panelist will objectively review and score the cooperative agreement applications using the evaluation criteria listed below. The panel will recommend centers based on (1) the application scores; (2) the feasibility and adequacy of the project plan and methodology; and (3) how the centers would jointly meet the objectives of the Consortium. The Agency will consider the panel's recommendations when awarding the cooperative agreements. Although the results from the review panel are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Agency will consider other factors as well (such as duplication of internal and external research effort) when making funding decisions.

All applicants must use the guidelines provided in the SSA application kit at *www.grants.gov* by June 9, 2008 for preparing applications requesting funding under this cooperative agreement announcement. These guidelines describe the minimum amount of required project information. However, when completing the Project Narrative, please follow the guidelines under Part IV, Section C, above.

All awardees must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) as well as provide specific safeguards surrounding client information sharing, paper/computer records/data, and other issues potentially arising from administrative data. Additional details regarding safeguarding of Personally Identifiable Information are available in the SSA Grants Administration Manual, Section 3–10–60, available at *http://www.ssa.gov/oag/grants/ssagrant_info.htm*.

B. Selection Process and Evaluation Criteria

The evaluation criteria correspond to the outline for the development of the Budget and Project Narrative Statement of the application described in Part IV, Section C, above. The application should be prepared in the format indicated by the outline described in the components of a complete application (Part IV, Section D).

Selection of the successful applicants will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below.

The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

(1) Quality of the background analysis. (10 points)

Applications will be judged on whether they provide a thoughtful and coherent discussion of political, economic, social, and demographic issues influencing retirement and solvency. Reviewers will judge applicants' abilities to discuss the past, present, and future role of government programs and polices which affect these issues and how these are tied to their proposed research agenda.

(2) Quality of the research and evaluation prospectus. (40 points)

Reviewers will judge this section on whether the research agenda is scientifically sound and policy relevant. They also will consider whether the applicant is likely to produce significant contributions to their proposed research areas and how closely the proposed projects fit the objectives for which the applications were solicited.

The application will be judged on the breadth and depth of the applicant's commitment to research and evaluation of the priority research areas described in Part I, Section B, part a. The discussion and research proposed must address at least three priority research areas, preferably with a multi-disciplinary approach. Applicants will generally receive higher scores for addressing more than three priority research areas. However, a strong proposal focusing on three areas will outscore one that is broad and weakly defined. Applicants with additional insightful research proposals will also score higher. Besides detailed plans for research projects in the first year, the research agenda should discuss possible projects over the longer five-year horizon. Reviewers will rate applications on the contents of the plans to conduct policy relevant research.

(3) Dissemination. (15 points)

Reviewers will evaluate strategies for dissemination of research and other related information to a broad and disparate set of academic, research, and policy communities as well as to the public. Reviewers will also evaluate whether the appropriate dissemination method is being proposed for targeted audiences of academics and researchers, policymakers, and the public. Proposed strategies that increase dissemination across centers and other organizations conducting retirement research will also receive higher ratings.

(4) Training. (10 points)

The evaluation of the training and education prospectus will include an assessment of plans to enhance the training of graduate students and young scholars through direct financial support as well as exposure to policy research. An approach that solicits applications widely and from across the nation is encouraged. In addition, reviewers will evaluate proposed strategies for educating and training policymakers and practitioners on issues of retirement.

(5) Quality of the staffing proposal and proposed administration. (15 points)

Reviewers will judge the applicant's center Director and staff on research experience, demonstrated research skills, administrative skills, public administration experience, and relevant policy-making skills. An additional criterion will be the center's demonstrated potential to act as a conduit between basic and applied behavioral and social science research and policy analysis/evaluation. Both the

evidence of past involvement in related research and the specific plans for seeking applied outcomes described in the application shall be considered part of that potential. Reviewers may consider references from grant/cooperative agreement administrators on previous grants and cooperative agreements held by the proposed center Director or other key personnel. Director and staff time commitments to the center also will be a factor in evaluation. Reviewers will evaluate the affiliations of proposed key personnel to ensure the required multi-disciplinary nature of the consortium is being fulfilled.

Applicants will be judged on the nature and extent of the organizational support for research, mentoring scholars, dissemination, and in areas related to the center's central priorities and this request. Reviewers will evaluate the commitment of the host institution (and the proposed institutional unit that will contain the center) to assess its ability to support all three of the center's major activities: (1) Research, evaluation, and data development; (2) dissemination; (3) education and training. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

(6) Appropriateness of the budget for carrying out the planned staffing and activities. (10 points)

Reviewers will consider whether (1) the budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation, and (2) the applicant has additional funding from other sources, in particular, the host institution. Applications that show funding from other sources that supplement funds from this cooperative agreement will be given higher marks than those without financial support. Awardees are required to contribute a minimum of 5 percent cost share of total project costs.

Panel Recommendations. Once each application is scored and ranked, the panel will then review the top applicants and recommend centers that together best address the range of responsibilities described in Part I.

Part VI. Award Administration Information

A. Notification

Grants.gov will issue application receipt acknowledgements.

B. Award Notices

Applicants who have been selected will receive an official electronic notice of award signed by an SSA Grants Management Officer around September 15, 2008. Those who were not selected will be notified by official letter.

C. Administration and National Policy Requirements

Executive Order 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order (E.O.) 12372, as amended by E.O. 12416, relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

VII. Agency Contacts

For matters related to the application and submission process for this cooperative agreement, contact Grants Management Officer, Gary Stammer at (410) 965–9501 or *gary.stammer@ssa.gov*, or Mary Biddle, Grants Management Officer, at (410) 965–9503 or *Mary.Biddle@ssa.gov*. The mailing address is SSA, Office of Acquisition and Grants, Grants Management Team, 7111 Security Blvd., 1st Floor, Rear Entrance, Baltimore, MD 21244. The fax number is (410) 966–9310.

For program content information, contact the RRC Project Officer, Sharmila Choudhury at (202) 358–6261 or *sharmila.choudhury@ssa.gov*. The mailing address is SSA, Office of Retirement and Disability Policy, 500 E St., SW., Room 913, Washington, DC 20254. The fax number is (202) 358–6187.

VIII. Other

This announcement is for the re-competition of the RRC. The cooperative agreement for the RRC currently in place was awarded in 2003 and will expire in September 2008.

Along with the official notice of award each year, SSA will issue a set of Terms and Conditions that define closely the responsibilities of the center and SSA towards meeting the goals of the cooperative agreement.

An Annual Priority Research Memo will also be issued each year before the start of the continuation cycle to guide the centers in preparing their continuation applications.

SSA is committed to accessibility of its products to persons with disabilities. Each center's Web site should meet accessibility standards identified in Section 508 of the Rehabilitation Act. The annual conference also should be accessible to persons with disabilities.

Additional information on how SSA sponsors grants and other details may be found on the Grants Home page at *http://www.ssa.gov/oag*.

(Catalog of Federal Domestic Assistance: Program No. 96.007, Social Security—Research and Demonstration)

Dated: March 21, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–6948 Filed 4–2–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 9, 2008, Vol. 73, No. 6, Pages 1666–1667.

DATES: Comments must be submitted on or before May 5, 2008

FOR FURTHER INFORMATION CONTACT: Susan Ryan at the National Highway Traffic Safety Administration, Office of Regional Operations and Program Delivery (NTI–200), 202–366–2715, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Highway Safety Program Cost Summary and 23 CFR Part 1345, Occupant Protection Incentive Grant, Section 405.

OMB Numbers: 2127–0003; 2127–0600.

Type of Request: Extension to a previously approved collection of information.

Abstract: The Highway Safety Plan identifies state's traffic safety problems and describes the program and projects to address those problems. In order to account for funds expended, States are required to submit a HS–217 Highway Safety Program Cost Summary. The Program Cost Summary is completed to reflect the state's proposed allocations of funds (including carry-forward funds)

by program area, based on the projects and activities identified in the Highway Safety Plan.

An occupant protection incentive grant (Section 405) is available to states that can demonstrate compliance with at least four of six criteria. Demonstration of compliance requires submission of copies of relevant seat belt and child passenger protection statutes, plan and/or reports on statewide seatbelt enforcement and child seat education programs and possible some traffic court records.

Affected Public: For the Highway Cost Summary the public is the 50 states, District of Columbia, Puerto Rico, U.S. Territories, and Tribal Government. For the Section 405 grant program the public is the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas and the Virgin Islands.

Estimated Total Annual Burden: 570 and 780 respectively.

Address: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

John F. Oates,

Acting Associate Administrator for Regional Operations and Program Delivery.

[FR Doc. E8–6856 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[PHMSA–2008–0075 (Notice No. 08–2)]

Hazardous Materials: Transport of Lithium Batteries; Notice of Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting to discuss the safe transportation of lithium batteries.

DATES: The public meeting will be Friday, April 11, 2008, starting at 9 a.m.

ADDRESSES: The meeting will be held at the U.S. DOT headquarters, Rooms 8–9–10—DOT Conference Center, 1200 New Jersey Ave., SE., Washington, DC 20590. The main visitor's entrance is located in the West Building, on New Jersey Avenue and M Street. For information on the facilities or to request special accommodations, please contact Kevin Leary at the telephone number listed under **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Kevin Leary, Office of Hazardous Materials Standards, telephone, 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–10, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On February 22, 2007, the Pipeline and Hazardous Materials Safety Administration (PHMSA) hosted a meeting of public and private sector stakeholders who share our interest in the safe transportation of batteries and battery-powered devices. The meeting included representatives of the National Transportation Safety Board (NTSB), the Federal Aviation Administration (FAA), the National Highway Traffic Safety Administration (NHTSA), battery and electronics manufacturers, the Air Transport Association (ATA), the Air Line Pilots Association (ALPA), and emergency responders. On the basis of the meeting we initiated a comprehensive strategy aimed at reducing the transportation risks posed by batteries of all types. PHMSA outlined the strategy in an action plan detailing a range of public and private sector measures designed to enhance safety standards, improve data collection and awareness, and otherwise reduce the risks of transporting batteries and battery-powered devices, with a special focus on aviation safety. PHMSA and the parties to the action plan have met repeatedly over the course of the last year and have made significant progress in meeting the action plan targets.

PHMSA believes that a follow-on public meeting would be useful at this time to review progress under the 2007 action plan and discuss necessary next steps. Although substantial effort and progress have been made since the February 2007 meeting, we believe additional steps should be taken to prevent a significant incident. While the safety record associated with the transportation of lithium batteries is very good, we continue to observe incidents in all modes of transport and are especially concerned about the risk of battery-related fires aboard aircraft. PHMSA is aware of more than 90 reports of transport incidents involving batteries and battery-powered devices; several of these have involved fires in an aircraft cabin. In cooperation with NTSB and FAA we are investigating a number of these incidents to determine their root cause and to identify effective measures to reduce risk. Based on the observed incidents and our investigations, we have identified several factors we believe are the primary cause of most of the battery incidents. These factors include: internal short circuits, external short circuits, improper charging or discharging, and non-compliance with current safety standards.

On December 17, 2007 and January 7, 2008, the National Transportation Safety Board (NTSB) issued a total of eight safety recommendations following its investigation of a February 7, 2006 hazardous materials incident at the Philadelphia International Airport. In that incident, United Parcel Service Company flight 1307 landed at the airport after a cargo smoke indication in the cockpit. The captain, first officer, and a flight engineer evacuated the airplane after landing, sustaining minor injuries. The airplane and most of the cargo were destroyed by a fire. NTSB determined that the probable cause of this accident was an in-flight cargo fire from an unknown source. The NTSB issued the following safety recommendations:

- Require aircraft operators to implement measures to reduce the risk of primary lithium batteries becoming involved in fires on cargo-only aircraft, such as transporting such batteries in fire resistant containers and/or in restricted quantities at any single location on the aircraft;
- Until fire suppression systems are required on cargo-only aircraft, as asked for in Safety Recommendation A–07–99, require that cargo shipments of secondary lithium batteries, including those contained in or packed with equipment, be transported in crew-accessible locations where portable fire suppression systems can be used;
- Require aircraft operators that transport hazardous materials to immediately provide consolidated and specific information about hazardous

materials on board an aircraft, including proper shipping name, hazard class, quantity, number of packages, and location, to on-scene emergency responders upon notification of an accident or incident;

• Require commercial cargo and passenger operators to report to the Pipeline and Hazardous Materials Safety Administration all incidents involving primary and secondary lithium batteries, including those contained in or packed with equipment, that occur either on board or during loading or unloading operations and retain the failed items for evaluation purposes;

• Analyze the causes of all thermal failures and fires involving secondary and primary lithium batteries and, based on this analysis, take appropriate action to mitigate any risks determined to be posed by transporting secondary and primary lithium batteries, including those contained in or packed with equipment, on board cargo and passenger aircraft as cargo; checked baggage; or carry-on items;

• Eliminate regulatory exemptions for the packaging, marking, and labeling of cargo shipments of small secondary lithium batteries (no more than 8 grams equivalent lithium content) until the analysis of the failures and the implementation of risk-based requirements asked for in Safety Recommendation A–07–108 are completed;

• In collaboration with air carriers, manufacturers of lithium batteries and electronic devices, air travel associations, and other appropriate government and private organizations, establish a process to ensure wider, highly visible, and continuous dissemination of guidance and information to the air-traveling public, including flight crews, about the safe carriage of secondary (rechargeable) lithium batteries or electronic devices containing these batteries on board passenger aircraft; and

• In collaboration with air carriers, manufacturers of lithium batteries and electronic devices, air travel associations, and other appropriate government and private organizations, establish a process to periodically measure the effectiveness of your efforts to educate the air-traveling public, including flight crews, about the safe carriage of secondary (rechargeable) lithium batteries or electronic devices containing these batteries on board passenger aircraft.

During the April 11th meeting we plan to distribute and solicit feedback on a draft action plan identifying additional steps that will help to reduce the risk associated with the transport of lithium batteries, particularly in the air mode.

Topics to be covered during the public meeting include:

(1) Recent transportation incidents;

(2) Probable causes of battery incidents;

(3) NTSB recommendations;

(4) PHMSA/FAA activities; and

(5) Action plan with next steps/additional actions.

In addition, we plan to discuss the effectiveness of stakeholder partnerships in reducing the safety risks posed by the transportation of lithium batteries, ways to facilitate and foster additional stakeholder partnerships, and strategies for expanding the ongoing DOT public awareness campaign.

The public is invited to attend without prior notification. Due to the heightened security measures, participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Issued in Washington, DC on March 28, 2008.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E8–6923 Filed 4–2–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35121]

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway—Acquisition and Operation Exemption—BNSF Railway Company

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway (BJRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement with BNSF Railway Company (BNSF), approximately 2.5 miles of BNSF railroad properties consisting of certain trackage, real properties, and railroad operating rights. The railroad properties consist of two tracks, numbered 3905 and 3930, connecting to a switch at BNSF's main rail line at milepost 39 in Montgomery, IL. There are no mileposts on the subject line.

The transaction is scheduled to be consummated on April 19, 2008 (more than 30 days after the notice of exemption was filed).

BJRY certifies that its projected annual revenues as a result of this transaction will not exceed those that qualify it as a Class III rail carrier and will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than April 10, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35121, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 350, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 26, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–6844 Filed 4–2–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 682X)]

CSX Transportation, Inc.—Abandonment Exemption—in Greenbrier and Fayette Counties, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 16.7-mile line of railroad on CSXT's Southern Region, Huntington-East Division, Sewell Subdivision, between milepost CAF 27, near Rainelle, and milepost CAF 43.7, near Nallen, in Greenbrier and Fayette Counties, WV. The line traverses United States Postal Service

Zip Codes 25962, 25981 and 26680, and includes the stations of Babcock and Nallen.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 3, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 14, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 23, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,300. *See* 49 CFR 1002.2(f)(25).

CSXT has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 8, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 3, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: March 24, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–6448 Filed 4–2–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34658]

Alaska Railroad Corporation—Petition for Exemption—To Construct and Operate a Rail Line Between North Pole, Alaska and Delta Junction in Alaska

AGENCY: Surface Transportation Board.

ACTION: Notice of availability of final scope of study for the Environmental Impact Statement (EIS).

SUMMARY: On July 6, 2007, the Alaska Railroad Corporation (ARRC) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority to construct and operate a new rail line from the vicinity of North Pole to Delta Junction, Alaska. The project would involve the construction and operation of approximately 80 miles of new main line track. Figure 1 shows ARRC's existing track and the proposed rail line extension from North Pole to Delta Junction (All figures are available for viewing on the Board's Web site at *www.stb.dot.gov* by going to ''Environmental Matters,'' then selecting ''Key Cases'' in the dropdown; and then when the next page appears, clicking ''Alaska Railroad—Northern Rail Extension''). Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section on Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate.

To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), SEA published in the **Federal Register** and mailed to the public on November 1, 2005, the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments. SEA also prepared and distributed to the public a fact sheet that introduced ARRC's Northern Rail Extension, announced SEA's intent to prepare an EIS, requested comments, and gave notice of three public scoping meetings to over 400 citizens, elected officials, Federal, state, and local agencies, tribal organizations, and other potentially interested organizations received this information. SEA held three public scoping meetings in North Pole, Delta Junction, and Anchorage, Alaska on December 6, 7, and 8, 2005, respectively.

The scoping comment period concluded January 13, 2006. The U.S. Army Corps of Engineers, Alaska District (USACE); U.S. Coast Guard, Seventeenth Coast Guard District (USCG); Bureau of Land Management, Alaska State Office (BLM); U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Department of Defense, 354th Fighter Wing, Eielson Air Force Base (354th); Federal Transit Administration, Region 10 (FTA); Federal Railroad Administration (FRA); and Alaska Department of Natural Resources (ADNR) requested and were granted cooperating agency status in preparation of the EIS. After review and consideration of all comments received, this notice sets forth the final scope of the EIS. The final scope reflects any changes to the draft scope as a result of the comments, summarizes and addresses the principal environmental concerns raised by the comments, and

briefly discusses pertinent issues concerning this project that further clarify the final scope.

FOR FURTHER INFORMATION CONTACT:

David Navecky, Section of Environmental Analysis, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, 202–245–0294, or call SEA's toll-free number for the project at 1–800–359–5142. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. The Web site for the Surface Transportation Board is *www.stb.dot.gov.*

Christy Everett, Regulatory Branch, Fairbanks Field Office, U.S. Army Corps of Engineers—Alaska District, 2175 University Avenue, Suite 201E, Fairbanks, AK 99709–4777, 907–474–2166.

James Helfinstine, Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802–5517, 907–463–2268.

Gary Foreman, Bureau of Land Management, Fairbanks District Office, 1150 University Avenue, Fairbanks, AK 99709, 907–474–2339.

Chris Pike, Lieutenant Colonel, USAF, ALCOM/J4, 10471 20th Street, Elmendorf AFB, AK 99506–2100, 907–552–7013.

Jeff Putnam, P.E., Deputy Base Civil Engineer, 354 CES/CEVP, 2310 Central Avenue, Suite 100, Eielson AFB, AK 99702–2299, 907–377–5213.

Linda Gehrke, Federal Transit Administration, Region 10, Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174–1002, 206–220–4463.

John Winkle, Passenger Programs Division, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590, 202–493–6067.

Donald Perrin, Large Project Coordinator, Office of Project Management and Permitting, Alaska Department of Natural Resources, 550 W. 7th Avenue, Suite 1160, Anchorage, AK 99501–1000, 907–269–7476.

SUPPLEMENTARY INFORMATION:

Background: ARRC operates and maintains a 29-mile-long branch, referred to as the Eielson Branch, that runs from ARRC's railyard facilities in Fairbanks and then south and east through the community of North Pole, Alaska to Eielson Air Force Base. The proposed action, referred to as the Northern Rail Extension, would involve the construction and operation of a new rail line from a point on the existing Eielson Branch in the vicinity of North Pole to Delta Junction, Alaska, a distance of approximately 80 miles. Figure 1 shows ARRC's existing track and the proposed rail line extension from North Pole to Delta Junction. The purpose of the project is to develop a safe and reliable all-weather rail connection to support anticipated freight and passenger needs between Fairbanks and Delta Junction.

Major elements of the project would include:

- Approximately 80 miles of new railroad track;
- Crossings of the Tanana River, Little Delta River, Delta Creek, Delta River, and depending on the selected alternative, the Salcha River and Little Salcha River (along with many other small stream crossings);
- Rock revetments and/or levees in and along the Tanana River to direct river flow under the proposed Tanana River bridge;
- Grade-separated crossings of the Richardson and Alaska highways depending on the selected alternative;
- Pipeline and utility crossings, including at least one crossing of the Trans-Alaska Pipeline System (TAPS);
- Sidings and facilities for passenger, freight, and maintenance operations; and
- Ancillary railroad support facilities including, but not limited to: communications towers and facilities, power lines, signals, and access roads.

ARRC plans to support both commercial and passenger rail service needs with the proposed project. Anticipated commercial freight includes agricultural goods, mining products, and petrochemicals. The proposed project could also provide improved access to the military training areas on the west side of the Tanana River.

Environmental Review Process: The Board is the lead agency, pursuant to 40 CFR 1501.5. SEA is responsible for ensuring that the Board complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4335, and related environmental statutes, and for completing the environmental review process. The NEPA review process is intended to assist SEA, the cooperating agencies and the public in identifying and assessing the potential environmental consequences of a proposed action and the reasonable alternative before a decision is made.

ICF International is serving as an independent third-party contractor to assist SEA in the environmental review process. SEA is directing and supervising the preparation of the EIS. The USACE, FTA, USCG, BLM, 354th, FRA, ALCOM, and ADNR are cooperating agencies, pursuant to 40 CFR 1501.6.

The Federal agency actions considered in this EIS will include decisions, permits, approvals and funding related to the proposed action. The Board will decide whether or not to grant authority to ARRC to construct and operate the rail line pursuant to 49 U.S.C. 10901 and 10502. The USACE will decide whether or not to issue permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1251–1376, as amended) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). The USCG will decide whether or not to issue authority to construct bridges over navigable waters of the United States pursuant to the Department of Transportation Act of 1966 (49 U.S.C. 1651–1659). The BLM will decide whether or not to issue a right-of-way grant for BLM-administered lands under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1737). ALCOM will decide whether or not to concur with alignments on military lands including the Tanana Flats and Donnelly training areas. The 354th will decide whether or not to concur with alignments on or in proximity to Eielson AFB, which is home to the 354th Fighter Wing. FTA may provide funding for portions of the project's construction and/or operation. FRA is currently administering grant funding to ARRC for preliminary engineering and environmental analysis of the Northern Rail Extension. The EIS should include all of the information necessary for the decisions by the Board and the cooperating agencies.

SEA and the cooperating agencies are preparing a Draft EIS (DEIS) for the proposed action. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in this final scope. It will also discuss a reasonable range of alternatives to the proposed action, including a no-action alternative, and recommend environmental mitigation measures, as appropriate.

The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting further analysis by SEA and the cooperating agencies and the public and agency comments on the DEIS. In reaching their decisions on this case, the Board and the cooperating agencies will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

Proposed Action and Alternatives: The NEPA regulations require Federal agencies to consider a reasonable range of feasible alternatives to the proposed action. The President's Council on Environmental Quality (CEQ), which

oversees the implementation of NEPA, has stated in Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations that ''[R]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense * * *.'' In this EIS, SEA and the cooperating agencies are considering a full range of alternatives that meet the purpose and need of the project, as well as the no-action alternative. Some alternatives have been dismissed from further analysis because they have been determined to be infeasible or because SEA and the cooperating agencies consider them to be environmentally inferior to other alternatives under consideration. The EIS will include a brief discussion of the reasons for eliminating certain alternatives from detailed analysis. The reasonable and feasible alternatives included for detailed analysis and alternatives dismissed from detailed analysis are discussed in more detail below.

A. Alternatives

The Proposed Action and Alternatives include common segments, alternative segments, and connector segments. Common segments are portions of the rail line with a single route option. Alternative segments provide multiple route options. Connector segments are short pieces of a rail alignment that connect alternative segments. There are two common segments—north and south common segments—with a combined length of 13.1 miles. Between these common segments are five sets of alternative segments with two or three segments each. Figure 2 shows the proposed routes, and divides the project into six areas. The six areas are shown in more detail in Figures 3–8.

ARRC filed its preferred alternative with the Board on July 6, 2007. All common segments are part of the preferred alternative identified by ARRC. Alternative segments and connector segments that were filed as ARRC's preference are identified in the sections below.

North Common Segment

The North Common Segment starts at the east end of the Chena River Overflow Bridge off of the Eielson Branch and extends 2.7 miles southeast to meet the Eielson Alternative Segments. The segment runs roughly parallel to the Richardson Highway, crosses the Eielson Farm Road, and is on the east side of the Tanana River (see Figure 3).

Eielson Alternative Segments

SEA is considering three alternative segments through the Eielson area that start about one half mile southeast of the Eielson Farm Road. Each alternative segment has at least one shared segment section. The alternative segments pass between the fence line of Eielson Air Force Base on the east and the Eielson Farm Community on the west. They connect with the Salcha Alternative Segments (see Figure 3).

Eielson Alternative Segment 1 takes the most westerly route, closer to the farm community and farthest from the Richardson Highway. The segment crosses through some farm community property while staying to the west along Piledriver Slough. The segment crosses a few roads before hugging the Tanana River for approximately the last 3 miles of the alternative segment. This alternative segment is 10.3 miles long.

Eielson Alternative Segment 2 follows the same route as the Eielson Alternative Segment 1 for approximately 5.7 miles, at which point Eielson Alternative Segment 2 bears more to the southeast, crosses Piledriver Slough, and follows a route closer to the Richardson Highway. The last 2.2 miles of Eielson Alternative Segment 2 share the same route as Eielson Alternative Segment 3. This alternative segment is 10.0 miles long.

Eielson Alternative Segment 3 takes the most easterly route, remaining closer to the Richardson Highway and located largely within Eielson Air Force Base property, but outside the base fence line. The segment would cross Piledriver Slough approximately one half mile into its route and then stay east of the slough for approximately 4.2 miles before crossing Twentythreemile Slough, a tributary of Piledriver Slough. This alternative segment is 10.1 miles long. This is ARRC's preferred alternative segment.

Salcha Alternative Segments

SEA is considering two alternative segments for the Salcha section, each starting approximately 0.3 mile northwest of the intersection of the Old Richardson Highway and Bradbury Drive. The segments cross the Tanana River at different places and meet four connector segments (see Figure 4).

Salcha Alternative Segment 1 crosses the Tanana River just west of the intersection of the Bradbury Drive and Ruger Trail. After crossing the river, the alternative segment runs through the Tanana Flats Training Area on the west side of the river. The segment is 11.8 miles long and would require a dual-modal bridge ranging from 2,400 to 3,500 feet in length to cross the Tanana River. This is ARRC's preferred alternative segment.

Salcha Alternative Segment 2 remains on the east side of the Tanana River for most of its 13.8-mile route. For approximately the first 9 miles, the route parallels the Tanana River and Richardson Highway. The river then curves west while the route maintains a southerly direction. In approximately the last 3 miles, the segment crosses the river at Flag Hill, where it connects with one of the Central Alternative Segments. The Tanana River crossing would require a dual-modal bridge span ranging from 1,300 to 2,800 feet in length. This alternative segment would require relocation of portions of the Richardson Highway and Salcha Elementary School. Approximately two miles of the highway would need to be relocated further into the river bluff and the rail line would assume the location of the highway by the river. In addition to the Tanana River main channel crossing, the alternative segment would cross some Tanana River side channels, the Little Salcha River, and the Salcha River.

Connector Segments

The connector segments are short pieces of rail alignment between 0.9 and 4.4 miles long that connect alternative segments that do not have a common start and end points. There are five connector segments on the west side of the Tanana River that connect the Central Alternative Segments to the Salcha and Donnelly alternative segments (see Figure 5). Connector Segments B and E are part of the ARRC's preferred route.

Central Alternative Segments

SEA is considering two alternative segments between the Salcha and Donnelly alternative segments. Both Central Alternative Segments run parallel to the west bank of the Tanana River in a southeasterly direction (see Figure 5).

Central Alternative Segment 1 connects to the Salcha Alternative Segments via Connector Segment A from Salcha Alternative Segment 1 or Connector Segment C from Salcha Alternative Segment 2 and is further from the Tanana River than Central Alternative Segment 2. The alternative segment is 5.1 miles long and out of the Tanana River floodplain. Central Alternative Segment 1 does not connect to Donnelly Alternative Segment 2 due to terrain considerations.

The Central Alternative Segment 2 connects to the Salcha Alternative Segments via Connector Segment B from

Salcha Alternative Segment 1 or Connector Segment D from Salcha Alternative Segment 2. The alternative segment is within the floodplain of the Tanana River and has several clearwater stream crossings. The Central Alternative Segment is 3.6 miles long and is the Applicant's preferred alternative. The alternative segment connects directly to Donnelly Alternative Segment 2 and to Donnelly Alternative Segment 1 via Connector Segment E.

Donnelly Alternative Segments

SEA is considering two alternative segments for the Donnelly area (see Figure 6). Both run on the southwestern side of the Tanana River and end approximately 4 miles east of Delta Creek, where they meet the South Common Segment. The alternative segments both cross Delta Creek and the Little Delta River but run through distinct terrains with different elevation profiles.

Donnelly Alternative Segment 1 takes the southern route, farther from the Tanana River and through the northeastern corner of the Donnelly Training Area. This segment is 25.8 miles long and crosses steep grades. The route would cross the Delta Creek paleochannel, an ancient water channel that appears to no longer be active but could become active during periods of high flow. This is ARRC's preferred alternative segment.

Donnelly Alternative Segment 2 runs closer to the Tanana River than Donnelly Alternative Segment 1. This segment is 26.2 miles long and crosses milder grades than Donnelly Alternative Segment 1, but faces more difficult geotechnical considerations than the other Donnelly alternative.

South Common Segment

This segment would connect the two Donnelly Alternative Segments to the Delta Alternative Segments described below. The segment begins approximately four miles east of Delta Creek and runs roughly parallel to the Tanana River until the river curves southerly, just north of Delta Junction. The segment is 10.5 miles long (see Figure 7).

Delta Alternative Segments

SEA is considering two alternative segments for the Delta area. Each of these segments crosses the Delta River: One north and one south of Delta Junction. The alternative segments meet at the end of the alignment about 3 miles west of the Tanana River, adjacent to the Alaska Highway (see Figure 8).

B. Alternatives Excluded From Detailed Analysis

Based on the process described under Proposed Action and Alternatives, ARRC developed the initial sets of alignments and provided them to SEA for consideration as alternatives. Since 2005, ARRC presented SEA with several versions of the alignments. Examples of these versions are shown in Figures 9 and 10. The latest alignment versions and the Applicant's preferred alignments were identified to SEA in two key sources; ARRC's Preferred Route Alternative Report published in March 2007 and ARRC's filing of its preferred route with the Board on July 6, 2007. SEA identified alignments and segments proposed to be carried forward for more detailed study, and others proposed to be eliminated from further consideration. The Proposed Action and Alternatives Section describes the alternative segments that have been retained by SEA for detailed analysis. The following discussion describes several alignments and alternatives for segments that were initially considered but eliminated from detailed study in the Salcha, Donnelly, and Delta segments of the alignment. For each of the alternatives that were eliminated, a brief discussion of the alternative and the reasons for elimination is provided.

Eielson Area Alignments

Alignments Proposed by ARRC

During SEA's EIS scoping comment period, ARRC initially presented three alignments (formerly called N1, N2, and N3) that crossed the Eielson Farm Community. Members of that community strongly opposed the N1 and N2 alignments, which were closer to the Tanana River, because of private property impacts (see Figure 11).

The N1 alignment, as initially proposed by ARRC in November 2005, crossed the Tanana River from the Eielson Farm Community into the Tanana Flats Training Area. The alignment then continued south through the training area on the western side of the Tanana River. During scoping, ALCOM expressed concern about the amount of encroachment this alignment would have on the training area. Other comments raised strong concerns about the alignment passing through a prime moose calving area. After the scoping comment period, ARRC developed two other feasible and reasonable alignments, now Eielson Alternative Segments 1 and 2, and dropped the N1 alignment through Tanana Flats Training Area.

Because there were few design differences through the Eielson Farm Community among the Eielson alignments proposed by ARRC in 2005, ARRC dropped the first half of the N1 and N2 alignments, the two alignments with greater private property intrusion. ARRC instead retained one (formerly called N3 and Eielson West) of the three alignments presented in November 2005 and after the scoping comment period offered a new alignment (formerly called Eielson East) located to the east of the Eielson Farm Community, closer to the Eielson Air Force Base fenced boundary. In the interim between the end of the scoping comment period and ARRC's Preferred Route Alternative Report, ARRC developed a crossover alignment between Eielson East and West.

SEA agreed with dropping the N1 and N2 alignments through the Eielson Farm Community and decided to retain the Eielson East and West alignments, renamed as Eielson 1 and 2, including the crossover alignment, for detailed analysis in this EIS as the Eielson Alternative Segments.

Alignments Proposed in Scoping Comments

In response to scoping comments that were received by SEA and posted on the Board's Web site, ARRC considered alignments that crossed the Tanana River shortly before or after the Chena River overflow; therefore bypassing the Eielson Farm Community. These alignments, however, would create further intrusion into the Tanana Flats Training Area and also affect important moose habitat. Therefore, ARRC did not propose these alignments to SEA in ARRC Preferred Route Alternative Report in March 2007.

Comments also recommended an alignment that crossed the Richardson Highway at Milepost 0. The recommended alignment would either continue through Eielson Air Force Base using an existing track or go around the Air Force Base to the east. According to ARRC, during its the initial corridor analysis, ARRC considered using the additional section of the existing Eielson Branch line, but determined that using the line was not reasonable or practicable because of the current grade crossing of the Richardson Highway and topography. Because of security and operational concerns, ARRC anticipated that the 354th Fighter Wing would consider use of the existing track through Eielson Air Force Base for through-movement of trains as highly undesirable. Land use and other conditions around the east side of Eielson Air Force Base are unfavorable for an alignment due to potential private property impacts, concerns over existing

land use, and steep topography. For these reasons, ARRC determined that alignments east of the Richardson Highway from the start of the project at Milepost 0 to the south end of the Air Force Base runway are not practicable or feasible.

Comments also recommended an alignment through Eielson Air Force Base along the east side of the Richardson Highway. Such an alignment would avoid Piledriver Slough and private property in the Eielson Farm Community. ARRC reviewed the feasibility of alignments in this area. Based on information obtained from the military, ARRC determined that alignments east of the highway in proximity to the Air Force Base were infeasible due to encroachment on the operating and runway/taxi areas.

Salcha Area Alignments

Alignments Proposed by ARRC

Before SEA's EIS scoping period began, ARRC proposed four alignments through the Salcha area including two on the western side of the Tanana River south of ARRC's proposed Salcha Crossing. These alignments paralleled each other until merging in the Flag Hill area. One alignment (formerly called the N5 and subsequently the Salcha West alignment) closely followed the bank of the Tanana River; therefore, intruding less into the Tanana Flats Training Area than the N1 alignment while having potentially higher impacts on fish habitat and higher construction costs. The second alignment (formerly called N1) encroached more on military property, but avoided the Tanana River bank and some of the fishery concerns. Because of the greater potential conflict with military use, ARRC retained the route closer to the Tanana River for further examination and dropped alignment N1. The alignment closer to the Tanana River was retained by SEA for detailed analysis and is now called the Salcha Alternative Segment 1 (see Figure 12).

Two alignments were also proposed by ARRC on the east side of the Tanana River. One Salcha area alignment (formerly known as the N3 and subsequently the Salcha East alignment), retained in ARRC's March 2007 Preferred Route Alternative Report, traveled east of the Richardson Highway and south of the Eielson Air Force Base. Although the alignment met the purpose and need, this alignment was not retained by SEA as an alternative for detailed analysis because it would affect a significantly greater wetland acreage than the two Salcha Alternative Segments that are being retained for detailed study. The N3 or Salcha East alignment would affect a total of approximately 304 acres of wetlands, compared to 103 acres for the Salcha Central alignment, and 53 acres for the Salcha West alignment. This segment would also more directly affect cultural resources such as remains of the historic Salchaket Village. SEA retained the other alignment (formerly known as the N2 and subsequently the Salcha Central alignment) on the east side of the Tanana River for detailed analysis, and is now called *Salcha Alternative Segment 2*.

Alignments Proposed in Scoping Comments

The east bank of the Tanana River, particularly through Salcha, remains transient and unstable as the river continues to migrate east. The Richardson Highway, along Salcha Bluff, is located on a narrow shelf between the steep bluff and the main channel of the Tanana River. In response to scoping comments, ARRC considered an alignment that would cross the eastern-most main channel to a pair of islands. This alignment would continue south of the bluff and traverse the islands before crossing back to the east bank of the Tanana River. However, after further examination of the river hydraulics, the stability of the islands in this area, and long-term serviceability, ARRC proposed to drop this alignment. SEA did not retain this alignment as an alternative in the DEIS.

Richardson Highway

Comments received during SEA's EIS scoping period recommended a rail alternative that paralleled the Richardson Highway all the way to Delta Junction. ARRC, upon request from SEA, considered an alignment following the Richardson Highway, but determined such an alignment was not reasonable or feasible. The hilly topography on the east side of the Tanana River is considerably less favorable for rail line construction south of Flag Hill. There are also a large number of private land holdings along the highway, requiring potentially significant mitigation for continued vehicle access and potentially causing large impacts to private property. SEA did not retain this alignment as an alternative in the DEIS.

Blair Lakes Spur

Before the start of scoping in 2005, ARRC proposed a spur to the Blair Lakes Range and/or other facilities to support military operations including sidings, off-load facilities, and end-of-track facilities. However, the spur would only be constructed if requested by the military. At this time, the spur has not been requested and the military has indicated to SEA that such a spur may interfere with training activities at the Blair Lakes Range. Therefore, the Blair Lakes Spur will not be analyzed in the DEIS (see Figure 10).

Tanana Area Alignments

All Tanana area alignments have been retained for detailed analysis in the DEIS. These alignments have been renamed as the Central Alternative Segments (see Figure 13).

Donnelly Area Alignments

During SEA's scoping process, ARRC presented two alignments to SEA through the Donnelly area. One alignment (formerly named S2/Donnelly East alignment) hugged the west side of the Tanana River while the second alignment (formerly named S1/Donnelly Central alignment) followed the Tanana River initially before heading further south and west near the Little Delta River (see Figures 14 and 15). In response to comments from agencies, ARRC shifted an early version of S2/Donnelly East further inland from the Tanana River due to fish habitat concerns. In ARRC's March 2007 Preferred Route Alternative Report both of these alignments were retained, but ARRC included a third alignment called the Donnelly West alignment, which was developed by ARRC after the scoping period.

Although ARRC had shifted the alignment to minimize potential impacts, SEA decided to not retain the Donnelly East alignment for detailed analysis in the DEIS. In addition to affecting a substantial amount of wetlands (approximately 363 acres), it would create adverse impacts through the displacement of summer homes and vacation cabins that the other two alignments avoid. The Donnelly East alignment would also cross sensitive wildlife habitat contained in clear backwater channels and springs that serve as prime spawning and rearing habitat for salmon. ARRC has also indicated that this alignment would traverse steep hills with potential icing problems as well as areas that exhibit groundwater upwelling and quicksand-type conditions. SEA retained Donnelly Alternative Segments 1 and 2 for detailed analysis in this DEIS.

Delta Area Alignments

During scoping, ARRC presented two alignments (formerly named S1 and S2 and Delta Central and South, respectively) in the Delta Junction area that crossed the Delta River from the

Donnelly alignments and continued to the rail terminus on the south side of Delta Junction (see Figure 16). In the interim between scoping and the March 2007 Preferred Route Alternative Analysis Report, ARRC developed a third alignment (formerly named the S5/Delta North alignment) that crossed the Delta River north of Delta Junction and continued south along the east side of the Richardson Highway to the rail terminus.

SEA decided not to retain the Delta Central alignment for detailed analysis because it would involve greater adverse impacts to residential and commercial property in Delta Junction than the other alignments. In addition, the Delta Central alignment would involve adverse impacts to a larger amount of wetlands (approximately 83 acres) than the two alternative segments being retained for detailed analysis (36 acres for the Delta North Segment and 58 acres for the Delta South segment). SEA retained Delta Alternative Segments 1 and 2 for detailed analysis in the DEIS.

Alignment Along the Alaska Range

In their October 2006 review of the range of reasonable alternatives, USACE recommended that the EIS include analysis of an alternative along the foothills of the Alaska Range to the military training areas on the west side of the Tanana River and that the EIS evaluate transportation alternatives other than rail. SEA eliminated further analysis of these recommended alternatives because they did not meet one of the purposes of the proposed Northern Rail Extension; specifically to provide passenger train service between Fairbanks and Delta Junction and to provide common carrier rail service to Delta Junction.

Public Participation

As part of the environmental review process to date, SEA has conducted broad public outreach activities to inform the public about the Proposed Action and to facilitate public participation. SEA consulted with and will continue to consult with Federal, state, and local agencies, affected communities, and all interested parties to gather and disseminate information about the proposal. SEA and the cooperating agencies have also developed and implemented a Government-to-Government Consultation and Coordination Plan to seek, discuss, and consider the views of Federally recognized Tribal Governments regarding the Proposed Action and Alternatives.

Response to Comments

SEA and the cooperating agencies reviewed and considered the comments received on the draft scope (26 comments with approximately 180 signatures) in preparation of this final scope of the EIS. The final scope reflects any changes to the draft scope as a result of comments. Other changes in the final scope were made for clarification or as a result of additional analysis. Additions and modifications reflected in the final scope include:

- Analysis of impacts on fisheries and fish habitat. Federal and state agencies provided comments on the potential impacts on fish and fish habitat. As a point of clarification, the EIS will consider all project effects on fish resources including: impacts from road placement, grade cuts and fills, changes in permafrost levels, types and locations of crossings and the accommodation of ice formation. The EIS will also evaluate impacts to aquatic resources in terms of aerial acreage or linear extent to be affected and the functions these resources perform.
- Analysis of impacts on birds. Comments stated concerns about the potential impacts on birds. As a point of clarification, the analysis in the EIS will consider the locations of raptor nests near proposed alignments. These nests were identified from surveys over three nesting seasons. The EIS will address the bird species generally present in the project area.
- Analysis of impacts on moose. Comments stated that moose strikes by trains are among the greatest wildlife concerns. To clarify, the EIS will address moose habitat, calving and concentration areas and travel corridors, and proposed protocols for monitoring and reporting moose strikes. The EIS will consider data from observations conducted during the winters of 2005/2006 and 2006/2007, and will identify potential mitigation measures, as appropriate.
- Analysis of wildlife and habitat. Comments recommend that the EIS consider the impacts of the proposed project on other wildlife such as bison and high quality plant communities such as freshwater fens and open-water oxbows. Federal agencies also requested that the EIS consider impacts from the spread of invasive species and the disruption of aquatic habitat by the placement of the rail line. The EIS will consider these impacts.
- Analysis of water resources. Comments requested that the EIS evaluate the potential project interactions between permafrost and surface water and groundwater and the effects of the project on rivers and ice formation. Other comments listed concerns regarding the potential project impacts on floodplains. Comments requested that the EIS include a discussion of best management practices applied to minimize impacts of the Proposed Action on water resources. The EIS will contain a floodplain analysis and will evaluate the potential impacts to surface water and ground water.
- Analysis of navigation. Comments requested that the EIS identify existing navigable waterways within the project area and analyze the potential impacts on navigability resulting from each alternative; describe the permitting requirements for the various alternatives with regards to navigation; and propose mitigation measures to minimize or eliminate potential impacts to navigation, as appropriate. The EIS will address navigation, as requested.
- Analysis of rail safety. Comments stated concerns over rail and highway safety such as hazardous materials transport and at-grade crossings. The EIS will examine the potential safety impacts that could result from the proposed action.
- Analysis of recreation and access. Comments requested that the EIS address the potential impacts on recreation areas, access to these areas, and safety. Analysis of these issues will be included in the EIS.
- Effects from expanded use of military training areas. Comments requested that the EIS evaluate the impacts of expanded use of the Tanana Flats and Donnelly training areas. Consultations with the military regarding future training plans indicate that the Proposed Action would not increase or shift training activities in these areas in the foreseeable future. Therefore, the project area for most analyses regarding the training areas will be limited to the rail line and immediate vicinity.
- Analysis of an Alaska-Canada rail link and Alaska-Canada natural gas pipeline as reasonably foreseeable future actions. Although the Alaska-Canada rail link has been proposed in the past, there are no formalized plans to construct, operate or fund a railroad to Canada. Therefore, SEA and the cooperating agencies do not consider this reasonably foreseeable. However, if an Alaska-Canada rail link becomes reasonably foreseeable during the process of preparing the EIS, SEA and the cooperating agencies will include it in the analysis of impacts. The State has accepted a proposal from TransCanada Pipeline Corporation to construct a natural gas pipeline along the TAPS,

pending approval by the legislature and a public review period. SEA will monitor the State review process and whether TransCanada files an application with the Federal Energy Regulatory Commission before determining that it is reasonably foreseeable.

Under CEQ's guidelines, the analysis of environmental effects resulting from a proposed action requires the separation of actions and effects that are reasonably foreseeable as opposed to results that are remote and speculative. Typically, the Board analyzes potential rail operations for a period of three to five years into the future depending on an applicant's projections. Projects for rail operations beyond these time frames are generally not reasonably foreseeable. Beyond three to five years, for example, fluctuations in the economy and demand for infrastructure projects become speculative. The time frame for the analysis of potential effects of other projects or actions will likely vary by resource area depending on the availability of reliable information and the current and predicted health of the resource.

• Analysis of alternatives that do not meet the ARRC's stated purpose and need. Under NEPA, an applicant's goals are important in defining the range of feasible alternatives. NEPA does not require discussion of an alternative that is not reasonably related to the proposal considered by the agencies. Here, the proposed project is intended to provide freight and passenger rail service from Fairbanks to the region south of North Pole, Alaska. Comments were received suggesting that the EIS evaluate transportation alternatives such as improvements to the Richardson Highway, as an alternative to rail construction. This alternative, while it may improve transportation access to Delta Junction, does not advance the applicant's goals of expanding reliable rail service in interior Alaska, and therefore will not be evaluated as a separate alternative in the EIS.

• Analysis of ARRC's proposed Eielson Branch Realignment Project (now the Fort Wainwright Realignment Project) and the Northern Rail Extension under one NEPA document. The comment stated that the projects are connected and suggested that one NEPA document could more efficiently analyze both projects. However, the Eielson Branch realignment would be constructed regardless of whether the Northern Rail Extension is built and the NEPA process for the realignment is on a different schedule. Therefore, both projects are best analyzed separately.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

Impact Categories

The EIS will analyze potential direct and indirect impacts from construction and operation of new rail facilities on the human and natural environment for each alternative, or in the case of the no-action, the potential direct and indirect impacts of these activities not occurring. Impact areas addressed will include the categories of land use, biological resources, water resources including wetlands and other waters of the US, navigation, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, highway-rail grade crossing delay, cultural and historic resources, subsistence, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential direct and indirect impacts of each alternative on each category as described below:

1. Safety.

The EIS will:

a. Describe existing road/rail grade crossing safety and analyze the potential for an increase in accidents related to the new rail operations, as appropriate.

b. Describe existing rail operations and analyze the potential for increased probability of train accidents, as appropriate.

c. Evaluate the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operation for each alternative.

d. Propose mitigative measures to minimize or eliminate potential project impacts to safety, as appropriate.

2. Land Use.

The EIS will:

a. Evaluate potential impacts of each alternative on existing land use patterns within the project area and identify those land uses that would be potentially impacted by new rail line construction.

b. Analyze the potential impacts associated with each alternative to land uses identified within the project area. Such potential impacts may include incompatibility with existing land uses and conversion of land to railroad uses.

c. Propose mitigative measures to minimize or eliminate potential impacts to land use, as appropriate.

3. Recreation (as part of the land use discussion and a separate Section 4(f) to meet the requirements of the Federal Railroad Administration and Federal Transit Administration).

The EIS will:

a. Evaluate existing conditions and the potential impacts of the alternatives, including the various new rail line construction alignments and their operation, on recreational opportunities in the project area.

b. Propose mitigative measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

c. Identify resources including parks, wildlife refuges, and sites eligible for the National Register of Historic Places and evaluate unavoidable impacts to them for the 4(f) evaluation, in accordance with Section 4(f) of the Department of Transportation Act of 1966, as amended.

4. Biological Resources.

The EIS will:

a. Evaluate the existing biological resources within the project area, including vegetative communities, wildlife and fisheries, wetlands, and Federal and state threatened or endangered species and the potential impacts to these resources resulting from each alternative.

b. Describe any wildlife sanctuaries, refuges, national or state parks, forests, or grasslands and evaluate the potential impacts to these resources resulting from each alternative.

c. Propose mitigative measures to avoid, minimize, or compensate for potential impacts to biological resources, as appropriate.

5. Water Resources.

The EIS will:

a. Describe the existing surface water and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, and floodplains and analyze the potential impacts on these resources resulting from each alternative.

b. Describe the permitting requirements for the various alternatives with regard to wetlands, stream and river crossings, water quality, floodplains, and erosion control.

c. Propose mitigative measures to avoid, minimize, or compensate for potential project impacts to water resources, as appropriate.

6. Navigation.

The EIS will:

a. Identify existing navigable waterways within the project area and analyze the potential impacts on navigability resulting from each alternative.

b. Describe the permitting requirements for the various alternatives with regards to navigation.

c. Propose mitigative measures to minimize or eliminate potential impacts to navigation, as appropriate.

7. Geology and Soils.

The EIS will:

a. Describe the geology, soils, permafrost and seismic conditions found within the project area, including unique or problematic geologic formations or soils, prime farmland, prime and unique soils, and hydric soils and analyze the potential impacts on these resources resulting from the various alternatives for construction and operation of a new rail line.

b. Evaluate potential measures employed to avoid or construct through unique or problematic geologic formations, soils, or permafrost.

c. Propose mitigative measures to minimize or eliminate potential project impacts to geology and soils, as appropriate.

8. Air Quality.

The EIS will:

a. Evaluate air emissions from rail operations, if the alternative would affect a Class I or non-attainment or maintenance area as designated under the Clean Air Act.

b. Describe the potential air quality impacts resulting from new rail line construction activities.

c. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

9. Noise and Vibration.

The EIS will:

a. Describe the potential noise and vibration impacts during new rail line construction.

b. Describe the potential noise and vibration impacts of rail line operations over new and existing rail lines.

c. Propose mitigative measures to minimize or eliminate potential project impacts to sensitive noise receptors, as appropriate.

10. Energy Resources.

The EIS will:

a. Describe and evaluate the potential impact of the new rail line on the distribution of energy resources in the project area for each alternative, including petroleum and gas pipelines and overhead electric transmission lines.

b. Propose mitigative measures to minimize or eliminate potential project impacts to energy resources, as appropriate.

11. Socioeconomics.

The EIS will:

a. Analyze the effects of a potential influx of construction workers and the potential increase in demand for local services interrelated with natural or physical environmental effects.

b. Propose mitigative measures to minimize or eliminate potential project adverse impacts to social and economic resources, as appropriate.

12. Transportation Systems.

The EIS will:

a. Evaluate the potential impacts of each alternative, including new rail line construction and operation, on the existing transportation network in the project area, including vehicular delays at grade crossings.

b. Propose mitigative measures to minimize or eliminate potential project impacts to transportation systems, as appropriate.

13. Cultural and Historic Resources.

The EIS will:

a. Analyze the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the proposed rail alignments.

b. Evaluate the potential impacts of each alternative to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the alternative rail alignments and the no-action alternative.

c. Analyze the potential impacts to historic structures or districts or archaeological sites identified by ground survey and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the alternative rail alignments.

d. Evaluate the potential general impacts to paleontological resources in the project area due to project construction, if necessary and required.

e. Propose mitigative measures to minimize or eliminate potential project impacts to cultural and historic resources, as appropriate.

14. Subsistence.

The EIS will:

a. Analyze the potential impacts of the alternatives, including the alternate alignments for new rail line construction and operation, on subsistence activities in the project area.

b. Propose mitigative measures to minimize or eliminate potential project impacts on subsistence activities, as appropriate.

15. Aesthetics.

The EIS will:

a. Evaluate the potential impacts of each alternative, including construction and operation of the rail lines, on visual resources and other aesthetic values within the project area.

b. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

16. Environmental Justice.

The EIS will:

a. Evaluate the potential impacts of each alternative, including construction and operation of the rail lines, on local and regional minority populations and low-income populations.

b. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice issues, as appropriate.

Cumulative Impacts

The EIS will analyze cumulative impacts for the alternatives for the proposed construction and operation of new rail facilities on the human and natural environment, or in the case of the no-action, of the lack of these activities. SEA will analyze the potential additive effects of the Proposed Action and Alternatives to the effects on applicable resources of relevant past, present, and reasonably foreseeable projects or actions in the area of the proposed action. SEA will determine appropriate time and geographic boundaries for applicable resource-specific analyses in order to focus the cumulative impacts analysis on truly meaningful effects. Resources addressed may include the categories of land use, biological resources, water resources including wetlands and other waters of the U.S., navigation, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, rail safety, transportation systems, cultural and historic resources, subsistence, recreation, aesthetics, and environmental justice. The EIS will review all relevant past, concurrent, and reasonably foreseeable actions that could result in collectively significant impacts to each of the categories of impacts listed above, and to any other categories of impacts that may be addressed as a result of comments received during the scoping process or the DEIS comment period.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–6939 Filed 4–2–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Renewal Without Change; Comment Request; Imposition of Special Measure Against VEF Banka, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed renewal, without change, to information collection requirements found in existing regulations imposing the imposition of a special measure against the VEF Banka, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before June 2, 2008.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Comment Request; Imposition of Special Measure against VEF Banka. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: Comment Request; Imposition of Special Measure against VEF Banka.''

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732.

SUPPLEMENTARY INFORMATION:

Abstract: The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act. The Act authorizes the Director to issue regulations to require all financial institutions defined as such pursuant to the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism.[1]

Regulations implementing section 5318A of title 31, United States Code can be found in part at 31 CFR 103.192. In general, the regulations require financial institutions, as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 103.11 to establish, document, and maintain programs as an aid in protecting and securing the U.S. financial system.

Title: Imposition of Special Measure against VEF Banka.

Office of Management and Budget Control Number: 1506–0041.

Abstract: The Financial Crimes Enforcement Network is issuing this notice to renew the control number for an information collection in an existing regulation concerning the imposition of a special measure against the VEF Banka, as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A.

Current Action: Renewal without change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents: 5,000.

Estimated Number of Responses: 5,000.

Estimated Number of Hours: 5,000. (Estimated at one hour per respondent).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 26, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–6889 Filed 4–2–08; 8:45 am]

BILLING CODE 4810–02–P

[1] Pub. L. 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107–56.

Corrections

Federal Register

Vol. 73, No. 65

Thursday, April 3, 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.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2008–0179;FRL–8543–7]

Proposed Determination To Prohibit, Restrict, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site, Yazoo River Basin, Issaquena County, MS

Correction

In notice document E8–5401 beginning on page 14806, in the issue of Wednesday, March 19, 2008, make the following correction:

On page 14815, footnote 22 is missing and is corrected to read:

[22] EPA, 2008. Synopsis of Yazoo Backwater Area Hydrology. Wetlands Regulatory Section, Water Management Division, EPA Region 4, Atlanta, GA.

[FR Doc. Z8–5401 Filed 4–2–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
April 3, 2008

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0306; FRL–8547–2]

RIN 2060–AO27

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emission standards for control of hazardous air pollutants (HAP) for nine metal fabrication and finishing area source categories. This rule proposes emission standards in the form of management practices and equipment standards for new and existing operations of dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting and other spray coating, and welding operations. These proposed standards reflect EPA's determination regarding the generally achievable control technology (GACT) and/or management practices for the nine area source categories.

DATES: Comments must be received on or before May 5, 2008, unless a public hearing is requested by April 14, 2008. If a hearing is requested on this proposed rule, written comments must be received by May 19, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before May 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0306, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* National Emission Standards for Hazardous Air *Pollutants*: Area Source Standards for Metal Fabrication and Finishing Operations Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0306. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the NESHAP for Metal Fabrication and Finishing Area Sources Docket, at the EPA Docket and Information Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Lee Jones, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–5251; *fax number*: (919) 541–3207; *e-mail address*: *jones.donnalee@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments to EPA?
  C. Where can I get a copy of this document?
  D. When would a public hearing occur?
II. Background Information for Proposed Area Source Standards
  A. What is the statutory authority and regulatory approach for the proposed standards?
  B. What source categories are affected by the proposed standards?
  C. What are the production operations, emission sources, and available controls?
III. Summary of Proposed Standards
  A. Do the proposed standards apply to my source?
  B. When must I comply with the proposed standards?
  C. For what processes is EPA proposing standards?
  D. What emissions control requirements is EPA proposing?
  E. What are the initial compliance provisions?
  F. What are the continuous compliance requirements?
  G. What are the notification, recordkeeping, and reporting requirements?
IV. Rationale for This Proposed Rule
  A. How did we select the source category?
  B. How did we select the affected sources?
  C. How did we determine the regulated processes?
  D. How was GACT determined?
  E. How did we select the compliance requirements?
  F. How did we decide to exempt this area source category from title V permit requirements?
V. Impacts of the Proposed Standards
  A. What are the air impacts?
  B. What are the cost impacts?
  C. What are the economic impacts?
  D. What are the non-air health, environmental, and energy impacts?
VI. 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 Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this proposed action are shown in the table below. This proposed rule applies only to facilities that are an area source of the compounds of cadmium, chromium, lead, manganese, and nickel, or an area source of volatile organic HAP (VOHAP) from spray painting operations, and which perform metal fabrication or finishing operations in one of the following nine source categories: (1) Electrical and Electronic Equipment Finishing Operations; (2) Fabricated Metal Products; (3) Fabricated Plate Work (Boiler Shops); (4) Fabricated Structural Metal Manufacturing; (5) Heating Equipment, except Electric; (6) Industrial Machinery and Equipment: Finishing Operations; (7) Iron and Steel Forging; (8) Primary Metal Products Manufacturing; and (9) Valves and Pipe Fittings. Facilities affected by this proposed rule are not subject to the miscellaneous coating requirements in 40 CFR part 63, subpart HHHHHH, ''National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources,'' for their affected source(s) that are subject to the requirements of this proposed rule. There potentially may be other sources at the facility not subject to the requirements of this proposed rule that are instead subject to subpart HHHHHH of this part.

Metal fabrication and finishing category	NAICS Codes[1]	Examples of Regulated Entities
Electrical and Electronics Equipment Finishing Operations.	335999	Establishments primarily engaged in manufacturing motors and generators and electrical machinery, equipment, and supplies, not elsewhere classified. The electrical machinery equipment and supplies industry sector includes facilities primarily engaged in high energy particle acceleration systems and equipment, electronic simulators, appliance and extension cords, bells and chimes, insect traps, and other electrical equipment and supplies, not elsewhere classified. The Motors and Generators Manufacturing industry sector includes those establishments primarily engaged in manufacturing electric motors (except engine starting motors) and power generators; motor generator sets; railway motors and control equipment; and motors, generators and control equipment for gasoline, electric, and oil-electric buses and trucks.
Fabricated Metal Products	332117	Establishments primarily engaged in manufacturing fabricated metal products, such as fire or burglary resistive steel safes and vaults and similar fire or burglary resistive products; and collapsible tubes of thin flexible metal. Also included are establishments primarily engaged in manufacturing powder metallurgy products, metal boxes; metal ladders; metal household articles, such as ice cream freezers and ironing boards; and other fabricated metal products not elsewhere classified.
Fabricated Plate Work (Boiler Shops).	332313, 332410, 332420	Establishments primarily engaged in manufacturing power and marine boilers, pressure and nonpressure tanks, processing and storage vessels, heat exchangers, weldments and similar products.
Fabricated Structural Metal Manufacturing.	332312	Establishments primarily engaged in fabricating iron and steel or other metal for structural purposes, such as bridges, buildings, and sections for ships, boats, and barges.
Heating Equipment, except Electric	333414	Establishments primarily engaged in manufacturing heating equipment, except electric and warm air furnaces, including gas, oil, and stoker coal fired equipment for the automatic utilization of gaseous, liquid, and solid fuels. Typical products produced in this source category include low-pressure heating (steam or hot water) boilers, fireplace inserts, domestic (steam or hot water) furnaces, domestic gas burners, gas room heaters, gas infrared heating units, combination gas-oil burners, oil or gas swimming pool heaters, heating apparatus (except electric or warm air), kerosene space heaters, gas fireplace logs, domestic and industrial oil burners, radiators (except electric), galvanized iron nonferrous metal range boilers, room heaters (except electric), coke and gas burning salamanders, liquid or gas solar energy collectors, solar heaters, space heaters (except electric), mechanical (domestic and industrial) stokers, wood and coal-burning stoves, domestic unit heaters (except electric), and wall heaters (except electric).

Metal fabrication and finishing category	NAICS Codes[1]	Examples of Regulated Entities
Industrial Machinery and Equipment: Finishing Operations.	333120, 333132, 333911	Establishments primarily engaged in construction machinery manufacturing, oil and gas field machinery manufacturing, and pumps and pumping equipment manufacturing. Finishing operations include the collection of all operations associated with the surface coating of industrial machinery and equipment. The construction machinery manufacturing industry sector includes establishments primarily engaged in manufacturing heavy machinery and equipment of types used primarily by the construction industries, such as bulldozers; concrete mixers; cranes, except industrial plan overhead and truck-type cranes; dredging machinery; pavers; and power shovels. Also included in this industry are establishments primarily engaged in manufacturing forestry equipment and certain specialized equipment, not elsewhere classified, similar to that used by the construction industries, such as elevating platforms, ship cranes and capstans, aerial work platforms, and automobile wrecker hoists. The oil and gas field machinery manufacturing industry sector includes establishments primarily engaged in manufacturing machinery and equipment for use in oil and gas field or for drilling water wells, including portable drilling rigs. The pumps and pumping equipment industry sector includes establishments primarily engaged in manufacturing pumps and pumping equipment for general industrial, commercial, or household use, except fluid power pumps and motors. This category includes establishments primarily engaged in manufacturing domestic water and sump pumps.
Iron and Steel Forging	33211	Establishments primarily engaged in the forging manufacturing process, where purchased iron and steel metal is pressed, pounded or squeezed under great pressure into high strength parts known as forgings. The process is usually performed hot by preheating the metal to a desired temperature before it is worked. The forging process is different from the casting and foundry processes, as metal used to make forged parts is never melted and poured.
Primary Metals Products Manufacturing.	332618	Establishments primarily engaged in manufacturing products such as fabricated wire products (except springs) made from purchased wire. These facilities also manufacture steel balls; nonferrous metal brads and nails; nonferrous metal spikes, staples, and tacks; and other primary metals products not elsewhere classified.
Valves and Pipe Fittings	332919	Establishments primarily engaged in manufacturing metal valves and pipe fittings; flanges; unions, with the exception of purchased pipes; and other valves and pipe fittings not elsewhere classified.

[1]North American Industry Classification System.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action you can refer to the descriptions in section (II)(B) below. For descriptions of the North American Industry Classification System (NAICS) codes, you can view information on the U.S. Census site at *http://www.census.gov/epcd/ec97brdg*. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2006–0306. 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.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). A copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning this proposed rule by April 14, 2008, we will hold a public hearing on April 18, 2008. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m.

at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority and regulatory approach for the proposed standards?

Section 112(d) of the CAA requires us to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We implemented these requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of GACT or management practices by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that may have many small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for 11 source categories listed pursuant to section 112(c)(3) and (k) by June 15, 2008 (*Sierra Club* v. *Johnson*, no. 01–1537, D.D.C., March 2006). We have already issued regulations addressing one of the 11 area source categories. See regulations for Wood Preserving (**Federal Register**, 72 (135), July 16, 2007.) Other rulemakings will include standards for the remaining source categories that are due in June 2008.

B. What source categories are affected by these proposed standards?

These proposed standards would affect any facility that performs metal fabrication or finishing operations in one of the following nine metal fabrication and finishing area source categories: (1) Electrical and Electronic Equipment Finishing Operations; (2) Fabricated Metal Products; (3) Fabricated Plate Work (Boiler Shops); (4) Fabricated Structural Metal Manufacturing; (5) Heating Equipment, except Electric; (6) Industrial Machinery and Equipment: Finishing Operations; (7) Iron and Steel Forging; (8) Primary Metal Products Manufacturing; and (9) Valves and Pipe Fittings. Throughout this proposed rule, we refer to the nine metal fabrication and finishing source categories collectively as ''metal fabrication or finishing operations.''

The following are descriptions of the nine metal fabrication and finishing source categories:

Electrical and Electronic Equipment Finishing Operations: This category includes establishments primarily engaged in manufacturing motors and generators and electrical machinery, equipment, and supplies, not elsewhere classified, and includes facilities primarily engaged in high energy particle acceleration systems and equipment, electronic simulators, appliance and extension cords, bells and chimes, insect traps, and other electrical equipment and supplies not elsewhere classified. This category also includes those establishments primarily engaged in manufacturing electric motors (except engine starting motors) and power generators; motor generator sets; railway motors and control equipment; and motors, generators and control equipment for gasoline, electric, and oil-electric buses and trucks.

Fabricated Metal Products, Not Elsewhere Classified: This category includes establishments primarily engaged in manufacturing fabricated metal products, such as fire or burglary resistive steel safes and vaults and similar fire or burglary resistive products; and collapsible tubes of thin flexible metal. Also included are establishments primarily engaged in manufacturing powder metallurgy products, metal boxes; metal ladders; metal household articles, such as ice cream freezers and ironing boards; and other fabricated metal products not elsewhere classified.

Fabricated Plate Work (Boiler Shops): This category includes establishments primarily engaged in manufacturing power and marine boilers, pressure and nonpressure tanks, processing and storage vessels, heat exchangers, weldments and similar products.

Fabricated Structural Metal Manufacturing: This category includes establishments primarily engaged in fabricating iron and steel or other metal for structural purposes, such as bridges, buildings, and sections for ships, boats, and barges.

Heating Equipment, except Electric: This category includes establishments primarily engaged in manufacturing heating equipment, except electric and warm air furnaces, including gas, oil, and stoker coal fired equipment for the automatic utilization of gaseous, liquid, and solid fuels. Typical products produced in this source category include low-pressure heating (steam or hot water) boilers, fireplace inserts, domestic (steam or hot water) furnaces, domestic gas burners, gas room heaters, gas infrared heating units, combination gas-oil burners, oil or gas swimming pool heaters, heating apparatus (except electric or warm air), kerosene space heaters, gas fireplace logs, domestic and industrial oil burners, radiators (except

electric), galvanized iron nonferrous metal range boilers, room heaters (except electric), coke and gas burning salamanders, liquid or gas solar energy collectors, solar heaters, space heaters (except electric), mechanical (domestic and industrial) stokers, wood and coal-burning stoves, domestic unit heaters (except electric), and wall heaters (except electric).

Industrial Machinery and Equipment Finishing Operations: This category includes establishments primarily engaged in construction machinery manufacturing, oil and gas field machinery manufacturing, and pumps and pumping equipment manufacturing. Finishing operations include the collection of all operations associated with the surface coating of industrial machinery and equipment. This category includes establishments primarily engaged in manufacturing heavy machinery and equipment of types used primarily by the construction industries, such as bulldozers; concrete mixers; cranes, except industrial plant overhead and truck-type cranes; dredging machinery; pavers; and power shovels. Also included in this industry are establishments primarily engaged in manufacturing forestry equipment and certain specialized equipment, not elsewhere classified, similar to that used by the construction industries, such as elevating platforms, ship cranes and capstans, aerial work platforms, and automobile wrecker hoists. This category also includes establishments primarily engaged in manufacturing machinery and equipment for use in oil and gas fields or for drilling water wells, including portable drilling rigs. This category includes establishments primarily engaged in manufacturing pumps and pumping equipment for general industrial, commercial, or household use, except fluid power pumps and motors, and establishments primarily engaged in manufacturing domestic water and sump pumps.

Iron and Steel Forging: This category includes establishments primarily engaged in the forging manufacturing process, where purchased iron and steel metal is pressed, pounded or squeezed under great pressure into high strength parts known as forgings. The process is usually performed hot by preheating the metal to a desired temperature before it is worked. The forging process is different from the casting and foundry processes, as metal used to make forged parts is never melted and poured.

Primary Metal Products Manufacturing: This source category includes establishments primarily engaged in manufacturing products such as fabricated wire products (except springs) made from purchased wire. These facilities also manufacture steel balls; nonferrous metal brads and nails; nonferrous metal spikes, staples, and tacks; and other primary metals products not elsewhere classified.

Valves and Pipe Fittings: This source category includes establishments primarily engaged in manufacturing metal valves and pipe fittings, flanges, and unions, with the exception of from purchased pipes; and other valves and pipe fitting products not elsewhere classified.

We added the nine metal fabrication and finishing source categories to the Integrated Urban Air Toxics Strategy Area Source Category List on November 22, 2002 (67 FR 70427). The inclusion of these source categories to the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. The nine metal fabrication and finishing source categories were listed for regulation based on emissions of compounds of cadmium, chromium, lead, manganese, and nickel in the 1990 inventory, hereafter referred to as ''metal fabrication and finishing metal HAP'' (MFHAP). Four of the metal fabrication and finishing source categories were also listed for emissions of the organic HAP trichloroethylene (TCE).[1] Chlorinated solvents such as TCE are used as degreasers in these metal fabrication and finishing source categories. We subsequently discovered that the 1990 emissions data for TCE was for metal fabrication and finishing facilities that used TCE in degreasing operations, which are not part of this source category. Rather, these emission units at both major and area sources are subject to standards for halogenated solvent cleaning under 40 CFR part 63, subpart T. Consequently, we are not proposing standards for TCE from metal fabrication and finishing facilities. The four metal fabrication and finishing source categories listed for TCE emissions remain listed source categories pursuant to section 112(c)(3) of this part. Therefore, we are clarifying that we do not need these four source categories to meet the section 112(c)(3) 90 percent requirement regarding area source emissions of TCE.

Based on 2002 U.S. Census data and a survey of the industry that we conducted in 2006, we estimate that 5,800 metal fabrication and finishing area source facilities are currently operating in the U.S. Our analyses of 2002 U.S. Census data also indicate that more than 90 percent of the metal fabrication and finishing area source categories is comprised of small businesses, based on the Small Business Administration definition.

A majority of the metal fabrication and finishing area source facilities are estimated to be in urban areas, based on an estimate of 73 percent developed from EPA's 2002 National Emission Inventory (NEI).[2]

Facilities affected by this proposed rule are not subject to the miscellaneous coating requirements in 40 CFR part 63, subpart HHHHHH, ''National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources,'' for their affected source(s) that are subject to the requirements of this proposed rule. There potentially may be other sources at the facility not subject to the requirements of this proposed rule that are instead subject to subpart HHHHHH of this part.

C. What are the production operations, emission sources, and available controls?

While these nine source categories produce a wide variety of products, they perform very similar fabrication and finishing operations to create them. There are five general production operations common to metal fabrication and finishing source categories that can emit MFHAP. These five production operations are: (1) Dry abrasive blasting; (2) dry grinding and dry polishing with machines; (3) machining; (4) spray painting and coating; and (5) welding.

As typical within any industry, there is variation in operations between facilities. Also, all facilities do not necessarily employ all five production areas. Information acquired from an EPA survey of 166 facilities showed that for the area sources in the source categories of interest, 39 percent perform dry abrasive blasting, 59 percent perform metal fabrication and finishing with machines, 60 percent perform painting or coating of some kind (that includes but is not limited to spray painting or spray coating), and 65 percent perform welding. More detailed analyses are available in the docket, including estimated percentages of the number of facilities in each category performing each operation.

Another metal fabrication and finishing operation that can emit MFHAP is plating. This operation was noted to be performed by some of the

[1] These four source categories were Electrical and Electronic Equipment Finishing Operations; Fabricated Metal Products; Primary Metal Products Manufacturing; and Valves and Pipe Fittings.

[2] These urban areas are defined to be the urban 1 and urban 2 areas that formed the basis of the listing decisions under 112(c)(3) and (k).

facilities in the nine metal fabrication and finishing source categories, but is not regulated by this proposed rule. Plating operations are not regulated by this proposed rule because they are regulated elsewhere, as follows: Chromium electroplating tanks are subject to the Chromium Electroplating NESHAP (40 CFR 63, subpart N), while other plating operations at area sources are subject to the Plating and Polishing Area Source Rule (40 CFR part 63, subpart WWWWWW) which will be promulgated by June 15, 2008.

1. Metal Fabrication and Finishing Operations

The nine Metal Fabrication and Finishing source categories produce a wide variety of products using five general production operations that can emit MFHAP: (1) Dry abrasive blasting; (2) dry grinding and dry polishing with machines; (3) machining; (4) spray painting and coating; and (5) welding. The following is a brief description of each of these five fabrication and finishing operations regulated by this proposed rule.

Dry Abrasive Blasting Operations. This metal fabrication and finishing operation (also referred to in the industry as sand blasting, shot blasting, and shot peening) is used to clean or prepare a surface by forcibly propelling abrasive material against it. Commonly used abrasives include silica sand, glass beads, aluminum oxide, slag, garnet, steel shot, walnut shells, as well as other materials. Common applications of dry abrasive blasting include surface preparation for painting or coating; burr removal after machining, grinding, or welding; matte surface finishing; removal of flash from molded objects.

Two primary aspects differentiate the various types of abrasive blasting: The method of abrasive propulsion and the type of abrasive used. There are three primary methods of propelling the abrasive: Air pressure, using compressed air to propel the abrasive; water pressure, using air or water pressure to propel a wet abrasive slurry; or centrifugal wheels, which use a rotating impeller to mechanically propel the abrasive.

Abrasive blasting covers numerous applications under widely varying conditions. Blasting is also performed outdoors with a portable apparatus or indoors within specially constructed cabinets or enclosures/chambers, either manually, or as part of an automated process line. Because the applications of abrasive blasting are widely varied, there is a similarly wide variety of abrasive blasting equipment available.

Dry abrasive blasting equipment consists of the following general types of systems, listed from small to large: Portable blasters, blast cabinets or ''glove boxes'', blast chambers which can be 3 or 4-sided structures, and ''bulk'' blasters that are totally enclosed and vented to a filtration device to collect and recycle the blast material. Shot peening is a common type of dry abrasive blasting that is a surface treatment used to increase the fatigue life of metal parts. In shot peening, a higher pressure is used to focus the abrasive on a localized area as opposed to general abrasive blasting that may be directed over a larger surface area. Shot peening generally refers to abrasive blasting with metallic or steel pellets, like BB shot. Shot peening is almost always performed in a contained area so that the pellets can be recovered and reused. Similarly, blasting performed with sand other media is also often performed in a contained area so that the media can be recovered and reused.

Dry Grinding and Dry Polishing Operations. These metal fabrication and finishing operations are very similar and vary only as to their timing in the fabrication and extent of abrasion. Not all parts are polished but most are ground. Grinding is performed on a work piece prior to fabrication or finishing operations to remove undesirable material from the surface or to remove burrs or sharp edges. Grinding is done using belts, disks, or wheels consisting of or covered with various abrasives, e.g., silica, alumina, silicon carbide, garnet, alundum, or emery. Grinding may be performed dry or may use lubricants or coolants such as water or water-based mixtures, solutions, or emulsions containing cutting oils, soaps, detergents, wetting agents, or proprietary compounds. Polishing generally follows grinding. The purpose of the polishing operation is to remove any remaining metal and to prepare the surface for more refined finishing procedures. Burrs on castings or stampings may also be removed by polishing. Polishing is performed using hard-faced wheels constructed of muslin, canvas, felt or leather. Abrasives are applied to the wheels with synthetic adhesives or cements, typically silicate-base cements. The types of abrasives that are used in polishing include both natural and artificial abrasives. Lubricants including oil, grease, tallow, and special bar lubricants are used to prevent gouging and tearing when a fine polished surface is required and also to minimize frictional heat. Polishing may also be performed by hand without machines; however, no emissions occur from hand polishing.

Machining Operations. This metal fabrication and finishing operation includes activities such as turning, milling, drilling, boring, tapping, planing, broaching, sawing, cutting, shaving, shearing, threading, reaming, shaping, slotting, hobbing, and chamfering, where stock is removed from a work piece as chips by a machine that forces a cutting piece against a work piece. Shearing operations cut materials into a desired shape and size, while forming operations bend or conform materials into specific shapes. Cutting and shearing operations include punching, piercing, blanking, cutoff, parting, shearing and trimming. Forming operations include bending, forming, extruding, drawing, rolling, spinning, coining, and forging the metal. Machining is usually totally enclosed, where the enclosure is part of the operating equipment. Many of these machining operations use lubricants or liquid coolants either alone or in conjunction with enclosures.

Painting Operations. Paints and coatings (hereafter called ''paints'') are applied to metal fabrication and finishing products for surface protection, aesthetics, or both. Painting or coating (hereafter called ''painting'') is usually performed using a spray gun in a spray booth or with portable spray equipment. Paints may also be applied via dip tanks. The coated parts then pass through an open (flashoff) area where additional volatiles evaporate from the paint. The coated parts may pass through a drying/curing oven, or are allowed to air dry, where the remaining volatiles are evaporated.

Spray-applied painting operations include any hand-held device that creates an atomized mist of paint and deposits the paint on a substrate. For the purposes of this rule, spray-painting does not include thermal spray operations, also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names, in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact. Thermal spraying operations at area sources are subject to the Plating and Polishing Area Source NESHAP, subpart WWWWWW of this part.

Spray gun cleaning may be done by hand cleaning parts of the disassembled gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and paint residue, or by using a fully enclosed

spray gun washer. A combination of non-atomizing methods may also be used. A gun washer consists of a solvent reservoir and a covered enclosure that dispenses solvent for gun cleaning. The enclosure may also hold the gun for automated gun cleaning. During gun cleaning in a gun washer, the cleaning solvent is dispensed from the reservoir and sprayed through the gun while it is open.

Welding Operations. This metal fabrication and finishing operation joins two metal parts by melting the parts at the joint and filling the space with molten metal. The most frequently used method for generating heat is obtained either from an electric arc or a gas-oxygen flame. The type of welding most commonly used in the metal fabrication and finishing source categories is thought to be electric arc welding.

Electric arc welding includes many different variations that involve various types of electrodes, fluxes, shielding gases, and types of equipment. Electric arc welding can be divided into that which uses consumable electrodes vs. nonconsumable electrodes. In electric arc welding, a flow of electricity across the gap from the tip of the welding electrode to the base metal creates the heat needed for melting and joining the metal parts. The electric current melts both the electrode and the base metal at the joint to form a molten pool, which solidifies upon cooling. Consumable welding rods are used when extra metal is needed as a filler for the joint to make a complete bond. The consumable rods must be close in composition to the base metals, and can vary with each application. An externally supplied gas (argon, helium, or carbon dioxide) can be used to shield the arc.

2. Metal Fabrication and Finishing HAP Emission Sources

All five of the metal fabrication and finishing operations described above can emit MFHAP. The MFHAP that can be emitted from the metal fabrication and finishing operations are in the form of particulate matter (PM) produced from the material being fabricated, PM emitted from the use of consumable welding rods, and MFHAP used to color paints (as pigments). In addition, there are VOHAP emitted from painting operations, where the VOHAP are used as vehicles and solvents for the paints. Details on the HAP emissions from each of the five potential HAP-emitting operations follow below.

Dry Abrasive Blasting Emissions. The emissions from dry abrasive blasting are predominantly inert PM resulting from breakdown of the blast material which is composed of silica sand, glass beads, aluminum oxide, slag, garnet, steel shot, walnut shells, and other materials. Few if any blast materials contain MFHAP, therefore any MFHAP that is emitted from blasting would originate from the part or product being blasted. Occasionally the blasted part or product may be painted, in which case the PM will contain additional MFHAP if present in the pigments in the paint. Painted substrates are uncommon in the metal fabrication and finishing industries, since these industries primarily produce new products rather than recondition old ones. The blasted substrates typically include metals such as: Cadmium, chromium (primarily in stainless steel), iron, lead, magnesium, manganese (in both mild and stainless steels), mercury, molybdenum, nickel (in stainless steel), selenium, tin, vanadium, and zinc (in galvanized steel). All five MFHAP are potential components of blasting substrates.

Dry Grinding and Dry Polishing Emissions. Some metal fabrication and finishing machine operations, such as grinding and polishing, are often times dry operations which can emit PM that can contain MFHAP. Polishing by hand without the use of machines usually emits little or no PM or MFHAP due to the low level of abrasion that potentially can be induced by the worker's hands. All the PM or MFHAP in grinding and polishing is produced from the work piece itself. Thus, the composition of the PM and presence of MFHAP is dependent upon the metal being worked. As above for blasting, the metal fabrication and finishing substrates typically include metals such as: Cadmium, chromium (primarily in stainless steel), iron, lead, magnesium, manganese (in both mild and stainless steels), mercury, molybdenum, nickel (in stainless steel), selenium, tin, vanadium, and zinc (in galvanized steel). All five MFHAP are potential components of metal fabrication and finishing substrates and therefore, are also potential emissions from operations of dry grinding and dry polishing with machines.

Machining Emissions. Most of the machining operations in the metal fabrication and finishing industry are totally enclosed, where the enclosure is part of the equipment. Many of these operations use lubricants or liquid coolants, either alone or in conjunction with enclosures. Because any emissions generated by these machining operations, which would be in the form of PM, are captured or entrained in the liquid, little or no emissions are generated. Any MFHAP that is released from machining would originate from the part or product being machined.

Spray Painting Emissions. The sources of HAP emissions from spray painting operations are the metal pigments and solvents that are in the paints. A substantial fraction of paint that is atomized does not reach the part and becomes what is termed ''overspray'' and generates HAP emissions.

All five MFHAP are potential components of paint pigments that are used to provide color to the paint. The MFHAP are emitted when the paints are atomized during spray application. The proposed spray painting requirements of this proposed rule would only apply to those spray painting operations that spray-apply paints that contain MFHAP. Paints are considered to contain MFHAP if they contain any individual MFHAP at a concentration greater than 0.1 percent by mass. For the purpose of determining whether paints contain MFHAP, facilities would be able to use formulation data provided by the manufacturer or supplier, such as the material safety data sheet, as long as it represents each MFHAP compound in the paint that is present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens and at 1.0 percent by mass or more for other MFHAP compounds.

Paint solvents are used as vehicles for the paint pigments. These solvents include VOHAP such as xylenes, toluene, phenol, cresols/cresylic acid, glycol ethers (including ethylene glycol monobutyl ether), styrene, methyl isobutyl ketone, and ethyl benzene. Paints used in spray painting are thinned with solvents so that the paints are fluid enough to be able to be delivered onto the parts and products via narrow spray gun nozzles. The solvents are considered to be completely volatilized during spray application of the paint and during curing or drying. Most solvents contain HAP. The solvents may also consist of volatile organic compound (VOC) emissions which contribute to ozone formation, an EPA-regulated criteria pollutant.

The remaining HAP emissions are primarily from cleaning operations, such as cleaning of spray guns. The HAP emissions from both the cleaning solvent and the paint removed from the gun can be emitted during cleaning. Solvents used for equipment cleaning may contain the same HAP as the paints they remove. The HAP Emissions from gun cleaning are minimized when cleaning is performed in a manner such that an atomized mist or spray of gun cleaning solvent and paint residue is not created outside of a container that collects used gun cleaning solvent.

Mixing and storage are other sources of HAP emissions. The HAP emissions can occur from displacement of HAP-laden air in containers used to store HAP solvents or to mix paints containing HAP solvents. The displacement of vapor-laden air also can be caused by changes in temperature or barometric pressure, or by agitation during mixing.

Welding Emissions. The type of welding most commonly used in the metal fabrication and finishing source categories is thought to be electric arc welding. This is also the type of welding that can produce the most MFHAP emissions, since a consumable electrode is used. Emissions from welding are in the form of a fume, which is defined to be particles that are small enough to be airborne for extended periods of time and are visible to the human eye. The size of particles in welding fume is highly variable with an average size around 1 micrometer (μm), corresponding to what is commonly called the ''fume'' size range. Welding fumes have a bimodal distribution, with maximum concentrations in ''coarse'' (approximately 1.5 μm) and ''fine'' (0.52 μm) particle size ranges.

Welding fumes are a product of the base metal being welded, the consumable welding electrode or wire, the shielding gas, and any surface coatings or contaminants on the base metal. As much as 95 percent of the welding fume is thought to originate from the melting of the electrode or wire consumable. Welding fume constituents may include silica and fluorides, used to aid the welding operation, and HAP metals such as antimony, arsenic, beryllium, cobalt, mercury, and selenium, in addition to the five MFHAP: Cadmium, chromium, lead, manganese, and nickel. As noted above for dry abrasive blasting, chromium and nickel are found primarily in stainless steel, whereas manganese is found in both mild and stainless steels.

Among the electric arc welding operations that use a consumable electrode, shielded metal arc welding (SMAW) is used in more than 50 percent of welding. SMAW also was the first welding type to use a consumable electrode and suits most general purpose welding applications. SMAW, also called manual metal arc welding (MMAW) or ''stick'' possibly because it uses replaceable welding electrode rods that look like sticks, has a high fume formation rate as compared to other welding operations. The advantages of SMAW welding include its simplicity, low cost, portability, and the fact that a shielding gas is not needed. One restriction of SMAW is that since it uses metal rods that must be replaced, it is slower than the welding operations which use continuous electrodes.

Another type of welding that uses a consumable electrode and has a high fume formation rate is fluxed-core arc welding (FCAW). High fume formation occurs because the weld material is a liquid or ''flux'' and not a solid wire, and therefore is more volatile.

Gas metal arc welding (GMAW), originally called metal inert gas (MIG) welding because it used an inert gas for shielding, has a moderate fume formation rate as compared to other welding operations. The advantages of GMAW include its ability to be operated in semiautomatic or automatic modes. It is the only consumable welding type that can weld all commercially important metals, such as carbon steel, high-strength low alloy steel, stainless steel, nickel alloys, titanium, aluminum, and copper. With GMAW, a weld can be performed in all positions with the proper choice of electrode, shielding gas, and welding variables. Compared to SMAW, the rate of deposition of the electrode material and therefore welding rate is higher than with GMAW. The disadvantage is that the equipment for GMAW is more complex, more expensive, and less portable than SMAW.

Another type of welding that uses a consumable electrode and has a low fume formation rate is submerged arc welding (SAW). In this type of welding, the welding rod is not exposed to the atmosphere which lowers the potential for emissions.

Two welding operations that use non-consumable electrodes are gas tungsten arc welding (GTAW) that is also called tungsten inert gas (TIG), and plasma arc welding (PAW). Because consumable electrodes are not used, this type of welding has low or no emissions.

The choice of welding method is determined by many variables that include but are not limited to substrate material and shape; type of weld needed; skill of welder; and amount of welding to be done, therefore, a change from one type of welding to another is not always possible.

The shape of the material is another variable that can affect fume formation rate. It also has been found that when the angle of welding is closer to 90°, lower fume formation occurs. If the shape of the part to be welded prevents re-positioning the welding equipment, this pollution prevention technique also cannot be used.

In terms of welding rod feed rate, it has been found that the higher the wire feed rate the higher the fume formation rate. Also, a low fume welding rod that reduces fume by 30 percent as compared to other available products has been reported as recently available for use with FCAW. Minor effects to reduce fume formation rate have also been attributed to the speed that the welding torch moves along the weld, i.e., the ''travel speed.''

Carrier or shielding gas type and flow rate are also variables that have been found to affect welding fume formation rate. Substitution of argon gas reduces the fume formation rate. A reduction in fume of approximately 40 percent has been reported if argon is replaced as the shielding gas. The shield gas flowrate also can be optimized, with 35 cubic feet per hour the reported optimum rate. This rate is in the middle of the usual operating range and is thought to be low enough to minimize turbulence but high enough to protect the worker.

Voltage and current play a key role in the welding fume formation rate. While low voltage and/or current is known to lower the fume formation rate, the use of a pulsed current has been found to lower fume formation by up to 90 percent of the rate with straight current for some types of welding operations. The reduction in welding fume with a pulsed current is due to the change in metal electrode transfer mode from globular to spray, that results from moderately increasing the voltage and delivering a pulsed rather than steady current. There is also a voltage window in which the fume rate reduction occurs, since with too high voltage, a shift from spray to stream mode occurs along with a subsequent increase in emissions. Pulsed current is only successful if used with GMAW, which is itself a pollution prevention technique since it has one of the lowest fume formation rates of welding performed with consumable electrodes.

Welding emissions have been found to be reduced when automation is used. Since automated welding is faster and more efficient than manual welding, total emissions are lower even though the overall fume formation rate of the automated welding remains the same as with manual welding.

Emissions of MFHAP in welding fume are also subject to regulations by the OSHA, a U.S. government agency that develops work place emission standards. The sole goal of OSHA regulations is to protect the worker from being exposed to high concentrations of pollutants, such as MFAP. The OSHA regulations set standards for MFHAP concentration as measured in the breathing zone of the workers, as a time-weighted average over the time period of a typical work shift (usually 6 hours

or more). The OSHA limits for MFHAP are as follows:

Welding MFHAP	OSHA limit (micrograms per cubic meter)
cadmium fume	5
chromium, hexavalent	5
chromium, total metal	1,000
lead	50
manganese	5,000
nickel	1,000

The OSHA hexavalent chromium exposure limit was reduced in 2006 from 52 to 5 micrograms per cubic meter (μg/m^3). The American Conference of Government Industrial Hygienists, an association of occupational health professionals, recommends a worker exposure limit for ''total welding fume'' of 5,000 μg/m^3.

3. Metal Fabrication and Finishing HAP Emission Controls

A variety of methods is used to control emissions from the metal fabrication and finishing operations. Some methods are designed to reduce emissions through pollution prevention or management practices, and other methods involve capturing emissions and exhausting them to an add-on emission control device. The most widely-used methods of control employed by the metal fabrication and finishing operations are discussed below.

Dry Abrasive Blasting Controls. Small self-contained ''glove box'' dry abrasive blasting operations are used for small parts and typically have no vents to the atmosphere, thus no emissions. These devices are considered controlled operations as typically operated. When using glove boxes, the worker places their hands in openings or gloves that extend into the box and enables the worker to hold the objects as they are being blasted without allowing air and blast material to escape the box. Because of the proximity of the worker to the glove box and the blasting operation, no abrasive material can be allowed to be emitted.

Larger dry abrasive blasting operations are performed in enclosures and are typically equipped with cartridge filters or other external add-on control devices that collect degraded or ''used'' blast material and particles removed from the parts or products. These control systems, which consist of enclosures and filters, can achieve at least 95 percent control of PM, as a surrogate for MFHAP, if operated according to the manufacturer's specifications. Used blast material is recycled via screening, sieving, or other methods to remove degraded media and return the blast material to its original condition. Significant cost savings are realized through recycling of the blast material. Some dry abrasive blasting operations are not completely enclosed, or are performed outdoors. Emissions from these operations are controlled or reduced via partial enclosures and also the use of management practices. These practices include good choice of blast media which is less likely to break down into fine PM; avoiding re-use of blast media, or filtration of blast media to remove broken particles; and avoiding blasting outside during periods of high winds.

Dry Grinding and Dry Polishing with Machines Controls. These machine operations emit significant metal PM if uncontrolled, therefore, these operations, if not totally enclosed, use control systems to control the PM emitted. The control systems are composed of local capture devices with cartridge, fabric, or high-efficiency particulate air (HEPA) filters as control devices. These control systems are known to achieve 85 percent overall control of PM, as a surrogate for MFHAP, considering the efficiency of both the capture and control devices. The large amount of fine PM generated during these operations would make the work environment unbearable for the workers if not controlled, hence constant PM control is standard industry practice and an integral part of all dry grinding and dry polishing with machine operations at metal fabrication and finishing facilities.

Machining Controls. The MFHAP emitted by machining operations consist of large particles or metal shavings that are so large they immediately fall to the floor. The machines used today to perform precision cutting and forming are totally enclosed except for doors that open to allow placement of the part to be machined. The doors are closed before the machining begins; therefore, no MFHAP or PM is emitted into the workplace during machining operations. Some machining operations also use lubricants and cutting oils to keep the equipment cooled and working properly and, therefore, concurrently entrain any fine particles that are generated. These ''wet'' machining operations also do not generate any MFHAP or PM emissions during operation. This industry has evolved since 1990, where machining operations were open and a large source of PM and MFHAP, to the current industry practice of totally enclosing the machining operations.

Spray Painting Controls. There are three primary means of controlling emissions from painting operations: Reduction of overspray; capture of overspray with a spray booth and control of the MFHAP by filtration or a water scrubbing system; and changes to paint composition to reduce solvent and VOHAP content.

Reduction of overspray can have a significant effect on emissions of both MFHAP and VOHAP. The fraction of applied paint that becomes overspray depends on many variables, but two of the most important are the type of equipment and the skill of the painter. High velocity low pressure spray guns or other high-efficiency technologies, such as airless spray guns or electrostatic technologies, can significantly reduce the amount of overspray, and thus reduce emissions. Worker training is particularly important with these technologies, because they require even experienced painters to learn new techniques. Many types of training programs are available and many facilities perform their own training ''in-house.'' The best known of the external training programs is the Spray Technique Analysis and Research (STAR®) program study that originated at the University of Northern Iowa Waste Reduction Center and has now been adopted at 37 locations (primarily community colleges) throughout the United States.

Some overspray lands on surfaces of the spray booth and the masking paper that is usually placed around the surface being sprayed, but the rest of the overspray is contained by the spray booth and drawn into the spray booth exhaust system. The large amount of PM generated during paint spraying makes it necessary to control the PM emitted at all times to protect the worker and working environment. If the spray booth has filters, most of the overspray PM and metals are captured by the filters; otherwise, the emissions are exhausted to the atmosphere. Spray booths controlled by fabric filters can reduce PM and MFHAP emissions by 98 percent, if operated properly. Water curtains can also be used for controlling emissions from spray booths.

As a result of efforts to reduce the impact of HAP- and VOC-containing paint solvents on the environment, many paint manufacturers have developed lower solvent-content paints, also referred to as ''water-based'' paints. Water-based paints may have up to 30 percent VOHAP-containing solvent, with the balance of the paint vehicle consisting of water; however, the level of solvent in water-based paints is much less than the previous 80 percent or

more VOHAP that is contained in solvent-based paints. As a result of the lower VOHAP solvent content, water-based paints in general have a lower VOHAP content than solvent-based paints. The regulations promulgated to fulfill section 112 of the CAA for major sources had a direct effect on increasing the market availability of lower-HAP and -VOC paints in all market areas, including miscellaneous metal parts, plastic parts, large appliances, autobody refinishing, and architectural and industrial maintenance coatings. Many State air toxics regulations require the use of commonly called ''compliant coatings,'' where the only paints or coatings allowed to be used in certain areas must contain a solvent content lower than a designated level in order to be ''compliant'' with the regulation. The use of compliant coatings is a pollution prevention control method.

Some regulations which require compliant coatings set one limit for all paints while others require different limits depending on the purpose of the paint. Other regulations permit a weighted averaging of the solvent content of the paints used, where facilities are permitted to use paints with higher solvent contents as long as their use is offset by paints with lower solvent content. This latter method of compliance is considered a more flexible approach that allows facilities to balance their use of solvents to where it is needed most. In addition, some facilities may choose to use add-on controls such as solvent recovery units, thermal incineration, or carbon absorbers to control VOHAP emissions for situations where the solvent content cannot be reduced to a compliant coating level. These add-on controls are known to achieve at least 95 percent control of VOHAP.

Welding Controls. Many different welding operations are commonly used in the metal fabrication and finishing industry, as discussed above under welding emissions. Consequently, there are many possible means of reducing emissions. Not all control methods are appropriate for all types of welding operations, however, and thus there is no one ''best'' method to reduce welding fume or PM, as a surrogate for MFHAP. The two primary categories of emission control for welding are fume reduction through pollution prevention and management practices, and capture and control of the welding fume.

The primary variable in pollution prevention for welding is the type of welding wire or electrode used. Over 95 percent of welding fume is thought to originate from the filler or electrode material with the remainder coming from the base material. If the wire consists of MFHAP-containing material, such as chromium or nickel, then the emissions of these MFHAP are more likely. Since the weld or wire material must closely match the material being welded in order to be effective, the choice of weld material may not be able to be altered by the facility for some or all of its products. For example, if stainless steel is a required material due to the specifications of the part or product by the customers, the potential for chromium emissions in these operations cannot be prevented.

The choice of welding type, which impacts the potential fume formation rate, also provides opportunities for pollution prevention. The type of welding method used at metal fabrication and finishing facilities is determined by many variables that include but are not limited to substrate material and shape; type of weld needed; skill of welder; and amount of welding to be done. Therefore, a change from one type of welding to another is not always possible.

Welding which does not use a consumable electrode has a much lower emission potential, as noted above in the ''Welding Emissions'' discussion. Two common welding operations that use non-consumable electrodes are GTAW, also called TIG, and PAW. Switching from welding that uses a consumable electrode to one of the above operations that does not use a consumable electrode is a form of pollution prevention.

Among the welding operations that use a consumable electrode, SMAW, also called MMAW or ''stick,'' is the most widely used electric arc welding. However, SMAW has a high fume formation rate as compared to other welding operations. Another welding type that also has a high fume formation rate is FCAW. GMAW, also called MIG, has a moderate fume formation rate as compared to other welding operations. The disadvantage of GMAW is that the equipment for GMAW is more complex, more expensive, and less portable than SMAW. Another type of welding that uses consumable electrodes and has a relatively lower fume formation rate is SAW. Switching from welding that has a relatively higher fume formation rate, such as SMAW or FCAW, to one that has a lower rate, such as GMAW or SAW, is a form of pollution prevention.

Other welding variables have been determined to have a favorable effect on fume formation rates. Optimizing these variables for the specific task at hand is a form of pollution prevention. These variables include optimized welding rod feed rate, use of low fume welding rods; fast welding torch travel speed; optimized carrier or shielding gas flow rate; substitution of inert shielding gas, such as argon, for carbon dioxide shielding gas; lowering the welding voltage; pulsing the applied current; and the use of automation, i.e., robotics. Note that pulsing the current is only successful if used with GMAW, which is itself a pollution prevention technique since it has one of the lowest fume formation rates for welding performed with consumable electrodes.

In addition to the numerous management and pollution prevention practices that reduce welding fume generation, some facilities use capture and control devices to collect welding fume after it is generated. Hoods and other local exhaust techniques are used to collect the welding fume which is then vented to cartridge, fabric, or HEPA filters. Some of these control systems may only partially capture the welding fume. The advantage of using local capture systems as opposed to room ventilation is that it provides the ability to move the control device to different welding stations as needed. Very few facilities in the metal fabrication and finishing source categories use full room ventilation and PM control to reduce welding emissions. This is due to the competing requirements to ventilate the breathing zone of the worker to comply with OSHA regulations and the need to minimize the amount of exhaust air going to ventilation and add-on control devices.

The use of control systems is not always possible because the capture systems may affect the air flow pattern around welding operations and, therefore, interfere with the success of the weld. Another difficulty with local exhaust is the need to position and sometimes reposition the capture equipment so as to be most effective during welding operations without causing more fumes to enter the breathing zone of the worker.

Fume control welding guns, commonly called fume guns, have been developed where the welding fume is captured by the same device that performs the welding. Mixed success has been reported with these devices because of problems with the ergonomics of using the fume guns.

In the EPA survey of metal fabrication and finishing facilities, only 20 percent of facilities with welding stations used controls devices or fume guns. These control systems are known to achieve 85 percent overall PM control efficiency, as a surrogate for MFHAP, considering the efficiency of both the capture and control devices.

III. Summary of Proposed Standards

A. Do the proposed standards apply to my source?

The proposed subpart XXXXXX applies to new or existing affected metal fabrication and finishing area sources in one of the following nine source categories (listed alphabetically) that emit MFHAP: (1) Electrical and Electronic Equipment Finishing Operations; (2) Fabricated Metal Products; (3) Fabricated Plate Work (Boiler Shops); (4) Fabricated Structural Metal Manufacturing; (5) Heating Equipment, except Electric; (6) Industrial Machinery and Equipment: Finishing Operations; (7) Iron and Steel Forging; (8) Primary Metal Products Manufacturing; and (9) Valves and Pipe Fittings. A more detailed description of these source categories can be found in section II(B) above. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions). Facilities affected by this proposed rule are not subject to the miscellaneous coating requirements in 40 CFR part 63, subpart HHHHHH, ''National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources,'' for their source(s) subject to the requirements of this proposed rule. There potentially may be other sources at the facility not subject to the requirements of this proposed rule that are instead subject to subpart HHHHHH of this part.

B. When must I comply with these proposed standards?

All existing area source facilities subject to this proposed rule would be required to comply with the rule requirements no later than 2 years after the date of publication of the final rule in the **Federal Register**.

C. For what processes is EPA proposing standards?

In our research for this proposed rule, we found that there are five general production operations common to the nine metal fabrication and finishing source categories that can emit MFHAP. These five production operations are: (1) Dry abrasive blasting; (2) dry grinding and dry polishing with machines; (3) machining; (4) spray painting; and (5) welding. In our review of the available data, we observed significant differences for some of the five metal fabrication and finishing operations. As explained below, as the result of these differences we have further differentiated some of the above five operations. We identify below nine distinct metal fabrication and finishing processes for the purposes of this proposed rule.

For dry abrasive blasting operations, we determined that there were two distinct sizes of products being blasted that affected the manner in which the blasting was performed: products more than 8 feet in any dimension, and products equal to or less than 8 feet. For products under 8 feet, we also observed that some of these products were blasted in completely enclosed chambers that did not allow any air or emissions to escape. Therefore, we developed three distinct dry abrasive blasting processes: (1) Dry abrasive blasting of objects less than or equal to 8 feet in any dimension in completely enclosed and unvented blast chambers; (2) dry abrasive blasting of objects less than or equal to 8 feet in any dimension performed in vented enclosures, and (3) dry abrasive blasting of objects greater than 8 feet in any dimension.

In spray painting operations that emit MFHAP, we also determined that there were two distinct sizes of products being painted that affected the manner in which the process was performed: products more than 15 feet in any dimension, and products equal to or less than 15 feet in any dimension. Therefore we developed two distinct spray painting processes: (1) Spray painting of objects less than or equal to 15 feet in any dimension, and (2) spray painting of objects greater than 15 feet in any dimension. However, for the purposes of controlling VOHAP, we did not distinguish between object size, therefore the standards proposed for control of VOHAP emissions from spray painting includes only one proposed GACT requirement.

For dry grinding and dry polishing with machines, machining, and welding, we did not observe any distinct differences that would warrant further distinguishing the operations into separate processes. Therefore, these three processes combined with the three for dry abrasive blasting and three for painting results described above, results in nine total processes addressed by this proposed rule, as follows: (1) Dry abrasive blasting objects less than or equal to 8 feet in any dimension, performed in completely enclosed and unvented blast chambers; (2) dry abrasive blasting of objects less than or equal to 8 feet in any dimension, performed in vented enclosures; (3) dry abrasive blasting of objects greater than 8 feet in any dimension; (4) dry grinding and dry polishing with machines; (5) machining; (6) control of VOHAP from spray painting; (7) control of MFHAP in the spray painting of objects less than or equal to 15 feet in any dimension; (8) control of MFHAP in the spray painting of objects greater than 15 feet in any dimension; and (9) welding.

D. What emissions control requirements is EPA proposing?

We are proposing control requirements for nine metal fabrication and finishing processes described above in section (C). The following is a description of these proposed control requirements. The emission control requirements proposed here do not apply to tool or equipment repair; or research and development operations.

1. Standards for Dry Abrasive Blasting of Objects Less Than or Equal To 8 Feet in Any Dimension, Performed in Completely Enclosed and Unvented Blast Chambers

Completely enclosed and unvented blast chambers are generally small ''glove box'' type dry abrasive blasting operations. Because there are no vents or openings in the enclosures, there are no emissions directly from the operation itself.

This proposed rule would require owners or operators of completely enclosed and unvented blast chambers to comply with the following two management and pollution prevention practices: (1) Minimize dust generation during emptying of the enclosure; and (2) operate all equipment used in the blasting operation according to manufacturer's instructions.

2. Standards for Dry Abrasive Blasting of Objects Less than or Equal to 8 Feet in Any Dimension, Performed in Vented Enclosures

This proposed rule would require owners or operators of affected new and existing dry abrasive blasting operations blasting substrates of less than or equal to 8 feet in any dimension to perform blasting with a control system that includes an enclosure, as a capture device, and a cartridge, fabric or HEPA filter as a control device that is designed to control PM emissions, as a surrogate for MFHAP, from the process. These control systems using filters can achieve at least 95 percent control efficiency of PM, as a surrogate for MFHAP, if operated according to the manufacturer's specifications.

An enclosure is defined to be any structure that includes a roof and at least two complete walls, with side curtains and ventilation as needed to insure that no air or PM exits the chamber while blasting is performed. Apertures or slots may be present in the

roof or walls to allow for transport of the blasted objects using overhead cranes, or cable and cord entry into the blasting chamber. Facilities that would like to use equipment other than those listed above can seek approval to do so pursuant to the procedures in § 63.6(g) of the General Provisions to part 63, which require the owner or operator to demonstrate that the alternative means of emission limitation achieves at least equivalent HAP emission reductions as the controls specified in this proposed rule.

This proposed rule also would require owners or operators of all affected new and existing dry abrasive blasting operations blasting substrates of less than or equal to 8 feet in any dimension to comply with the following three management and pollution prevention practices: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; (2) enclose dusty material storage areas and holding bins, seal chutes and conveyors; and (3) operate all equipment according to manufacturer's instructions.

3. Standards for Dry Abrasive Blasting of Objects Greater Than 8 Feet in Any Dimension

This proposed rule would require owners or operators of affected new and existing dry abrasive blasting operations that blast substrates greater than 8 feet in any dimension to comply with the following management and pollution prevention practices to minimize MFHAP emissions from the processes: (1) Do not perform blasting outside when wind velocity is greater than 25 miles per hour; (2) switch from high PM-emitting blast media (e.g., sand) to low PM-emitting blast media (e.g., steel shot, aluminum oxide), whenever practicable; (3) do not blast substrates having coatings containing lead (>0.1 percent lead), unless enclosures, barriers, or other PM control methods are used to collect the lead particles; and (4) do not re-use the blast media unless contaminants (i.e., any material other than the base metal, such as paint residue) have been removed by filtration or screening so that the abrasive material conforms to its original size and makeup.

This proposed rule would also require owners or operators of affected dry abrasive blasting operations that blast substrates greater than 8 feet in any dimension to comply with the following three management and pollution prevention practices: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; (2) enclose dusty material storage areas and holding bins, seal chutes and conveyors; and (3) operate all equipment according to manufacturer's instructions.

4. Standards for Dry Grinding and Dry Polishing With Machines

Dry grinding and dry polishing with machines operations often emit significant PM, which is a surrogate for MFPM. This proposed rule would require owners or operators of affected new and existing dry grinding and dry polishing with machines operations to capture PM emissions, as a surrogate for MFHAP, with capture devices and vent the exhaust to a cartridge, fabric, or HEPA filter. These control systems are known to achieve at least 85 percent overall PM control efficiency, as a surrogate for MFHAP, if operated according to the manufacturer's specifications. Facilities that would like to use equipment other than those listed above can seek approval to do so pursuant to the procedures in § 63.6(g) of the General Provisions to part 63, which require the owner or operator to demonstrate that the alternative means of emission limitation achieves at least equivalent HAP emission reductions as the controls specified in this proposed rule.

This proposed rule would also require owners or operators of affected new and existing dry grinding and dry polishing with machines operations to comply with the following two management and pollution prevention practices: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; and (2) operate all equipment used in dry grinding and dry polishing with machines according to manufacturer's instructions.

5. Standards for Machining

The majority of the PM released by machining operations consists of large particles or metal shavings that fall immediately to the floor. Any MFHAP that is released would originate from the part or product being machined. Machining is totally enclosed and/or uses lubricants or liquid coolants that do not allow small particles to escape. This proposed rule would require owners or operators of affected new and existing machining operations to comply with the following two management and pollution prevention practices to minimize dust generation in the workplace: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; and (2) operate equipment used in machining operations according to manufacturer's instructions.

6. Standards for Control of VOHAP from Spray Painting Operations

Spray painting operations can be significant sources of VOHAP emissions. This proposed rule would require owners or operators of spray painting operations from affected sources that have the potential to emit VOHAP to use paints containing no more than 3.0 pounds VOHAP per gallon paint solids (0.36 kilograms per liter (kg/liter)) on an annual (12-month) rolling average basis. Two methods of complying with this standard are provided. One option would require that all paints are demonstrated as meeting the VOHAP limit. The second option would require facilities to meet the VOHAP limit using a 12-month rolling weighted average. In this second option, some paints can be above the VOHAP limit as long as their use is balanced by other paints that are below the limit, such that the overall weighted average of all paints and their VOHAP content is calculated to be at or below the VOHAP limit that would be required by this proposed rule.

This proposed rule would also require owners or operators of new and existing spray painting operations that have the potential to emit VOHAP to comply with the following two management and pollution prevention practices: (1) Minimize VOHAP emissions during mixing, storage, and transfer of paints; and (2) keep paint and solvent lids tightly closed when not in use.

Based on reasonable assumptions about the practices included in the 1990 112(k) urban HAP inventory, we have concluded that painting processes that contributed to VOHAP and MFHAP emissions in these source categories most likely did not include the following materials or activities and,

therefore, we do not cover these materials or activities in this proposed rule:

(1) Paints applied from a hand-held device with a paint cup capacity that is less than 3.0 fluid ounces (89 cubic centimeters);

(2) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens;

(3) Any painting or coating that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; or the application of paints or coatings that contain fillers that adversely affect atomization with high velocity low pressure (HVLP) or equivalent spray guns, and the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.).

7. Standards for Control of MFHAP from Spray Painting of Objects Greater Than 15 Feet in Any Dimension

This proposed rule would require owners or operators of affected new and existing spray painting of objects greater than 15 feet in any dimension to comply with one equipment standard, to use of low-emitting and pollution preventing spray gun technology. This proposed rule also would require two management practices: (1) Spray painter training and (2) spray gun cleaning.

Based on reasonable assumptions about the practices included in the 1990 112(k) urban HAP inventory, we have concluded that painting processes that contributed to MFHAP emissions in these source categories most likely did not include the following materials or activities, and, therefore, we do not cover these materials or activities in this proposed rule:

(1) Paints applied from a hand-held device with a paint cup capacity that is less than 3.0 fluid ounces (89 cubic centimeters);

(2) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens;

(3) Any painting or coating that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; or the application of paints or coatings that contain fillers that adversely affect atomization with HVLP or equivalent spray guns, and the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.).

Spray painting also does not include thermal spray operations, also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names, in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact. Thermal spraying operations at area sources are subject to the Plating and Polishing Area Source NESHAP, subpart WWWWWW of this part.

Spray Gun Technology Requirements. This proposed rule would require all affected new and existing facilities using spray-applied paints to use HVLP spray guns, electrostatic application, or airless spray techniques. Alternatively, an equivalent technology can be used if it is demonstrated to achieve transfer efficiency comparable to one of the spray gun technologies listed above for a comparable operation, and for which written approval has been obtained from the Administrator or delegated authority.

The procedure to be used to demonstrate that spray gun transfer efficiency is equivalent to that of an HVLP spray gun should be equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' (incorporated by reference, see § 63.14 of subpart A of this part). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the California South Coast Air Quality Management District Web site at *http://www.aqmd.gov/permit/docspdf/TransferEfficiencyTestingGuidelinesforHVLPEquivalency.pdf* and *http://www.aqmd.gov/permit/docspdf/Spray-Eqpt-Trfr-Efficiency.pdf.* You may inspect a copy 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.* The proposed requirements of this paragraph do not apply to painting performed by students and instructors at paint training centers.

Spray Painting Training Requirements. This proposed rule would require all workers that perform spray painting at affected new and existing facilities to be trained, with certification made available that this training has occurred. The painters would need to be certified as having completed classroom and hands-on training in the proper selection, mixing, and application of paints, or the equivalent. Refresher training would need to be repeated at least once every 5 years. These requirements would not apply to operators of robotic or automated surface painting operations. The initial and refresher training would need to address the following topics to reduce paint overspray, which has a direct effect on emissions reductions, as follows:

- Spray gun equipment selection, set up, and operation, including measuring paint viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.
- Spray technique for different types of paints to improve transfer efficiency and minimize paint usage and overspray, including maintaining the correct spray gun distance and angle to the part, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.
- Routine spray booth and filter maintenance, including filter selection and installation.

For the purposes of the proposed training requirements, the facility owner or operator may certify that their employees have completed training during ''in-house'' training programs. Also, facilities that can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the training described above would not be required to provide the initial training required for these painters.

Spray painters have 180 days to complete training after hiring or transferring into a surface painting job from another job in the facility. These proposed training requirements would not apply to the students of an accredited surface painting training program who are under the direct supervision of an instructor who meets the requirements of this paragraph. The training and certification for this rule would be valid for a period not to exceed 5 years after the date the training is completed.

Spray Gun Cleaning Requirements. This proposed rule would require all paint spray gun cleaning operations at affected new and existing facilities to use an atomized mist or spray such that the gun cleaning solvent and paint residue is not created outside of the container that collects the used gun cleaning solvent. Spray gun cleaning may be done, for example, by hand cleaning of parts of the disassembled gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and paint residue, or by using a fully enclosed spray gun washer. A combination of these non-atomizing methods above may also be used.

8. Standards for Control of MFHAP From Spray Painting Objects Less Than or Equal to 15 Feet in Any Dimension

This proposed rule would require affected new and existing facilities that are spray painting objects less than or equal to 15 feet in any dimension to comply with two equipment standards: (1) Use of low-emitting and pollution preventing spray gun technology, and (2) use of spray booth PM filters. This proposed rule also would require two management practices: (1) Spray painter training; and (2) spray gun cleaning.

Based on reasonable assumptions about the practices included in the 1990 112(k) urban HAP inventory, we have concluded that painting processes that contributed to MFHAP emissions in these source categories most likely did not include the following materials or activities:

(1) Paints applied from a hand-held device with a paint cup capacity that is less than 3.0 fluid ounces (89 cubic centimeters);

(2) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens;

(3) Any painting or coating that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; or the application of paints or coatings that contain fillers that adversely affect atomization with HVLP or equivalent spray guns, and the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.).

Spray painting also does not include thermal spray operations, also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names, in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact. Thermal spraying operations at area sources are subject to the Plating and Polishing Area Source NESHAP, subpart WWWWWW of this part.

Spray Gun Technology Standards. This proposed rule would require all affected new and existing facilities using spray-applied paints to use HVLP spray guns, electrostatic application, or airless spray techniques. Alternatively, an equivalent technology can be used if it is demonstrated to achieve transfer efficiency comparable to one of the spray gun technologies listed above for a comparable operation, and for which written approval has been obtained from the Administrator or delegated authority.

The procedure to be used to demonstrate that spray gun transfer efficiency is equivalent to that of an HVLP spray gun should be equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' (incorporated by reference, see § 63.14 of subpart A of this part). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the California South Coast Air Quality Management District Web site at *http://www.aqmd.gov/permit/docspdf/TransferEfficiencyTestingGuidelinesforHVLPEquivalency.pdf* and *http://www.aqmd.gov/permit/docspdf/Spray-Eqpt-Trfr-Efficiency.pdf.* You may inspect a copy at the 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.* The requirements of this paragraph would not apply to painting performed by students and instructors at paint training centers.

Spray Booth PM Control Requirement. This proposed rule would require the surface preparation stations or spray booths [3] of affected new and existing facilities to be fitted with fiberglass or polyester fiber filters or other comparable filter technology that can be demonstrated to achieve at least 98 percent control efficiency of paint overspray (also referred to as ''arrestance''). As an alternate compliance option, spray booths can be equipped with a water curtain, called a ''waterwash'' or ''waterspray'' booth.

98 Percent PM Control Filter—For spray booths equipped with a PM filter, the procedure used to demonstrate filter efficiency would need to be consistent with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992'' (incorporated by reference, see § 63.14 of subpart A of this part). The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the ASHRAE at 1791 Tullie Circle, NE., Atlanta, GA 30329 or by electronic mail at orders@ashrae.org. You may inspect a copy at the 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.* Compliance with the filter efficiency standard also can be demonstrated through data provided by the filter manufacturer. The test paint for measuring filter efficiency would be a high solids bake enamel delivered at a rate of at least 135 grams per minute from a conventional (non-HVLP) air-atomized spray gun operating at 40 pounds per square inch air pressure; the air flow rate across the filter shall be 150 feet per minute. Affected facilities may use published filter efficiency data provided by filter vendors to demonstrate compliance with this proposed requirement and would not be required to perform this measurement.

Waterwash spray booths—As an alternative compliance option, spray booths may be equipped with a water curtain that achieves at least 98 percent control of MFHAP. The waterwash or ''waterspray'' spray booths would be required to be operated and maintained according to the manufacturer's specifications.

Spray Painting Training Requirements. This proposed rule would require all workers that perform spray painting at affected new and existing facilities to be trained, with certification made available that this training has occurred. The painters would need to be certified as having completed classroom and hands-on

[3] The spray booth roof may contain narrow slots for connecting the parts and products to overhead cranes, or for cord or cable entry into the spray booth.

training in the proper selection, mixing, and application of paints, or the equivalent. Refresher training would need to be repeated at least once every 5 years. These requirements would not apply to operators of robotic or automated surface painting operations. The initial and refresher training would need to address the following topics to reduce paint overspray, which has a direct effect on emissions reductions, as follows:

- Spray gun equipment selection, set up, and operation, including measuring paint viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.
- Spray technique for different types of paints to improve transfer efficiency and minimize paint usage and overspray, including maintaining the correct spray gun distance and angle to the part, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.
- Routine spray booth and filter maintenance, including filter selection and installation.

For the purposes of the proposed training requirements, the facility owner or operator may certify that their employees have completed training during ''in-house'' training programs. Also, facilities that can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the proposed training described above would not be required to provide the initial training required for these painters.

Spray painters have 180 days to complete training after hiring or transferring into a surface painting job from another job in the facility. These proposed training requirements do not apply to the students of an accredited surface painting training program who are under the direct supervision of an instructor who meets the requirements of this paragraph. The training and certification for this proposed rule would be valid for a period not to exceed 5 years after the date the training is completed.

Spray Gun Cleaning Requirements. This proposed rule would require all paint spray gun cleaning operations at affected new and existing facilities to use an atomized mist or spray such that the gun cleaning solvent and paint residue is not created outside of the container that collects the used gun cleaning solvent. Spray gun cleaning may be done, for example, by hand cleaning of parts of the disassembled gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and paint residue, or by using a fully enclosed spray gun washer. A combination of these non-atomizing methods above may also be used.

9. Standards for Welding

This proposed rule would require owners or operators of affected new and existing welding operations to minimize or reduce welding fume by implementing the following 11 management and pollution prevention practices to be used as practicable:

(a) Use low fume welding processes whenever possible. These welding processes include but are not limited to: GMAW—also called MIG; GTAW—also called TIG; PAW; SAW; and all welding processes that do not use a consumable electrode;

(b) Use shielding gases, as appropriate to the type of welding used;

(c) Use an inert carrier gas, such as argon, as practicable to the type of welding used;

(d) Use low or no-HAP welding materials and substrates;

(e) Operate with a welding angle close to 90°;

(f) Optimize electrode diameter;

(g) Operate with lower voltage and current;

(h) Use low fume wires, as appropriate to the type of welding used;

(i) Optimize shield gas flow rate, as applicable to the type of welding used;

(j) Use low or optimized torch speed; and

(k) Use pulsed-current power supplies, as applicable to the type of welding used.

As a compliance alternative to the management practices for welding processes, facilities may use control systems that reduce at least 85 percent of the welding fume, as a surrogate for MFHAP, with operation of the capture and control devices according to the manufacturer's instructions.

E. What are the initial compliance requirements?

To demonstrate initial compliance with this proposed rule, owners or operators of affected new and existing sources with dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting, and welding operations would certify that they have implemented all required management and pollution prevention practices.

In addition, owners or operators of new and existing affected sources with spray painting operations that have the potential to emit VOHAP or MFHAP would also certify that they are in compliance with the following requirements: Limit the VOHAP content of spray-applied paints, use of spray booths and filters, use of approved spray delivery and cleaning systems, and proper training of workers in spray painting application techniques.

F. What are the continuous compliance requirements?

There are continuous requirements for all affected processes in metal fabrication and finishing sources. There are also additional continuous compliance requirements for specific processes or groups of processes, as follows: Visual emissions testing for dry abrasive blasting, machining, and dry grinding and dry polishing with machines; tests for VOHAP content of paints in spray painting; tests for spray painting for MFHAP control; and visual emissions testing for welding. These requirements are discussed below in more detail.

1. Continuous Compliance Requirements for All Sources

This proposed rule would require owners or operators of all affected new and existing sources to demonstrate continuous compliance by adhering to the management and pollution prevention practices specified in this proposed rule and maintaining the appropriate records to document this compliance.

Owners or operators that comply with this proposed rule by operating capture and control systems would be required to operate and maintain each capture system and control device according to the manufacturer's specifications. They also would be required to maintain records to document conformance with this requirement, and to keep the manufacturer's instruction manual available at the facility at all times.

2. Visual Emissions Testing for Dry Abrasive Blasting, Machining, and Dry Grinding and Dry Polishing With Machines, To Determine Continuous Compliance

Visible Emissions Testing. For new and existing affected sources of dry abrasive blasting operations (except dry abrasive blasting in completely enclosed and unvented blast chambers), machining operations, and dry grinding and dry polishing with machines, this proposed rule would require visible emissions testing to demonstrate continuous compliance with management and pollution prevention practices intended to reduce emissions of PM, as a surrogate for MFHAP.

The affected sources would perform visual determinations of fugitive

emissions, according to the graduated schedule described below, using EPA Method 22 (40 CFR part 60, appendix A) for a period of 15 continuous minutes from the exhaust from either the stack to the control device or the stack from the building where the equipment is located, as applicable. For the purpose of this proposed rule, the presence of visible emissions would be noted if any emissions are observed for more than a total of 6 minutes during the 15-minute period. In case of failure in any Method 22 test, immediate correction action would be required to follow to reduce or eliminate the visible emissions. The affected source would then be required to perform more frequent visible emissions testing, as described in the graduated schedule below.

Graduated Testing Schedule. The graduated schedule for continuous compliance with visible emissions testing for this rule, which progresses from daily to weekly to monthly testing, is as follows.

Affected sources would be required to be tested daily for visible emissions with Method 22 for 10 consecutive days that the source is in operation. If visible emissions are not observed during these 10 days, the affected source can be tested once every 5 consecutive days (weekly) that the source is in operation. If no visible emissions are observed during these 4 consecutive weekly Method 22 tests, the affected source can be tested once per consecutive 21 days (month) of operation. If any visible emissions are observed during the weekly and monthly testing, the affected source would resume visible emissions testing in the more frequent schedule, i.e., weekly visible emissions testing is increased to daily, and monthly testing is increased to weekly.

3. Tests for VOHAP Content of Paints in Spray Painting To Determine Continuous Compliance

For owners and operators of new and existing affected spray painting operations, this proposed rule would allow two options for demonstrating compliance with the limitation on the mass of VOHAP contained in their paints: (1) Compliance via paint VOHAP content limit, and (2) compliance via a weighted-average paint VOHAP content limit. Both of these options are pollution prevention strategies.

Since we do not have knowledge of any facilities using other control approaches to control VOHAP emissions, we have not included any other on control options in this proposed rule. We are specifically requesting comments on this part of the proposed rule if our assumptions about the need for an additional compliance option are in error.

Option 1: *Compliance via Paint VOHAP Content Limit*. In this option, the facility determines the VOHAP content of their paints and the volume fraction of paint solids in the paints to compare to the limit of 3.0 pounds VOHAP per gallon paint solids (0.36 kg/liter) on an annual (12-month) rolling average basis.

Facilities may rely on manufacturer's formulation data for determining the VOHAP content of their paints and the volume fraction of paint solids; tests or analysis of the materials would not be required if formulation data are available. Alternatively, results from the following test methods may be used.

For determining the VOHAP content of paints, Method 311 of 40 CFR part 63, appendix A may be used. Nonaqueous volatile matter, excluding water (*i.e.*, VOC) may also be used as a surrogate for VOHAP, since VOC includes all VOHAP as well as any additional organic compounds present in the paint. To determine VOC content of the paints, facilities may use manufacturer's formulation data or Method 24 of 40 CFR part 60, appendix A. For determining the average density of volatile matter in the paint, facilities may use American Society of Testing and Materials (ASTM) Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14 of subpart A of this part). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these standards from ASTM at *http://www.astm.org* or ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 U.S.A. You may inspect a copy 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*.

For determining the volume fraction of paint solids, facilities may use: (1) ASTM Method D2697–03, ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings;'' or (2) ASTM Method D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, see § 63.14 of subpart A of this part). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these standards from ASTM at *http://www.astm.org* or ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 U.S.A. You may inspect a copy 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*.

Option 2: Compliance via a Weighted-Average Paint VOHAP Content Limit. This option would allow a demonstration of compliance based on the VOHAP contained in the mix of paints used. This option offers facilities the flexibility to use some individual paints that do not by themselves meet the paint VOHAP limit, if they also use low-HAP or non-HAP paints such that overall weighted average VOHAP content of all paints used over a 12-month period meets the VOHAP limit. Facilities would likely need to use this option if they use HAP-containing thinners and/or other additives in addition to paints, since these additives usually have high VOHAP contents. Equations are provided in this proposed rule to demonstrate how to perform the calculations to demonstrate compliance.

Facilities would track the mass of VOHAP in each paint and the amount of paint used in affected sources each month of the compliance period. This information would then be used to determine the total mass of VOHAP in all paints along with the total volume of paint solids used during the compliance period by adding together all the monthly values for mass of VOHAP and the monthly values for volume of paint solids used, for the 12 months of the initial compliance period. Facilities may subtract from the total mass of VOHAP the amount contained in waste materials sent to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266, ''Hazardous Waste.''

Facilities would be required to calculate their overall weighted-average VOHAP paint content (in pound or kilogram VOHAP emitted per gallon or liter paint solids used) and show that this rate meets the VOHAP limit. Facilities may use readily available purchase records and manufacturer formulation data to determine the amount of each paint used and the VOHAP in each material.

In summary, if a facility chooses to demonstrate compliance using Option 2, *Compliance via a Weighted Average*

Paint VOHAP Content Limit, they would be required to determine all the parameters listed below for their paints. Either manufacturer's formulation data or analysis of the materials by approved test methods would be allowable options for determining these values.

- Quantity of each paint, thinner and/or other additive used, from records.
- Mass of VOHAP in each paint, thinner, and other additives, from manufacturer's data or tests.
- Volume fraction of paint solids for each paint, from manufacturer's data or tests.
- Total mass of VOHAP in all materials and total volume of paint solids used each month, by calculation.
- Total mass of VOHAP emissions and total volume of paint solids used for the initial compliance period, by calculation.
- Ratio of the total mass of VOHAP emitted to the total volume of paint solids used for the initial compliance period, by calculation.

With this option, facilities would need to record these calculations and results, and include them in the Notification of Compliance Status. EPA notes that the VOHAP composition of coatings subject to this proposed rule is ''emissions data'' under section 114 of the CAA, and EPA's regulatory definition of such term in 40 CFR part 2, because the information is necessary to determine compliance with applicable limits. 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.''

4. Tests for Spray Painting for MFHAP Control To Determine Continuous Compliance

Affected new and existing facilities that perform spray painting would need to ensure and certify that: (1) All new and existing personnel, including contract personnel, who spray-apply surface paints with MFHAP are trained in the proper application of surface paints; (2) all spray-applied paints with MFHAP are applied with a HVLP spray gun, electrostatic application, airless spray gun, or equivalent; (3) emissions of MFHAP are minimized during mixing, storage, and transfer of paints; and (4) paint and solvent lids are kept tightly closed when not in use.

In addition, for spray painting objects less than 15 feet in any dimension, owners or operators of affected processes would also need to ensure and certify that surface preparation stations or spray booths are fitted with fiberglass or polyester fiber filters or other comparable filter technology that can be demonstrated to achieve at least 98 percent control efficiency of the MFHAP in the paint.

5. Visual Emissions Testing for Welding To Determine Continuous Compliance

For new and existing affected sources with welding operations, this proposed rule would require visible emissions testing from a vent, stack, exit, or opening from the building containing the welding metal fabrication and finishing operations to demonstrate continuous compliance with management practices or add-on controls intended to control PM emissions, as a surrogate for MFHAP. This testing has a three-tier compliance structure.

Tier 1. The first tier for welding compliance would require visual determinations of fugitive emissions using EPA Method 22, and allows the same graduated testing schedule described above in section (F)(2) for dry abrasive blasting, dry grinding and dry polishing with machines, and machining, which includes provisions for reducing the frequency of the Method 22 tests when no visible emissions are observed in consecutive time periods of operation. If no visible emissions are found, no corrective action would be required.

If visible emissions are present during any Method 22 test, immediate corrective action would be required that includes inspection of all fume sources and control methods in operation, and documentation of the visual emissions test results. The graduated schedule also would require the affected source to resume visible emissions testing in the previous, more frequent schedule, i.e., weekly visible emissions testing is increased to daily, and monthly testing is increased to weekly.

Tier 2. The second tier for welding compliance would be implemented if visible emissions are detected for the second time in any consecutive twelve-month period. The second tier would require corrective action and documentation of the detection of visible emissions and the corrective action taken. Corrective action would be required to take place immediately after the failed Method 22 test. In addition, the second tier for welding compliance would require a facility to perform a visual determination of emissions opacity using EPA Method 9 (40 CFR part 60, appendix A) within 24 hours of the failed Method 22 test. In EPA Method 9, the average of 24 15-second intervals of opacity observation is determined, producing a total of 360 seconds or 6 minutes of opacity observation or 6-minute average opacity.

If in the second tier tests using Method 9 the average of the 6-minute opacities is determined to be 20 percent or less, implementation of Method 9 testing would be required with a graduated schedule of reduced frequency like that used for the Method 22 tests, described above in section (F)(2), from daily to weekly to monthly for consecutive successful tests. If opacity continues to be less than 20 percent and, pursuant to the graduated schedule the Method 9 testing for the welding processes is able to be reduced to once a month, the facility would have the choice of switching back to performing Method 22 tests on a monthly basis. Alternatively, the facility could choose to continue performing monthly Method 9 tests.

If the average of the 6-minute opacities is determined to be more than 20 percent in the Method 9 tests in the second tier, the third tier of welding compliance requirements would be required, as described below.

Tier 3. The third tier for welding compliance would include the development and implementation of a Site-specific Welding Emissions Management Plan (SWMP) within 30 days, and submittal of the SWMP to the delegated authority. The SWMP would be required to be kept at the facility in a readily accessed location for inspector review. Also, the facility would be required to report any exceedence of the 20 percent opacity annually along with their annual compliance report.

The purpose of the SWMP is to ensure that no visible emissions occur in the future from this process, as determined by EPA Method 22 tests or less than 20 percent opacity by EPA Method 9. Application of the SWMP may involve implementation of additional management and pollution prevention practices, as described above under Welding Controls, beyond those already in place at the facility or the use of capture equipment and add-on control devices. During the development of the SWMP, daily Method 9 tests would be required to continue to be performed, according to the graduated schedule. The SWMP would be required to be updated after any failures to meet 20 percent or less opacity as determined by Method 9. If opacity continues to be less than 20 percent and Method 9 testing of the welding processes at the facility falls to once a month, according to the graduated testing schedule, the facility would have a choice of changing to monthly Method 22 tests or remaining

with monthly Method 9, as above. The SWMP would be updated annually and would include revisions to reflect any changes in welding operations or controls at the facility.

The SWMP is estimated to require up to 16 hours to prepare initially. We are proposing that the SWMP would address the following: The type(s) of welding operation(s) currently used at the facility; the measures used to minimize welding fume at each of type of welding operation or each welding station; and procedures used by the facility to ensure that these measures are being implemented. No outside consultants or professional engineer certification is required or necessary to prepare the SWMP.

G. What are the notification, recordkeeping, and reporting requirements?

The affected new and existing sources would be required to comply with some requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 3 of this proposed rule. Each facility would be required to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 in the General Provisions. The affected source would be required to prepare an annual compliance status report and keep this report in a readily available location for inspector review. If there are any exceedences during the year, the facility would submit this annual compliance report with any exceedence reports prepared during the year. The exceedence reports would describe the circumstance of the exceedence and the corrective action taken. We specifically request comment on this proposed requirement for annual compliance report preparation and exceedence report submission.

Facilities also would be required to maintain all records that demonstrate initial and continuous compliance with this proposed rule, including records of all required notifications and reports, with supporting documentation; records showing compliance with management and pollution prevention practices. Owners and operators would also maintain records of the following, if applicable: Date and results of all visual determinations of fugitive emissions, including any follow-up tests and corrective actions taken; date and results of all visual determinations of emissions opacity, and corrective actions taken; and a copy of the SWMP, if it is required.

IV. Rationale for This Proposed Rule

A. How did we select the source category?

The nine metal fabrication and finishing source categories were listed as area source categories on November 22, 2002 (67 FR 70427). The inclusion of these source categories on the area source category list was based on data from the CAA section 112(k) inventory, which represents 1990 urban air information. Those data indicated that metal fabrication and finishing plants were contributors to MFHAP emissions in urban areas.

For these source categories, we performed site visits and written facility surveys, reviewed published literature, reviewed information from Web sites of vendors of air pollution control devices, and held discussions with trade organizations and industry experts. From this research we found that the nine source categories perform the same HAP-emitting processes, and, if the process was present, the emissions were controlled in the same way. Consequently, we decided to issue regulations for these nine metal fabrication and finishing area source categories in one rulemaking action.

B. How did we select the affected sources?

We found in on our research described above in section IV(A) that potential sources of HAP emissions from the nine metal fabrication and finishing source categories include the following five general metal fabrication and finishing operations: (1) Dry abrasive blasting; (2) machining; (3) dry grinding and dry polishing with machines; (4) spray painting; and (5) welding. We found that MFHAP are used in and have the potential to be emitted from these operations. Therefore, we selected the facilities with these processes in the source categories as the affected sources for this proposed rule. Because the MFHAP may be emitted as fugitives, we have elected to define the affected sources as the collection of all equipment and activities necessary to perform dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting, and welding.

Four of the metal fabrication and finishing source categories were also listed for emissions of the organic HAP TCE.[4] Chlorinated solvents such as TCE are used as degreasers in these metal fabrication and finishing source categories. We subsequently discovered that the 1990 emissions data for TCE was for metal fabrication and finishing facilities that used TCE in degreasing operations, which are not part of this source category. Rather, these emission units at both major and area sources are subject to standards for halogenated solvent cleaning under 40 CFR part 63, subpart T. Consequently, we are not proposing standards for TCE from metal fabrication and finishing facilities. The four metal fabrication and finishing source categories listed for TCE emissions remain listed source categories pursuant to section 112(c)(3) of this part, and this proposed rule establishes standards for emissions of MFHAP and VOHAP. Therefore, we are clarifying that we do not need these four source categories to meet the section 112(c)(3) 90 percent requirement regarding area source emissions of TCE.

We also found that some metal fabrication and finishing facilities also perform plating. All chromium electroplating tanks are already subject to the Chromium Electroplating NESHAP (40 CFR part 63, subpart N), while other plating operations at area sources are subject to the Plating and Polishing Area Source Rule (40 CFR part 63, subpart WWWWWW). Therefore, these sources would not be affected sources under this proposed rule for metal fabrication and finishing area sources.

C. How did we determine the regulated processes?

We found in our research for this proposed rule that there are five general production operations common to the nine metal fabrication and finishing source categories that can emit MFHAP: (1) Dry abrasive blasting; (2) dry grinding and dry polishing with machines; (3) machining; (4) spray painting; and (5) welding. As part of our analyses, we considered whether there were differences in the operations, the products fabricated or finished, or other factors affecting emissions that would warrant different control strategies. Under section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards * * *''

We observed significant differences in processes for two of the five metal fabrication and finishing operations: Dry abrasive blasting and painting. Considering these differences in the processes, we identified nine distinct metal fabrication and finishing processes for the purposes of this proposed rule. A discussion of how we

[4] These four source categories were Electrical and Electronic Equipment Finishing Operations; Fabricated Metal Products; Primary Metal Products Manufacturing; and Valves and Pipe Fittings.

identified these nine processes follows below.

1. Dry Abrasive Blasting Regulated Processes

Some dry abrasive blasting operations for small parts with low-throughput are performed in completely enclosed units commonly called ''glove boxes,'' which have no air outlet or ventilation and, hence, no emissions when designed and operated properly. These sources are distinctly different from larger operations which are not completely enclosed because of the limitations of their size.

Most dry abrasive blasting of larger objects and/or large throughput operations performed at metal fabrication and finishing area sources is performed in enclosed spaces, which are typically equipped with cartridge filters or other control devices on the air exhaust. However, it is not always practical to completely enclose dry abrasive blasting of very large objects (*e.g.*, oil derricks) because of the size and subsequent cost of the enclosure and also difficulty maneuvering the object into the enclosure. The impracticality of this effort is particularly evident when the operation is only performed intermittently. Consequently, dry abrasive blasting of very large objects is sometimes performed outdoors or in 2- or 3-sided buildings that are open on one or more sides to allow the large articles to be easily moved into the blasting zone by heavy equipment or cranes.

We found State regulations that allow outdoor dry abrasive blasting operations for objects over 8 feet in any one dimension. We also found through our industry surveys that these very large objects were blasted outdoors. We also learned that facilities are motivated to enclose dry abrasive blasting operations whenever possible because of the potential cost savings from recovering the blast material which lowers blast material usage and also costs, so that outside blasting is only performed when necessary because of the size of the parts or products.

Consequently, we determined for the purposes of this proposed rule that there were two distinct sizes of products being blasted that affected the manner in which the process was performed: Products more than 8 feet in any dimension, and products less than or equal to 8 feet. For products less than or equal to 8 feet, we also observed that some of these products were blasted in completely enclosed chambers that did not allow any air or emissions to escape. Therefore, we developed three distinct dry abrasive blasting processes: (1) Dry abrasive blasting of objects greater than 8 feet in any dimension; (2) dry abrasive blasting of objects less than or equal to 8 feet in any dimension, performed in completely enclosed and unvented blast chambers; and (3) dry abrasive blasting of objects less than or equal to 8 feet in any dimension, performed in vented enclosures.

2. Spray Painting Regulated Processes

Most spray painting performed at metal fabrication and finishing area sources is performed in enclosed spray paint booths, which are typically equipped with filters for PM control, where PM is a surrogate for MFHAP. Because of the impracticality of enclosing large objects in booths, similar to the discussion above for dry abrasive blasting, we found that it is common practice in the industry for these sources to spray paint large objects outside or in 2- or 3-sided buildings. We found that the size of objects typically spray painted outside are approximately 15 feet in any one dimension.

Therefore, we determined that there were two distinct sizes of products being painted that affected the manner in which the process was performed: (1) Products more than 15 feet in any dimension; and (2) products equal to or less than 15 feet in any dimension. Therefore, we developed two distinct spray painting processes for MFHAP control: (1) Spray painting of objects less than or equal to 15 feet in any dimension; and (2) spray painting of objects greater than 15 feet in any dimension.

It should be noted that the object size cut-off for the spray painting processes is more stringent than the one selected for dry abrasive blasting in that objects between 8 and 15 feet in dimension are enclosed for spray painting but not for blasting. This difference occurs because the MFHAP overspray from uncontrolled spray painting is higher, more hazardous, and more of a nuisance (*i.e.*, more odor, clean-up, etc.) than the inert PM and low level of MFHAP emitted from dry abrasive blasting. Therefore, painting spray booths need to be sealed better, whereas in dry abrasive blasting the structures can be partially enclosed.

We also determined that there was the potential for significant VOHAP emissions from painting that are not controlled by the PM capture and control equipment described above. We also observed that for the purposes of controlling VOHAP, it was not necessary to distinguish between sizes of the objects painted. Therefore, we are proposing one standard for control of VOHAP emissions from spray painting that would apply to all spray painting operations. Since this standard is a pollution prevention technique that restricts the types of coatings used in spray painting, it does not differentiate the size of the product being painted.

3. Other Regulated Processes

For dry grinding and dry polishing with machines; machining; and welding we did not observe any distinct differences that would warrant differentiating the operations into separate processes. Therefore, these three operations are included as individual regulated processes in this proposed rule.

4. The Nine Regulated Processes in the Metal Fabrication and Finishing Source Categories

In the above section IV(C)(1), we discussed how we divided dry abrasive blasting operations into three processes for the purposes of this proposed rule. In the above section IV(C)(2), we discussed how we divided painting operations into three processes for regulation. The remaining three operations were not further divided, as discussed above in section (C)(3). The result of these analyses is that we have identified the following nine metal fabrication and finishing processes for this proposed rule:

(1) Dry abrasive blasting objects less than or equal to 8 feet in any dimension, performed in completely enclosed and unvented blast chambers;

(2) Dry abrasive blasting of objects less than or equal to 8 feet in any dimension, performed in vented enclosures;

(3) Dry abrasive blasting of objects greater than 8 feet in any dimension;

(4) Dry grinding and dry polishing with machines;

(5) Machining;

(6) Control of VOHAP from spray painting;

(7) Control of MFHAP in spray painting of objects less than or equal to 15 feet in any dimension;

(8) Control of MFHAP in spray painting of objects greater than 15 feet in any dimension; and

(9) Welding.

D. How was GACT determined?

We are proposing nine standards representing GACT for the metal fabrication and finishing source categories, as provided in CAA section 112(d)(5). The information used to determine the proposed GACT is derived from site visits and written facility surveys, published literature, information from websites of vendors of air pollution control devices, and

discussions with trade organizations and industry experts. We found that the MFHAP emissions from the nine metal fabrication and finishing source categories are already well controlled by the industry, where MFHAP is controlled as PM, a surrogate for MFHAP. The facilities were motivated to control these MFHAP emissions to improve health and safety of the worker's environment and to save raw material use.

We evaluated the control technologies and management practices that are current industry practice for the nine metal fabrication and finishing area source categories. See Section II(C)(3) above, ''Metal Fabrication and Finishing HAP Emission Controls,'' for a discussion of the controls used in the metal fabrication and finishing source categories. We also evaluated the control technologies used in similar industries. We did not identify any major sources of MFHAP in these nine source categories.

We also considered costs and economic impacts in determining GACT. We believe the consideration of costs and economic impacts is especially important for metal fabrication and finishing sources because requiring additional controls would result in only marginal reductions in emissions at very high costs for a modest incremental improvement in MFHAP control, and because more than 90 percent of metal fabrication and finishing facilities are small businesses.

Since we have concluded that the industry was already well-controlled, we have developed GACT requirements to insure that these gains in emission control from the 1990 levels are continued. We explain below in detail our proposed GACT determinations.

1. GACT for Dry Abrasive Blasting

Dry abrasive blasting generates much PM and to a lesser degree MFHAP from substrate material, and any dirt and paint if the substrate was previously used. We found that it is standard industry practice to control indoor blasting by either a total enclosure with no exhaust or a total enclosure exhausted to PM filtration devices where PM is controlled as a surrogate for MFHAP. Facilities in the industry have enclosed these processes due to the significant cost savings that results from the ability to recycle the used blast material.

We also found that it is standard industry practice to perform blasting of large objects outdoors since they cannot fit easily inside enclosures. Many State laws allow dry abrasive blasting outdoors for objects over 8 feet in any one dimension. Therefore, we concluded that this is a separate process different from the indoor blasting which was described above.

Consequently, we developed three distinct processes for dry abrasive blasting operations the purposes of this proposed rule, as follows: (1) Dry abrasive blasting objects less than or equal to 8 feet in any dimension, performed in completely enclosed and unvented blast chambers; (2) dry abrasive blasting of objects less than or equal to 8 feet in any dimension, performed in vented enclosures; and (3) dry abrasive blasting of objects greater than 8 feet in any dimension. The following is a discussion of how we developed GACT for these three processes.

a. *Dry Abrasive Blasting Objects Less Than or Equal to 8 Feet in Any Dimension, Performed in Completely Enclosed and Unvented Chambers.* We found that it is standard industry practice to use total enclosures with no exhaust for some dry abrasive blasting operations of objects less than or equal to 8 feet. Therefore, we are proposing that GACT for this dry abrasive blasting process is management practices because controls in the form of total enclosures are already a part of the process equipment and do not allow PM, as a surrogate for MFHAP, to be emitted during blasting. These two management practices are as follows: (1) Minimize dust generation during emptying of the enclosure; and (2) operate all equipment used in the blasting operation according to manufacturer's instructions. These management practices are standard industry practice for ''good housekeeping'' in and around dusty processes, and are applicable when the chambers are opened for cleaning after blasting is competed.

b. *Dry Abrasive Blasting of Objects Less than or Equal to 8 Feet in any Dimension, Performed in Vented Enclosures.* We found that it is standard industry practice to control some indoor blasting operations of objects less than or equal to 8 feet by using an enclosure exhausted to PM filtration devices, where PM is controlled as a surrogate for MFHAP. Since these dry abrasive blasting operations are enclosed, capturing and filtering the exhaust enables recycling of the blast material, which is a cost savings to the facility and standard industry practice. We learned from the facilities in the industry that the indoor workplace would not be tolerable without the blasting controls that we are proposing as GACT. Therefore, we propose that GACT for this process is an equipment standard of enclosures and filtration that captures and collects the PM emitted, as a surrogate for MFHAP. We are also proposing management practices as GACT that are standard industry practice or ''good housekeeping'' for in and around dusty processes, as follows: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; (2) enclose dusty material storage areas and holding bins, seal chutes and conveyors; and (3) operate all equipment according to manufacturer's instructions.

c. *Dry Abrasive Blasting of Objects Greater Than 8 Feet in any Dimension.* We found that it is standard industry practice to perform outdoor blasting of large objects that cannot fit easily inside an enclosure. We also found that many State laws allow dry abrasive blasting outdoors if performed on objects larger than 8 feet in any one dimension. It is not standard practice in metal fabrication and finishing facilities to enclose these processes and would be a significant cost to the facility to do so because of the large size of the objects, at approximately $110 million per ton of MFHAP removed.

Because of the burden an enclosure requirement would entail for facilities that perform abrasive blasting of large objects, we propose the GACT requirement for objects greater than 8 feet in any dimension, where the blasting is performed outdoors, to be management practices that minimize MFHAP emissions, as follows: (1) Do not perform blasting outside when wind velocity is greater than 25 mph; (2) switch from high PM-emitting blast media (e.g., sand) to low PM-emitting blast media (e.g., steel shot, aluminum oxide), whenever practicable; (3) do not blast substrates having coatings containing lead (>0.1 percent lead), unless enclosures, barriers, or other PM control methods are used to collect the lead particles; (4) do not re-use the blast media unless contaminants (i.e., any material other than the base metal, such as paint residue) have been removed by filtration or screening so that the dry abrasive material conforms to its original size and makeup; (5) keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or

vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; (6) enclose dusty material storage areas and holding bins, seal chutes and conveyors; and (7) operate all equipment according to manufacturer's instructions.

2. GACT for Dry Grinding and Dry Polishing With Machines

We found that it is standard industry practice to capture PM emissions, as a surrogate for MFHAP, from dry grinding and dry polishing with machines, by the use of local exhaust, hoods, or other vacuum devices; and to collect the PM with filtration devices, such as cartridge filters. Facilities have reported that the indoor workplace would not be tolerable without these types of controls on dry grinding and dry polishing with machines.

Therefore, we propose that GACT for dry grinding and dry polishing with machines would be the equipment standard of capture and control with filtration devices. We also propose management practices that are standard industry procedures and common ''good housekeeping'' practices in and around dusty processes, as follows: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; and (2) operate all equipment used in dry grinding and dry polishing with machines according to manufacturer's instructions.

3. GACT for Machining

The majority of the PM released by machining processes consists of large particles or metal shavings that fall immediately to the floor. Any MFHAP that is released would originate from the part or product being machined. We found that it is general industry practice to totally enclose the machining process and/or use lubricants or liquid coolants that do not allow small particles to escape. Therefore, we are proposing that GACT for machining is the following two management and pollution prevention practices: (1) Keep work areas free of excess dust by regular sweeping or vacuuming to control the accumulation of dust and other particles; regular sweeping or vacuuming is defined to be sweeping or vacuuming conducted once per day, once per shift, or once per operation as needed, depending on the severity of dust generation; and (2) operate all equipment used in machining operations according to manufacturer's instructions.

4. GACT for Spray Painting To Control MFHAP

Emissions from spray painting include MFHAP from the paint pigments. Spray painting performed indoors at metal fabrication and finishing area sources is required by OSHA regulations to be performed in an enclosed spray paint booth. We found that these booths are typically equipped with filters for PM control, where PM is a surrogate for MFHAP. Because of the impracticality of enclosing very large objects in booths, we also found that it is common practice in the industry to spray paint large objects outside or in 2- or 3-sided structures. We found that the size of objects typically spray painted outside are approximately 15 feet in any one dimension. Therefore, we determined that there were two distinct sizes of products being painted that affected the manner in which the process was performed: (1) Products greater than 15 feet in any dimension, and (2) products less than or equal to 15 feet in any dimension. Accordingly, we developed GACT requirements for each of these two processes. The following describes our proposed GACT and the rationale for selecting the GACT requirements for these two processes.

a. GACT Requirements for Control of MFHAP in Spray Painting Objects Greater Than 15 Feet in Any Dimension

The GACT requirements in this proposed rule would require owners or operators of affected new and existing spray painting operations to comply with one equipment standard: (1) Use of low-emitting and pollution preventing spray gun technology. The proposed rule also would require two management practices: (1) Spray painter training; and (2) spray gun cleaning.

Spray Gun Technology Requirements—We are proposing that GACT for this proposed rule would require all affected new and existing facilities using spray-applied paints to use HVLP spray guns, electrostatic application, or airless spray techniques. Alternatively, an equivalent technology can be used if it is demonstrated to achieve transfer efficiency comparable to one of the spray gun technologies listed above for a comparable operation, and for which written approval has been obtained from the Administrator or delegated authority.

Spray Painting Training Requirements—We are proposing that GACT for this proposed rule would require all workers that perform spray painting at affected new and existing facilities to be trained, with certification made available that this training has occurred. For the purposes of the proposed training requirements, the facility owner or operator may certify that their employees have completed training during ''in-house'' training programs. Also, facilities that can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the training described above would not be required to provide the initial training required for these painters. The training would need to address the following topics to reduce paint overspray, which has a direct effect on emissions reductions: Spray gun equipment selection, set up, and operation; spray technique for different types of paints to improve transfer efficiency and minimize paint usage and overspray; and routine spray booth and filter maintenance, including filter selection and installation. Spray painters have 180 days to complete training after hiring or transferring into a surface painting job from another job in the facility. The training and certification for this proposed rule would be valid for a period not to exceed 5 years after the date the training is completed.

Spray Gun Cleaning Requirements—We are proposing that GACT for this proposed rule would require all paint spray gun cleaning operations at affected new and existing facilities to use an atomized mist or spray such that the gun cleaning solvent and paint residue is not created outside of the container that collects the used gun cleaning solvent. These gun cleaning methods include hand cleaning of parts, use of a fully enclosed spray gun washer, or a combination of these non-atomizing methods. Hand cleaning is considered equivalent to gun washers as long as the painters do not atomize cleaning solvent from the gun and the spent solvent is collected in a container that is closed when not in use.

b. Rationale for GACT To Control MFHAP in Spray Painting Objects Greater Than 15 Feet in Any Dimension

Some facilities paint large objects (greater than 15 feet) in open air or 2-sided buildings so that the objects can be moved in and out with cranes and other heavy equipment. It is not standard practice in metal fabrication and finishing facilities to enclose these operations in booths and would be a significant cost to the facility to do so because of the large size of the objects, at approximately $20 million per ton of MFHAP removed for large spray booths.

However, in order to minimize paint waste and exposure of the worker to paint overspray, it is standard industry practice for facilities that spray paint large objects to use HVLP equivalent high transfer efficiency spray techniques even though they are not enclosing the paint operation and filtering the exhaust air.

These HVLP spray painting technologies produce a 40 percent decrease in paint consumption and resultant emissions compared to conventional spray guns. Conventional high-pressure air-atomized spray guns have a typical transfer efficiency of about 30 percent while HVLP and other types of high-efficiency spraying use lower air pressures and achieve a transfer efficiency of about 50 percent, or greater, with appropriate operator training. The HVLP spray method we are proposing as GACT is a pollution prevention technology that is standard industry practice and reduces the amount of paint sprayed. The HVLP spray method reduces paint costs to the facility, reduces worker exposure to paint overspray, reduces clean-up requirements, and also reduces MFHAP emissions.

Because of the burden an enclosure requirement would entail for facilities that paint large objects, we propose the equipment standard for GACT for these sources to be a requirement for HVLP spray gun use. We chose the size requirement for indoor spray painting at 15 feet based on industry information. We specifically request comment on our size cut-off on affected sources of this requirement. In addition, we are proposing management practices as GACT to ensure that workers are trained properly in the high efficiency spray painting techniques and that the spry equipment is washed in a way that minimizes atomization of the paint, which can cause MFHAP emissions to occur. The HVLP training and equipment cleaning procedures are common practice in this industry as well as other similar industries. To minimize the impact on small business, the facility owner or operator may perform this training during ''in-house'' training programs. Also, facilities can show that a painter's work experience and/or training have resulted in equivalent training and, therefore, would not be required to provide training at an external location for these painters.

This proposed rule would require all paint spray gun cleaning operations at affected new and existing facilities to be performed such that the gun cleaning solvent and paint residue is not created outside of the container that collects the used gun cleaning solvent. These gun cleaning methods include hand cleaning of parts, use of a fully enclosed spray gun washer, or a combination of these non-atomizing methods. Hand cleaning is considered equivalent to gun washers as long as the painters do not atomize cleaning solvent from the gun and the spent solvent is collected in a container that is closed when not in use. Since facilities that do not currently have an automated gun washer can still comply with the proposed standards by cleaning guns by hand, we do not expect that sources would have any annualized capital costs or operating costs for spray gun cleaning.

c. GACT Requirements for Control of MFHAP in Spray Painting Objects Equal To or Less Than 15 Feet in Any Dimension

This proposed rule would require affected new and existing facilities that are spray painting objects less than or equal to 15 feet in any dimension to comply with two equipment standards: (1) Use of low-emitting and pollution preventing spray gun technology, and (2) use of spray booth PM filters. This proposed rule also would require two management practices: (1) Spray painter training, and (2) spray gun cleaning.

Spray Booth PM Control Requirement—We are proposing that GACT for this proposed rule would require the surface preparation stations or spray booths of affected new and existing facilities to be fitted with fiberglass or polyester fiber filters or other comparable filter technology that can be demonstrated to achieve at least 98 percent control efficiency of paint overspray (also referred to as ''arrestance''). As an alternative compliance option, spray booths may be equipped with a water curtain that achieves at least 98 percent control of MFHAP. The waterspray booths would be required to be operated and maintained according to the manufacturer's specifications.

Spray Gun Technology Requirements—We are proposing that GACT for this proposed rule would require all affected new and existing facilities using spray-applied paints to use HVLP spray guns, electrostatic application, or airless spray techniques. Alternatively, an equivalent technology can be used if it is demonstrated to achieve transfer efficiency comparable to one of the spray gun technologies listed above for a comparable operation, and for which written approval has been obtained from the Administrator or delegated authority.

Spray Painting Training Requirements—We are proposing that GACT for this proposed rule would require all workers that perform spray painting at affected new and existing facilities to be trained, with certification made available that this training has occurred. The training would need to address the following topics to reduce paint overspray, which has a direct effect on emissions reductions: Spray gun equipment selection, set up, and operation; spray technique for different types of paints to improve transfer efficiency and minimize paint usage and overspray; and routine spray booth and filter maintenance, including filter selection and installation. Spray painters have 180 days to complete training after hiring or transferring into a surface painting job from another job in the facility. For the purposes of the proposed training requirements, the facility owner or operator may certify that their employees have completed training during ''in-house'' training programs. Also, facilities that can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the training described above would not be required to provide the initial training required for their painters. The training and certification for this proposed rule would be valid for a period not to exceed 5 years after the date the training is completed.

Spray Gun Cleaning Requirements—We are proposing that GACT for this proposed rule would require all paint spray gun cleaning operations at affected new and existing facilities to use an atomized mist or spray such that the gun cleaning solvent and paint residue is not created outside of the container that collects the used gun cleaning solvent. These gun cleaning methods include hand cleaning of parts, use of a fully enclosed spray gun washer, or a combination of these non-atomizing methods. Hand cleaning is considered equivalent to gun washers as long as the painters do not atomize cleaning solvent from the gun and the spent solvent is collected in a container that is closed when not in use.

d. Rationale for GACT To Control MFHAP in Spray Painting Objects Equal To or Less Than 15 Feet in Any Dimension

We are proposing that GACT for this process includes management practices and equipment standards. Our proposed GACT for this process includes the use of the pollution prevention spray painting technologies such as HVLP spray guns or their equivalent. These spray painting technologies produce a 40 percent decrease in paint consumption and resultant emissions

compared to conventional spray guns. Conventional high-pressure air-atomized spray guns have a typical transfer efficiency of about 30 percent while HVLP and other types of high-efficiency spraying use lower air pressures and achieve a transfer efficiency of about 50 percent, or greater, with appropriate operator training.

The HVLP spray method we are proposing as GACT is a pollution prevention technology that is standard industry practice in this industry as well as other similar industries, and reduces the amount of paint sprayed. The HVLP spray method reduces paint costs to the facility, reduces worker exposure to paint overspray, reduces clean-up requirements, and also reduces MFHAP emissions.

In addition, we are proposing management practices as GACT to ensure that workers are trained properly in the high efficiency spray painting techniques and that the spray equipment is washed in a way that minimizes atomization of the paint, which can cause MFHAP emissions to occur. The HVLP training and equipment cleaning procedures are common practice in this industry as well as other similar industries. To minimize the impact on small business, the facility owner or operator may perform this training during ''in-house'' training programs. Also, facilities can show that a painter's work experience and/or training have resulted in equivalent training and, therefore, would not be required to provide training at an external location for their painters.

We also propose that GACT for spray painting objects less than or equal to 15 feet is the use of a spray booth equipped with a high efficiency PM filter that removes MFHAP. OSHA already requires that all indoor spray painting be performed in an enclosed booth or room, with the exhaust vented through a filter. Therefore, upgrade of a spray booth to include a PM filter to control MFHAP is only a small change to the current process. The PM filters that remove MFHAP also are available at no significant additional cost. Based on our research, we estimate that only 20 percent of the current facilities that do spray painting are expected to require a change in their filter type to be able to control MFHAP and meet the proposed GACT. The costs of the MFHAP filters as well as the costs of high efficiency spray equipment and training are estimated to be offset by the reduced paint costs attributed to the use of high efficiency spray equipment, for those facilities where HVLP is not already in use. In addition, the use of high efficiency spray paint techniques reduces the amount of time the worker spends in painting, allowing the facility to use the worker for other operations or training, and thereby reducing labor costs.

This proposed rule would require all paint spray gun cleaning operations at affected new and existing facilities to be performed such that the gun cleaning solvent and paint residue is not created outside of the container that collects the used gun cleaning solvent. These gun cleaning methods include hand cleaning of parts, use of a fully enclosed spray gun washer, or a combination of these non-atomizing methods. Hand cleaning is considered equivalent to gun washers as long as the painters do not atomize cleaning solvent from the gun and the spent solvent is collected in a container that is closed when not in use. Since facilities that do not currently have an automated gun washer can still comply with the proposed standards by cleaning guns by hand, we do not expect that sources would have any annualized capital costs or operating costs for spray gun cleaning.

5. GACT for Control of VOHAP Emissions From Spray Painting

We are proposing to set GACT for VOHAP emissions from spray painting because the CAA, in § 112(k)(3)(C), provides us with the discretion to regulate these HAP in order to reduce the public health risk posed by the release of any HAP. We found that VOHAP emissions from painting were over 60 percent of the total HAP emissions from the metal fabrication and finishing area source categories in the 2002 EPA NEI and were over 30 times the MFHAP level. We also found that some facilities currently have State permits that allow them to emit high levels of VOHAP from their metal fabrication and finishing painting processes, although their actual emissions have historically been at lower levels. In this regard, we believe that in the time since data were collected for the 2002 NEI, most facilities have begun to use low-VOC and low-VOHAP paints that were developed as a result of a shift in market demand due to the recent paint and coating rules for other sources.

Therefore, we are proposing a spray painting VOHAP content limit of 3.0 pound VOHAP per gallon painting solids as GACT, based on information received from the industry in the 2006 EPA survey and data acquired in previously promulgated EPA rules for other similar industries. A VOHAP limit will also ensure that any new sources will use paints that meet the same VOHAP level as the current industry practice. We specifically request comment on the appropriateness of this part of GACT for metal fabrication and finishing sources.

The proposed GACT would require owners or operators of spray painting operations from affected sources that have the potential to emit VOHAP to use paints containing no more than 3.0 pounds VOHAP per gallon paint solids (0.36 kg/liter) on an annual (12-month) rolling average basis. We are proposing two methods of complying with this GACT standard. One option would require that all paints are demonstrated as meeting the VOHAP limit. The second option would require facilities to meet the VOHAP limit using a 12-month rolling weighted average. In this second option, some paints can be above the VOHAP limit as long as their use is balanced by other paints that are below the limit, such that the overall weighted average of all paints and their VOHAP content is calculated to be at or below the VOHAP limit that would be required by this proposed rule.

The proposed GACT would also require owners or operators of new and existing spray painting operations that have the potential to emit VOHAP to comply with the following two management and pollution prevention practices: (1) Minimize VOHAP emissions during mixing, storage, and transfer of paints; and (2) keep paint and solvent lids tightly closed when not in use.

6. GACT for Welding

Welding generates a small particle size metal fume (<5 μm) that is visible to the human eye at high enough concentrations and which contains MFHAP. Because of recent OSHA rulings to reduce the worker exposure to hexavalent chromium, a common component of most welding fumes, facilities may consider ventilating their welding processes areas beyond the previous levels so that the welding exhaust goes quickly and directly into the environment. Previous to the 2006 OSHA rule and at a lower ventilation rate, a large portion of the welding fumes would have collided with equipment and interior walls and would not have been exhausted outside.

The amount of MFHAP emissions from welding is dependent on a variety of factors including welding techniques, amount of welding performed, and type of metal in the product being welded. In our research we found that welding operations at any one facility vary from day to day, and from product to product. We also found that a change

from one type of welding process to another is not always technically possible for this industry as well as other similar industries. This is demonstrated by the fact that even at an individual facility, different types of welding and fume control strategies are in use. Thus, there is no one single method that is generally used to reduce welding fumes in this industry or other similar industries.

Because heat is needed to melt the welding rod and form the welded joint during the welding process, moving and/or cooling high velocity air in the vicinity of the weld can be detrimental to its success. Therefore, small enclosures or vacuum systems with high exhaust rates close to the welding cannot be used to capture welding fumes. Another difficulty with local exhaust is the need to position and sometimes re-position the capture equipment to be most effective during the welding process without causing more fume to enter the breathing zone of the worker. We studied the practices of metal fabrication and finishing industry as well as other industries that use welding, and determined that control devices are usually used only as a last resort when process variables and/or products dictate a high fume-forming welding technique.

In addition to the technical difficulty of using add-on controls for welding fumes, the control devices are not cost-effective for control of MFHAP and would impose a significant burden on the facilities in the metal fabrication and finishing industry. The estimated costs for use of add-on control equipment for welding is greater than $7 million per ton of MFHAP. Therefore, based on the above technical and cost issues, we are not proposing that GACT is the use of add-on control equipment.

Most facilities have begun to use management and pollution prevention techniques to reduce welding fumes, since these practices are the most efficient and cost-effective way to protect their workers and meet the OSHA standards. Because of the difficulties with using control equipment for welding, we propose as GACT a set of management practices that minimize fume generation for welding, as practicable to the type of welding used or needed and the type of product being welded. We also propose that control systems with add-on control devices that achieve at least 85 percent control can be used as a compliance option instead of the management practices, since these control systems provide an equivalent control of MFHAP.

The following are the management practices we are proposing as GACT for welding processes in the metal fabrication and finishing industries:

(a) Use low fume welding processes whenever practicable. These welding processes include but are not limited to: GMAW—also called MIG; GTAW—also called TIG; PAW; SAW; and all welding processes that do not use a consumable electrode.

(b) Use shielding gases, as practicable;

(c) Use an inert carrier gas, such as argon, as practicable to the type of welding used;

(d) Use low or no-HAP welding materials and substrates as much as practicable;

(e) Operate with a welding angle close to 90°, as practicable to the type of welding used and physical characteristics of the substrate;

(f) Optimize electrode diameter, as practicable;

(g) Operate with lower voltage and current, as practicable;

(h) Use low fume wires, as practicable;

(i) Optimize shield gas flow rate, as practicable;

(j) Use low or optimized torch speed, as practicable; and

(k) Use pulsed-current power supplies, as practicable.

E. How did we select the compliance requirements?

We are proposing notification, reporting, and recordkeeping requirements to ensure compliance with this proposed rule. We are requiring an Initial Notification and Notification of Compliance Status. These requirements are consistent with Section 63.9(h) of the General Provisions of this part. For demonstrating initial compliance, this proposed rule would require affected facilities to certify that the required management practices have been implemented and that all equipment associated with the processes is being properly operated and maintained. For demonstrating continuous compliance, the proposed requirements include annual certifications that the management practices are being followed and all equipment associated with the processes is being properly operated and maintained. This proposed rule specifies recordkeeping requirements in accordance with Section 63.10 of the General Provisions. These records are needed for EPA to determine compliance with specific rule requirements.

Because MFHAP emissions from the metal fabrication and finishing sources are visible emissions, we are requiring visual emissions or opacity testing performed in a graduated schedule, from daily to weekly to monthly, to determine whether or not the process is in compliance for five of the nine standards described above: Two of the three process types of dry abrasive blasting (not to include dry abrasive blasting of objects less than or equal to 8 feet in completely enclosed chambers), machining, and dry grinding and dry polishing with machines, and welding.

We believe that compliance with GACT using the graduated testing schedule for visual emissions and opacity will enable facilities with a low level of emissions to quickly reach a low frequency of testing thereby minimizing the impact of this proposed rule on lower emitting sources. On the other hand, facilities with higher levels of emissions may be required to prepare a SWMP and give careful thought to the pollution prevention management practices that can reduce emissions at their facility. The use of visual emissions or opacity testing, as opposed to emission testing, is a lower cost method to determine compliance that accommodates the different levels of activity that can occur from facility to facility, and from product to product and day to day within the same facility, so that there is not a large cost impact on small businesses.

Under this proposed rule, each facility would prepare an annual compliance certification and keep it on site in a readily-accessible location. Facilities would be required to submit this annual compliance report only if there are any exceedences or deviations from the equipment and management practice requirements during the year, and would include these exceedence reports with their compliance report. We recognize that many of these facilities are small businesses; therefore we are requiring the submission of this annual compliance certification only if exceedences occur during the year so that there is not an undue economic burden on small businesses.

We are proposing a 2-year period for existing facilities to achieve compliance. We believe the 2-year period provides sufficient time for facilities to identify their applicability to the rule and make any necessary changes to comply with the standards. All new area sources would be required to comply with this proposed rule on the date of publication of the final rule or upon startup, whichever is later.

F. How did we decide to exempt this area source category from title V permitting requirements?

We are proposing exemption from title V permitting requirements for affected facilities in the metal fabrication and finishing area source categories for the reasons described below.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

The four factors that EPA identified in the Exemption Rule for determining whether title V is ''unnecessarily burdensome'' on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing these factors in the Exemption Rule, we further explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. We have determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows here.

In considering the proposed exemption from title V requirements for sources in the category affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in this proposed NESHAP for the metal fabrication and finishing area source categories. EPA determined that the management practices currently used by metal fabrication and finishing facilities is GACT, and this proposed rule would require recordkeeping, which serves as monitoring and deviation reporting, to assure compliance with this NESHAP. The monitoring component of the first factor favors title V exemption because this proposed standard would provide for monitoring in the form of visible emissions and opacity testing and recordkeeping that would assure compliance with the requirements of this proposed rule. This proposed NESHAP would also require the preparation of annual compliance certification reports and submission of this report if there are any deviations during the year, which should call attention to those facilities in need of supervision to the State agency in the same way as a title V permit. Records would be required to ensure that the management practices are followed, including such records as results of the visual emissions and opacity tests, and spray painting training of the employees.

As part of the first factor, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6. For any affected metal fabrication and finishing facility, this proposed NESHAP would require an initial notification and a notification of compliance status. This proposed Metal Fabrication and Finishing NESHAP also would require affected facilities to maintain records showing compliance with the required equipment standard and management practices. The information that would be required in the notifications and records is similar to the information that would be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). We acknowledge that title V might impose additional compliance requirements on this category, but we have determined that the monitoring, recordkeeping, and reporting requirements of this proposed NESHAP for the metal fabrication and finishing source categories would be sufficient to assure compliance with the provisions of this NESHAP, and title V would not significantly improve those compliance requirements.

For the second factor, we determine whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. EPA does not have specific estimates for the burdens and costs of permitting the metal fabrication and finishing area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and

understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for metal fabrication and finishing facilities, we found that over 90 percent of the approximately 5,800 metal fabrication and finishing facilities affected by this proposed rule are small businesses. These small sources lack the technical resources that would be needed to comply with permitting requirements and the financial resources that would be needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant costs on these area sources, and, accordingly, we propose that title V would be a significant burden for sources in this category. More than 90 percent of the facilities that would be subject to this proposed rule are small businesses with limited resources, and under title V they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Furthermore, given the number of sources in the category and the relatively small size of many of those sources, it would likely be difficult for them to obtain assistance from the permitting authority. Thus, we believe that the second factor strongly supports the proposed title V exemption for metal fabrication and finishing facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained for the second factor that the costs of compliance with title V would impose a significant burden on nearly all of the approximately 5,800 metal fabrication and finishing facilities affected by this proposed rule. We also believe in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the proposed NESHAP would assure compliance with the equipment standards and management practices imposed in the NESHAP. In addition, in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are so high, and the potential for gains in compliance is low, we propose that title V permitting is not justified for this source category. Accordingly, the third factor supports the proposed title V exemptions for metal fabrication and finishing area sources.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. There are State programs in place to enforce this area source NESHAP, and we believe that the State programs will be sufficient to assure compliance with this NESHAP. We also note that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. We further note that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. These additional programs would supplement and enhance the success of compliance with this area source NESHAP. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA, combined with the additional assistance programs would be sufficient to assure compliance with this area source NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to assure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we do not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, General Provisions, subpart E.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the Metal Fabrication and Finishing NESHAP without relying on title V permitting. Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in the NESHAP because the requirements in this proposed rule are specifically designed to assure compliance with the standards and management practices imposed on this area source category.

We further maintain that the economic and non-economic costs of compliance with title V, in conjunction with the likely difficulty this number of small sources would have obtaining assistance from the permitting authority, would impose a significant burden on the sources. In addition, the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Thus, we propose that title V permitting is ''unnecessarily burdensome'' for the metal fabrication and finishing area source categories.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome,'' EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the metal fabrication and finishing area source categories from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the metal

fabrication and finishing area source categories from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements applicable to these area sources. We also have no reason to think that new sources would be substantially different from the existing sources. In addition, we explained in the Exemption Rule that requiring permits for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on this analysis, we believe that title V exemptions for metal fabrication and finishing area sources would not adversely affect public health, welfare, or the environment for all of the reasons previously explained.

For the reasons stated here, we are proposing to exempt the metal fabrication and finishing area source categories from title V permitting requirements.

V. Impacts of the Proposed Standards

A. What are the air impacts?

Since 1990, the metal fabrication and finishing industry has reduced their air impacts by voluntary controls that were likely motivated by concerns for worker safety. These controls would have reduced approximately 122 tons of the MFHAP (cadmium, chromium, lead, manganese, and nickel) attributed to this industry in the 1990 urban HAP inventory. Although there are no additional air emission reductions as a result of this proposed rule, we believe that this proposed rule will assure that the emission reductions made by the industry since 1990 will be maintained.

Along with the HAP described above, there is an undetermined amount of VOHAP and PM that has been co-controlled in the metal fabrication and finishing processes that contributed to criteria pollutant emissions in 1990.

B. What are the cost impacts?

For all metal fabrication and finishing processes except painting, all facilities are expected to be achieving the level of control required by the proposed standard. Therefore, no additional air pollution control devices or systems would be required. No capital costs are associated with this proposed rule, and no operational and maintenance costs are expected because facilities are already following the manufacturer's instructions for operation and maintenance of pollution control devices and systems. Many of the management practices required by this proposed rule are pollution prevention and have the co-benefit to provide a cost savings for facilities.

The annual cost of monitoring, reporting, and recordkeeping for this proposed rule is estimated at approximately $735 per facility per year after the first year with an additional $385 per facility for one-time costs in the first year. While most of these facilities are small, the costs are expected to be approximately 0.01 percent of revenues.

The annual estimate includes 2 hours per facility per year for preparing annual compliance reports. The annual estimate also includes an industry-wide average of 13 hours a year per facility for visible emissions monitoring of two buildings or sources. Although it is possible that some facilities would initially be required by this proposed rule to perform daily visual emissions or opacity testing, the graduated compliance test schedule of this proposed rule allows for decrease in frequency to once a month if visible emissions are not found. This monitoring schedule is reflected in our estimate.

In the above estimated annual costs, we have included approximately 11,600 labor-hours among the 5,800 sources for exceedence reports and preparation of a SWMP. This estimate assumes that 80 percent of the facilities (4,640 facilities) will have no exceedences; 15 percent (870 facilities) will have one exceedence per year; 4 percent (232 facilities) will have two exceedences per year; and 1 percent (58 facilities) will have three exceedences per year and need to prepare an initial SWMP. The labor hours estimated for each exceedence report is 2 hours, 16 hours are estimated for preparation of the SWMP, and 0.25 hours for recording a test result. For subsequent years, facilities with a SWMP will only need to update their SWMP.

The above analysis shows that we expect that the maximum number of exceedences per year for any facility would be three exceedences. According to the monitoring requirements for welding sources, which are the only metal fabrication and finishing sources that are not required to use add-on control devices, the second exceedence in any one year requires the facility to perform an EPA Method 9 opacity test to determine whether the exhaust from the process or building is less than or greater than 20 percent opacity. If the EPA Method 9 test shows an opacity greater than 20 percent, the facility would be required to prepare a SWMP to address the emission control strategy that the facility is planning for the future to minimize PM emissions from the process. We expect that the requirement to prepare a SWMP will cause the facility to initiate changes in the facility's management practices or use of add-on control equipment such that the facility will subsequently be able to meet the opacity or visible emission requirements in this proposed rule. Therefore, we expect no further exceedences by the facilities after being required to prepare a SWMP. We specifically invite comment on these assumptions for the proposed rule.

The total number of labor hours included in this annual cost estimate includes 2 hours for preparation of the Initial Notification in the first year; 4 hours for preparation of the Notification of Compliance Status in the first year, and 2 hours for preparing the Annual Compliance Certification at the end of the year, for an industry-wide average estimate of 24 hours per facility in the first year, which include the 13 hours per facility for monitoring. In the second year, the estimated industry-wide average labor hours per facility falls to 18 hours, of which 13 hours are due to monitoring.

We estimate that the proposed standards for spray painting VOHAP content will have no net annual cost to spray painting operations. The cost of lower VOHAP content paints has been reduced since the market for these paints has increased due to other paint and coating rules promulgated by EPA. Therefore, there is no additional cost

estimated for lower VOHAP content paints required by this proposed rule.

We estimate that the proposed standards for spray painting will have no net annual cost to spray painting operations. The initial cost of complying with these proposed standards would be off-set and recovered over time by cost savings as a result of more efficient use of labor and materials by surface coating operations. The initial costs for surface coating operations may include purchase of improved spray booth filters, automated enclosed gun washers, HVLP spray guns, and painter training, if needed to comply with the proposed standards. However, spray painting processes are already required by OSHA standards to perform spray painting in a spray booth or similar enclosure, so theses costs would not be attributed to these proposed standards. Therefore, we have not estimated costs required to install spray booths to comply with the proposed standards. We specifically request comment on the appropriateness of this assumption for the metal fabrication and finishing industries.

The proposed standards specify that certain types of filters have to be used on the spray booth exhaust to minimize MFHAP emissions, and these filters are not addressed by OSHA standards. Some spray painting facilities may need to replace their current filters for ones with higher control efficiency, but the higher efficiency filters are readily available and will not result in any additional cost.

This proposed rule also would require all affected new and existing facilities to perform their paint spray gun cleaning operations such that gun cleaning solvent and paint residue is not created outside of the container and used gun cleaning solvent is collected. These gun cleaning methods include hand cleaning of parts, use of a fully enclosed spray gun washer, or a combination of these non-atomizing methods. Hand cleaning is considered equivalent to gun washers as long as the painters do not atomize cleaning solvent from the gun and the spent solvent is collected in a container that is closed when not in use. Since facilities that do not currently have an automated gun washer can still comply with the proposed standards by cleaning guns by hand, we do not expect that sources would have any annualized capital costs or operating costs for spray gun cleaning. We specifically request comment on this assumption.

If spray gun washers are used, the annual costs for these washers would be offset by the reduced labor to clean spray guns and reduced costs for cleaning solvent purchase and disposal. Spray gun washers are automated so that after loading the spray gun in the washer, the painters can perform other tasks while the spray guns are being cleaned. Automated spray gun washers are also capable of re-using solvent for gun cleaning to minimize solvent consumption and waste disposal.

This proposed rule also requires that facilities certify that their painters have knowledge of the proper use of HVLP or equivalent equipment. However, facilities can show that a painter's work experience and/or training have resulted in equivalent training and, therefore, would not be necessarily required to provide training at an external location for these painters. In addition, this proposed rule permits facilities to perform hands-on or in-house training to meet the training requirements. Therefore, we believe that painter training costs would have a low impact on the affected facilities. The following discussion summarizes and further illustrates this point.

First, many facilities already send their painters to training sponsored by paint companies and trade organizations. Paint companies sponsor painter training so that the paint company can reduce warranty claims on their paint products. These training courses already cover much of the same material required by this proposed rule. Therefore, this proposed rule would not impose new training costs on these facilities that already participate in training. Second, facilities may perform training ''in-house'' or show that a painter's work experience and/or training have resulted in equivalent training and, therefore, would not be required to provide training at an external location for these painters. Third, the estimated training cost could be offset by reduced coating costs if the training results in reduced coating consumption. Data from the STAR® program indicate that painters who complete this training can decrease the amount of coating sprayed by about 20 percent per job. We estimate that if a typical facility reduced their coating consumption and costs by about 4 percent per year, the cost savings would equalize the increased cost of training after 1 year, and there would be no net cost in training. To recover the cost of training over 5 years, a typical facility would need to reduce their coating consumption by slightly less than 1 percent. Fourth, all painting in the metal fabrication and finishing industries is not done by spraying. Many metal fabrication and finishing facilities perform painting by dip painting or other coating techniques that are not subject to the spray painting standards of this proposed rule. Therefore, spray painting training impacts would be lower than that estimated based on typical assumptions of the number of spray painters per facility. In summary, EPA estimates that the proposed requirements for surface coating operations would not result in any net increase in annual or capital costs from the control requirements for surface coating operations. We specifically request comment on this aspect of this proposed rule.

Information on our cost impact estimates on the sources is available in the docket for this proposed rule. (See Docket Number EPA–HQ–OAR–2006–0306).

C. What are the economic impacts?

The only measurable costs attributable to these proposed standards are associated with the monitoring, recordkeeping, and reporting requirements. These proposed standards are estimated to impact a total of 5,800 area source facilities. We estimate that over 5,300 of these facilities are small entities. Our analysis indicates that this proposed rule would not impose a significant adverse impact on any facilities, large or small since these costs are approximately 0.01 percent of revenues.

D. What are the non-air health, environmental, and energy impacts?

No detrimental secondary impacts are expected to occur from the non-painting sources because all facilities are currently achieving the GACT level of control. No facilities would be required to install and operate new or additional control devices or systems, or install and operate monitoring devices or systems. No additional solid waste would be generated as a result of the PM emissions collected and there are no additional energy impacts associated with operation of control devices or monitoring systems for the non-painting sources.

We expect no increase in generation of wastewater or other water quality impacts. None of the control measures considered for this proposed rule generates a wastewater stream. The installation of spray booths and enclosed gun washers, and increased worker training in the proper use and handling of coating materials should reduce worker exposure to harmful chemicals in the workplace. This should have a positive benefit on worker health, but this benefit cannot be quantified in the scope of this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to 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 2298.01.

The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This proposed NESHAP would require metal fabrication and finishing area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records would be required to demonstrate compliance with operation and maintenance of capture and control devices, VOHAP content of paints, and other management practices. The owner or operator of a metal fabrication and finishing facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A). Annual compliance certifications and annual exceedence reports would be required instead of the semiannual excess emissions reports required by the NESHAP General Provisions.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 35,268 labor hours per year at a cost of $1.1 million or approximately $580 per facility. The average annual reporting burden is six hours per response, with approximately three responses per facility for 1,933 respondents. The only costs attributable to these proposed standards are associated with the monitoring, recordkeeping, and reporting requirements. There are no capital, operating, maintenance, or purchase of services costs expected as a result of this proposed rule.

Although it is possible that some facilities would initially be required by this proposed rule to record the results of daily visual emissions or opacity testing, the graduated compliance test schedule of this proposed rule allows for decrease in frequency to once a month if emissions are not found. Also, the requirement for preparation of a SWMP is expected to result in a maximum of three exceedences from 1 percent (58) of the facilities because of the pollution prevention focus of the SWMP. Burden is defined at 5 CFR 1320.3(b).

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 part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this action, which includes this ICR, under Docket ID number EPA–HQ–OAR–2006–0306. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, *Attention:* Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 3, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by May 5, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact a total of 5,800 area source metal fabrication and finishing facilities; over 5,300 of these facilities are estimated to be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 0.01 percent. The analysis also shows that none of the small entities would incur economic impacts exceeding three percent of its revenue. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next three years, and consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The standards represent practices and controls that are common throughout the sources engaged in metal fabrication and finishing. The standards also require minimal amount of recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from small businesses in our surveys, consultation with small business representatives on the State and national level, and industry representatives that are affiliated with small businesses.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 by State, local, and tribal governments, in the aggregate, or by 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 proposed 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. This proposed rule is not expected to impact State, local, or tribal governments. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule contains no requirements that apply to such governments, and impose no obligations upon them. Therefore, this proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 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 Executive Order 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 Advancement Act

Section 12(d) of the National Technology Transfer and 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 impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable VCS. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Methods 24 and 311 in this proposed rule. In addition, we are proposing to use ASHRAE Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992,'' to measure paint booth filter efficiency and to measure the control efficiency of paint overspray arrestors with spray-applied paintings. This method will enable owner/operators to determine their facility's compliance with the spray booth filter requirement of this proposed rule.

We are also proposing to use two methods from the California South Coast Air Quality Management District: ''Spray Equipment Transfer Efficiency Test Procedure For Equipment User, May 24, 1989,'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002,'' as methods to demonstrate the equivalency of spray gun transfer efficiency for spray

guns that do not meet the definition of HVLP, airless spray, or electrostatic spray. These methods will enable owner/operators to determine their facility's compliance with the HVLP requirement of this proposed rule.

We also cite in this proposed rule three ASTM methods: ASTM Method D2697–03, ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' for determining the volume fraction of paint solids; and ASTM D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' for determining the average density of volatile matter in the spray paints and coatings.

In addition to the VCS already cited in this proposed rule, EPA Method 24 and 311 already incorporate VCS. The EPA Method 311 is a compilation of five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94. The EPA Method 24 incorporates six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, 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.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it 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 population. The nationwide standards would reduce HAP emissions and thus decrease the amount of emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: March 20, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraphs (b)(25) and (26), (d)(7) and (8), and (l)(1); and adding new paragraph (b)(66) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(25) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3161(f)(1), 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), 63.5160(c), and 63.11516(e)(3)(ii)(A).

(26) ASTM D1475–98, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for §§ 63.3151(b), 63.3941(b)(4), 63.3941(c), 63.3951(c), 63.4141(b)(3), 63.4141(c), 63.4551(c), 63.11516(e)(3)(iii), 63.11516(e)(3)(iv), 63.11516(e)(4)(iii), and 63.11516(e)(4)(iv).

* * * * *

(66) ASTM D2697–03, Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for § 63.11516(e)(3)(ii)(A).

* * * * *

(d) * * *

(7) California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989,'' IBR approved for § 63.11173(e)(3) and § 63.11516(d)(2) of subpart XXXXXX of this part.

(8) California South Coast Air Quality Management District's ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002,'' IBR approved for §§ 63.11173(e) and 63.11516(d)(2).

* * * * *

(l) * * *

(1) American Society of Heating, Refrigerating, and Air Conditioning Engineers Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992,'' IBR approved for §§ 63.11173(e)(2)(i) and 63.11516(d)(1)(ii).

* * * * *

3. Part 63 is amended by adding subpart XXXXXX consisting of §§ 63.11514 through 63.11523 and tables 1 through 4 to read as follows:

Subpart XXXXXX—National Emission Standards for Hazardous Air Pollutants Area Source Standards for 9 Metal Fabrication and Finishing Source Categories Applicability and Compliance Dates

Sec.
63.11514 Am I subject to this subpart?
63.11515 What are my compliance dates?

Standards and Compliance Requirements

63.11516 What are my standards and management practices?
63.11517 What are my monitoring requirements?
63.11518 [Reserved]
63.11519 What are my notification, recordkeeping, and reporting requirements?
63.11520 [Reserved]

Other Requirements and Information

63.11521 Who implements and enforces this subpart?
63.11522 What definitions apply to this subpart?
63.11523 What General Provisions sections apply to this subpart?

Tables to Subpart XXXXXX

Table 1 to Subpart XXXXXX of Part 63—Description of Source Categories Affected by This Subpart
Table 2 to Subpart XXXXXX of Part 63—Default Organic HAP Mass Fraction for Solvents and Solvent Blends

Table 3 to Subpart XXXXXX of Part 63—Default Organic HAP Mass Fraction for Petroleum Solvent Groups
Table 4 to Subpart XXXXXX of Part 63—Applicability of General Provisions to Metal Fabrication or Finishing Area Sources

Subpart XXXXXX—National Emission Standards for Hazardous Air Pollutants Area Source Standards for 9 Metal Fabrication and Finishing Source Categories Applicability and Compliance Dates

§ 63.11514 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an area source of metal fabrication or finishing metal HAP (MFHAP), defined to be the compounds of cadmium, chromium, lead, manganese, and nickel, or a source of volatile organic HAP (VOHAP) from spray painting operations, which performs metal fabrication or finishing operations in one of the following nine source categories listed in paragraphs (a)(1) through (9) of this section. Descriptions of these source categories are shown in Table 1 of this subpart.

(1) Electrical and Electronic Equipment Finishing Operations;

(2) Fabricated Metal Products;

(3) Fabricated Plate Work (Boiler Shops);

(4) Fabricated Structural Metal Manufacturing;

(5) Heating Equipment, except Electric;

(6) Industrial Machinery and Equipment: Finishing Operations;

(7) Iron and Steel Forging;

(8) Primary Metal Products Manufacturing; and

(9) Valves and Pipe Fittings.

(b) The provisions of this subpart apply to each new and existing affected source listed and defined in paragraphs (b)(1) through (5) of this section at all times.

(1) A dry abrasive blasting metal fabrication or finishing affected source is the collection of all equipment and activities necessary to perform dry abrasive blasting operations, which use MFHAP or perform metal fabrication or finishing operations that have the potential to emit MFHAP.

(2) A machining metal fabrication or finishing affected source is the collection of all equipment and activities necessary to perform machining metal fabrication or finishing operations which use MFHAP or perform metal fabrication or finishing operations that have the potential to emit MFHAP.

(3) A dry grinding and dry polishing with machines metal fabrication or finishing affected source is the collection of all equipment and activities necessary to perform dry grinding and dry polishing with machines metal fabrication or finishing operations which use MFHAP or perform metal fabrication or finishing operations that have the potential to emit MFHAP.

(4) A spray painting metal fabrication or finishing affected source is the collection of all equipment and activities necessary to perform spray-applied painting operations on metal substrates using paints which contain VOHAP or MFHAP. A spray painting metal fabrication or finishing affected source includes all equipment used to apply cleaning materials to a substrate to prepare it for paint application (surface preparation) or to remove dried paint; to apply a paint to a substrate (paint application) and to dry or cure the paint after application; or to clean paint operation equipment (equipment cleaning). If you are subject to the provisions of this subpart, you are not subject to the provisions of subpart HHHHHH of this part, National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, for affected source(s) subject to the requirements of paragraphs (b)(1) through (5) of this section.

(5) A welding metal fabrication or finishing affected source is the collection of all equipment and activities necessary to perform welding operations which use MFHAP, or perform metal fabrication or finishing operations that have the potential to emit MFHAP.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source, as defined in § 63.2, ''General Provisions'' to part 63, before April 3, 2008.

(d) An affected source is new if you commenced construction or reconstruction of the affected source, as defined in § 63.2, ''General Provisions'' to part 63, on or after April 3, 2008.

(e) This subpart does not apply to research or laboratory facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(f) This subpart does not apply to tool or equipment repair operations, or facility maintenance as defined in § 63.11522, ''Definitions.''

(g) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11515 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart within two years of the date of publication of the final rule in the **Federal Register**, except for spray painter training required by § 63.11516(d)(8), ''Standards for control of MFHAP in spray painting.''

(b) If you start up a new affected source after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63. 11516 What are my standards and management practices?

(a) *Dry abrasive blasting metal fabrication or finishing standards.* If you own or operate a new or existing dry abrasive blasting metal fabrication or finishing affected source you must comply with the requirements in paragraphs (a)(1) through (3) of this section, as applicable.

(1) *Standards for dry abrasive blasting of objects less than or equal to 8 feet in any one dimension, performed in totally enclosed and unvented blast chambers.* If you own or operate a new or existing dry abrasive blasting metal fabrication or finishing affected source which consists of an abrasive blasting chamber that is totally enclosed and unvented, as defined in § 63.11522, ''Definitions,'' you must implement management practices to minimize emissions of MFHAP. These management practices are the practices specified in paragraph (a)(1)(i) of this section. You must demonstrate that management practices are being implemented by complying with the requirements in paragraphs (a)(1)(ii) through (iv) of this section.

(i) Management practices for totally enclosed and unvented abrasive blasting chamber affected sources are to:

(A) Minimize dust generation during emptying of abrasive blasting enclosures; and

(B) Operate all equipment associated with dry abrasive blasting operations according to the manufacturer's instructions.

(ii) You must perform visual determinations of fugitive emissions as specified in § 63.11517(b), ''Monitoring Requirements,'' in close proximity to the total enclosed and unvented dry abrasive blasting chamber.

(iii) You must keep a record of all visual determinations of fugitive emissions along with any corrective actions taken in accordance with the requirements in § 63.11519(c)(2), ''Notification, recordkeeping, and reporting requirements.''

(iv) If visible fugitive emissions are detected, you must comply with the requirements in paragraphs (a)(1)(iv)(A) and (B) of this section.

(A) Perform corrective actions as needed until the visible emissions are eliminated, at which time you must perform a follow-up inspection for visible emissions in accordance with § 63.11517(a), ''Monitoring Requirements.'' Corrective actions include, but are not limited to, inspection and repositioning of the blasting chamber, adjusting the blasting mechanism, and repairing leaks.

(B) Report all instances when visible emissions are detected, along with the corrective actions taken and the results of subsequent follow-up determinations for visible emissions, along with your annual compliance report, as required by § 63.11519(b)(5), ''Notification, recordkeeping, reporting requirements.''

(2) *Standards for dry abrasive blasting of objects less than or equal to 8 feet in any one dimension, performed in vented enclosures.* If you own or operate a new or existing dry abrasive blasting metal fabrication or finishing affected source which consists of a dry abrasive blasting operation which has a vent allowing any air or blast material to escape, you must comply with the requirements in paragraphs (a)(2)(i) through (v) of this section. As an alternative, dry abrasive blasting operations for which the items to be blasted exceed 8 feet (2.4 meters) in any dimension, may be performed outdoors, subject to the requirements in paragraph (a)(3) of this section.

(i) You must capture emissions and vent them to a filtration control device. You must demonstrate compliance with this requirement by maintaining a record of the manufacturer's specifications for the capture and control devices, as specified by the requirements in § 63.11519(c)(4), ''Notification, recordkeeping, and reporting requirements.'' If you control emissions with a device other than a filtration device, you must establish that the alternate control device is at least equivalent, according to § 63.6(g) of the ''General Provisions'' to part 63.

(ii) You must implement the management practices to minimize emissions of MFHAP as specified in paragraphs (a)(2)(ii)(A) through (C) of this section.

(A) You must keep work areas free of excess MFHAP material by sweeping or vacuuming dust once per day, once per shift, or once per operation, as needed depending on the severity of dust generation; and

(B) You must enclose dusty material storage areas and holding bins, seal chutes and conveyors; and

(C) You must operate all equipment associated with dry abrasive blasting operations according to manufacturer's instructions.

(iii) To demonstrate that management practices are being implemented, you must perform visual determinations of fugitive emissions as specified in § 63.11517(b), ''Monitoring Requirements,'' at the outlet of the vent or stack to which the dry abrasive blasting operation and any control system are vented.

(iv) You must keep a record of all visual determinations of fugitive emissions along with any corrective action taken in accordance with the requirements in § 63.11519(c)(2), ''Notification, recordkeeping, and reporting requirements.''

(v) If visible fugitive emissions are detected, perform corrective actions as needed until the visible fugitive emissions are eliminated, at which time you must comply with the requirements in paragraphs (a)(2)(v)(A) and (B) of this section.

(A) Perform a follow-up inspection for visible fugitive emissions in accordance with § 63.11517(a), ''Monitoring Requirements.'' Corrective actions include, but are not limited to, inspecting and replacing filters; and inspecting, repairing, and/or correcting enclosure and exhaust air flow, so that the enclosure air is directed into the filtration device.

(B) Report all instances where visible emissions are detected, along with any corrective action taken and the results of subsequent follow-up inspections for visible emissions, along with your annual compliance report, as required by § 63.11519(b)(5), ''Notification, recordkeeping, and reporting requirements.''

(3) *Standards for dry abrasive blasting of objects greater than 8 feet in any one dimension.* If you own or operate a new or existing dry abrasive blasting metal fabrication or finishing affected source which consists of a dry abrasive blasting operation which is performed outdoors, you must implement management practices to minimize emissions of MFHAP as specified in paragraph (a)(3)(i) of this section. You must demonstrate that management practices are being implemented by complying with the requirements in paragraphs (a)(3)(ii) through (iv) of this section.

(i) Management practices for outdoor dry abrasive blasting metal fabrication or finishing affected sources are the practices specified in paragraphs (a)(3)(i)(A) through (G) of this section.

(A) Keep work areas free of excess MFHAP material by sweeping or vacuuming dust once per day, once per shift, or once per operation, as needed depending on the severity of dust generation; and

(B) Enclose dusty material storage areas and holding bins, seal chutes and conveyors; and

(C) Operate all equipment associated with dry abrasive blasting operations according to manufacturer's instructions; and

(D) No dry abrasive blasting shall be performed during a wind event, as defined in § 63.11522, ''Definitions;'' and

(E) No dry abrasive blasting shall be performed on substrates having paints containing lead (greater than 0.1 percent lead) unless enclosures or barriers are employed, or similar precautions are taken to collect the lead-bearing emissions or prevent them from being dispersed; and

(F) Dry abrasive blasting media shall not be re-used unless contaminants (i.e., any material other than the base metal, such as paint residue) have been removed by filtration or screening, and the abrasive material conforms to its original size; and

(G) Whenever practicable, switch from high particulate matter (PM)-emitting blast media (e.g., sand) to low PM-emitting blast media (e.g., steel shot, aluminum oxide.), where PM is a surrogate for MFHAP.

(ii) You must perform visual determinations of fugitive emissions, as specified in § 63.11517(b), ''Monitoring Requirements,'' at the fenceline or property border nearest to the outdoor dry abrasive blasting operation.

(iii) Keep a record of all visual determinations of fugitive emissions along with any corrective action taken in accordance with the requirements in § 63.11519(c)(2), ''Notification, recordkeeping, and reporting requirements.''

(iv) If visible fugitive emissions are detected, perform corrective actions until the visible fugitive emissions are eliminated, at which time you must comply with the requirements in paragraphs (a)(3)(iv)(A) and (B) of this section.

(A) Perform a follow-up inspection for visible fugitive emissions in accordance with § 63.11517(a), ''Monitoring Requirements.''

(B) Report all instances where visible emissions are detected, along with any

corrective action taken and the results of subsequent follow-up inspections for visible emissions, along with your annual compliance report as required by § 63.11519(b)(5), ''Notification, recordkeeping, and reporting requirements.''

(b) *Standards for machining.* If you own or operate a new or existing machining metal fabrication or finishing affected source, you must implement management practices to minimize emissions of MFHAP as specified in paragraph (b)(1) of this section. You must demonstrate that management practices are being implemented by complying with the requirements in paragraphs (b)(2) through (4) of this section.

(1) Machining affected sources must comply with the management practices specified in paragraphs (b)(1)(i) and (ii) of this section.

(i) Keep work areas free of excess MFHAP material by sweeping or vacuuming once per day, once per shift, or once per operation, as needed depending on the severity of dust generation; and

(ii) Operate all equipment associated with machining according to manufacturer's instructions.

(2) You must perform visual determinations of fugitive emissions, as specified in § 63.11517(b), ''Monitoring Requirements,'' at an exit or opening of the building containing the machining metal fabrication or finishing operation.

(3) You must keep a record of all visual determinations of fugitive emissions along with any corrective action taken in accordance with the requirements in § 63.11519(c)(2), ''Notification, recordkeeping, and reporting requirements.''

(4) If visible fugitive emissions are detected, perform corrective actions until the visible fugitive emissions are eliminated, at which time you must comply with the requirements in paragraphs (b)(4)(i) and (ii) of this section.

(i) You must perform a follow-up inspection for visible fugitive emissions in accordance with § 63.11517(a), ''Monitoring Requirements.''

(ii) You must report all instances where visible emissions are detected, along with any corrective action taken and the results of subsequent follow-up inspections for visible emissions, along with your annual compliance report as required by § 63.11519(b)(5), ''Notification, recordkeeping, and reporting requirements.''

(c) *Standards for dry grinding and dry polishing with machines.* If you own or operate a new or existing dry grinding and dry polishing with machines metal fabrication or finishing affected source, you must comply with the requirements of paragraphs (c)(1) through (5) of this section.

(1) You must capture emissions and vent them to a filtration control device. You must demonstrate compliance with this requirement by maintaining a record of the manufacturer's specifications for the capture and control devices, as specified by the requirements in § 63.11519(c)(4), ''Notification, recordkeeping, and reporting requirements.'' If you control emissions with a device other than a filtration device, you must establish that the alternate control device is at least equivalent, according to § 63.6(g) of the ''General Provisions'' to part 63.

(2) You must implement management practices to minimize emissions of MFHAP as specified in paragraphs (c)(2)(i) and (ii) of this section.

(i) Keep work areas free of excess MFHAP material by sweeping or vacuuming once per day, once per shift, or once per operation, as needed depending on the severity of dust generation;

(ii) Operate all equipment associated with the operation of dry grinding and dry polishing with machines, including the emission control system, according to manufacturer's instructions.

(3) To demonstrate that the management practices are being implemented, you must perform visual determinations of fugitive emissions, as specified in § 63.11517(b), ''Monitoring Requirements,'' at an exit or opening of the building containing the dry grinding and dry polishing with machines.

(4) You must keep a record of all visual determinations of fugitive emissions along with any corrective action taken in accordance with the requirements in § 63.11519(c)(2), ''Notification, recordkeeping, and reporting Requirements.''

(5) If visible fugitive emissions are detected, perform corrective actions until the visible fugitive emissions are eliminated, at which time you must comply with the requirements in paragraphs (c)(5)(i) and (ii) of this section. Corrective actions include, but are not limited to, inspecting and replacing filters; inspecting, repairing, and/or correcting the operation of the emission capture equipment and air flow into the capture system; and increasing the capture efficiency.

(i) You must perform a follow-up inspection for visible fugitive emissions in accordance with § 63.11517(a), ''Monitoring Requirements.''

(ii) You must report all instances where visible emissions are detected, along with any corrective action taken and the results of subsequent follow-up inspections for visible emissions, along with your annual compliance report as required by § 63.11519(b)(5), ''Notification, recordkeeping, and reporting requirements.''

(d) *Standards for control of MFHAP in spray painting.* If you own or operate a new or existing spray painting metal fabrication or finishing affected source, as defined in § 63.11522, ''Definitions,'' you must implement the management practices in paragraphs (d)(1) through (9) of this section.

(1) *Standards for spray painting objects less than or equal to 15 feet in any dimension for MFHAP control.* All paints applied via spray-applied painting to objects which do not exceed 15 feet (4.57 meters) in any dimension, must be applied in a spray booth or preparation station that meets the requirements of paragraphs (d)(1)(i) through (iii) of this section.

(i) Spray booths and preparation stations must have a full roof, at least two complete walls, and one or two complete side curtains or other barrier material so that all four sides are covered. The spray booths must be ventilated so that air is drawn into the booth and leaves only through the filter. The roof may contain narrow slots for connecting fabricated products to overhead cranes, and/or for cords or cables.

(ii) All spray booths, preparation stations, and mobile enclosures must be fitted with a type of filter technology that is demonstrated to achieve at least 98 percent capture of MFHAP. The procedure used to demonstrate filter efficiency must be consistent with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992'' (incorporated by reference, see § 63.14 of subpart A of this part). The test coating for measuring filter efficiency shall be a high solids bake enamel delivered at a rate of at least 135 grams per minute from a conventional (non-HVLP) air-atomized spray gun operating at 40 pounds per square inch (psi) air pressure; the air flow rate across the filter shall be 150 feet per minute. Owners and operators may use published filter efficiency data provided by filter vendors to demonstrate compliance with this requirement and are not required to perform this measurement.

(iii) You must perform regular inspection and replacement of the filters in all spray booths, preparation stations,

and mobile enclosures according to manufacturer instructions, and maintain documentation of these activities, as detailed in § 63.11519(c)(5), ''Notification, recordkeeping, and reporting requirements.''

(iv) As an alternative compliance requirement, spray booths equipped with a water curtain, called ''waterwash'' or ''waterspray'' booths that are operated and maintained according to the manufacturer's specifications and that achieve at least 98 percent control of MFHAP, may be used in lieu of the spray booths requirements of paragraphs (d)(1)(i) through (iii) of this section.

(2) *Standards for spray painting of all objects for MFHAP control.* All paints applied via spray-applied painting must be applied with a high-volume, low-pressure (HVLP) spray gun, electrostatic application, airless spray gun, air-assisted airless spray gun, or an equivalent technology that is demonstrated to achieve transfer efficiency comparable to one of these spray gun technologies for a comparable operation, and for which written approval has been obtained from the Administrator. The procedure used to demonstrate that spray gun transfer efficiency is equivalent to that of an HVLP spray gun must be equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' (incorporated by reference, see § 63.14 of subpart A of this part).

(3) *Spray system recordkeeping.* You must maintain documentation of the HVLP or other high transfer efficiency spray paint delivery methods, as detailed in § 63.11519(c)(6), ''Notification, recordkeeping, and reporting requirements.''

(4) *Spray gun cleaning.* All cleaning of paint spray guns must be done with either non-HAP gun cleaning solvents, or in such a manner that an atomized mist of spray of gun cleaning solvent and paint residue is not created outside of a container that collects used gun cleaning solvent. Spray gun cleaning may be done with, for example, hand cleaning of parts of the disassembled gun in a container of solvent, by flushing solvent through the gun without atomizing the solvent and paint residue, or by using a fully enclosed spray gun washer. A combination of these non-atomizing methods may also be used.

(5) *Spray painting worker certification.* All workers performing painting must be certified that they have completed training in the proper spray application of paints and the proper setup and maintenance of spray equipment. The minimum requirements for training and certification are described in paragraph (d)(6) of this section. The spray application of paint is prohibited by persons who are not certified as having completed the training described in paragraph (d)(6) of this section. The requirements of this paragraph do not apply to the students of an accredited painting training program who are under the direct supervision of an instructor who meets the requirements of this paragraph. The requirements of this paragraph do not apply to operators of robotic or automated painting operations.

(6) *Spray painting training program content.* Each owner or operator of an affected spray painting metal fabrication or finishing affected source must ensure and certify that all new and existing personnel, including contract personnel, who spray apply paints are trained in the proper application of paints as required by paragraph (d)(5) of this section. The training program must include, at a minimum, the items listed in paragraphs (d)(6)(i) through (iii) of this section.

(i) A list of all current personnel by name and job description who are required to be trained;

(ii) Hands-on, or in-house or external classroom instruction that addresses, at a minimum, initial and refresher training in the topics listed in paragraphs (d)(6)(ii)(A) through (D) of this section.

(A) Spray gun equipment selection, set up, and operation, including measuring coating viscosity, selecting the proper fluid tip or nozzle, and achieving the proper spray pattern, air pressure and volume, and fluid delivery rate.

(B) Spray technique for different types of paints to improve transfer efficiency and minimize paint usage and overspray, including maintaining the correct spray gun distance and angle to the part, using proper banding and overlap, and reducing lead and lag spraying at the beginning and end of each stroke.

(C) Routine spray booth and filter maintenance, including filter selection and installation.

(D) Environmental compliance with the requirements of this subpart.

(iii) A description of the methods to be used at the completion of initial or refresher training to demonstrate, document, and provide certification of successful completion of the required training. Alternatively, owners and operators who can show by documentation or certification that a painter's work experience and/or training has resulted in training equivalent to the training required in paragraph (d)(6)(ii) of this section are not required to provide the initial training required by that paragraph to these painters.

(7) *Records of spray painting training.* You must maintain records of employee training certification for use of HVLP or other high transfer efficiency spray paint delivery methods as detailed in § 63.11519(c)(7), ''Notification, recordkeeping, and reporting requirements.''

(8) *Spray painting training dates.* As required by paragraph (d)(5) of this section, all new and existing personnel at an affected spray painting metal fabrication or finishing affected source, including contract personnel, who spray apply paints must be trained by the dates specified in paragraphs (d)(8)(i) and (ii) of this section.

(i) If your source is a new source, all personnel must be trained and certified no later than 180 days after hiring or no later than 180 days after April 3, 2008, whichever is later. Training that was completed within 5 years prior to the date training is required, and that meets the requirements specified in paragraph (d)(6)(ii) of this section satisfies this requirement and is valid for a period not to exceed 5 years after the date the training is completed.

(ii) If your source is an existing source, all personnel must be trained and certified no later than 60 days after hiring or no later than 6 months after April 3, 2008, whichever is later. Worker training that was completed within 5 years prior to the date training is required, and that meets the requirements specified in paragraph (d)(6)(ii) of this section satisfies this requirement and is valid for a period not to exceed 5 years after the date the training is completed.

(9) *Duration of training validity.* Training and certification will be valid for a period not to exceed 5 years after the date the training is completed, and all personnel must receive refresher training that meets the requirements of this section and be re-certified every 5 years.

(e) *Standards for VOHAP from spray painting.* For a new or existing spray painting metal fabrication or finishing affected source, as defined in § 63.11522, ''Definitions,'' you must comply with the limits specified in either paragraph (e)(1) or (e)(2) of this section. You must demonstrate these

limits are being implemented by complying with the requirements in paragraph (e)(3) or (e)(4) of this section, as applicable. You must also implement the management practices specified in paragraph (e)(5) of this section to minimize VOHAP emissions from mixing and storage.

(1) *Paint VOHAP content limit option*. Limit the VOHAP content of all paints applied via spray applied coating operations to no more than 3 pounds of volatile organic HAP per gallon (lb/gal) (0.36 kg/l) paint solids, in accordance with paragraphs (e)(1)(i) through (iii) of this section.

(i) You may use the VOHAP content limit option for any individual painting operation, for any group of painting operations in the affected source, or for all the painting operations in the affected source.

(ii) You may not use any thinner and/or other additive that contains VOHAP as determined according to paragraph (e)(3)(i) of this section.

(iii) You must use the procedures in this section on each paint, thinner and/or other additive in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration.

(iv) You do not need to determine the VOHAP content of paints, thinners and/or other additives that are reclaimed on-site (or reclaimed off-site if you have documentation showing that you received back the exact same materials that were sent off-site) and reused in the painting operation for which you use the VOHAP content limit option, provided these materials in their condition as received were demonstrated to comply with the VOHAP content limit option.

(2) *Weighted-average paint VOHAP content limit option*. Limit the VOHAP content of the total mass of paints applied via spray-applied coating operations to no more than 3 lb/gal (0.36 kg/l) paint solids on a 12-month rolling weighted-average basis.

(3) *Compliance with paint VOHAP content limit option*. If you comply with the VOHAP content limit in paragraph (e)(1) of this section, you must demonstrate compliance by complying with the requirements in paragraphs (e)(3)(i) through (vi) of this section.

(i) *Determine the mass fraction of VOHAP*. You must determine the mass fraction of VOHAP for each paint, thinner and/or other additive used during the compliance period by using one of the options in paragraphs (e)(3)(i)(A) through (E) of this section.

(A) *Information from the supplier or manufacturer of the material*. You may rely on information other than that generated by the test methods specified in paragraphs (e)(3)(i)(B) through (E) of this section, such as manufacturer's formulation data or material safety data sheets (MSDS), if it represents each VOHAP that is present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)—defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may rely on manufacturer's data that expressly states the VOHAP or volatile matter mass fraction emitted. If there is a disagreement between such information and results of a test conducted according to paragraphs (e)(3)(i)(B) through (D) of this section, then the test method results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(B) *Method 311*. You may use EPA Method 311 (appendix A to 40 CFR part 63, ''Test Methods'') for determining the mass fraction of VOHAP. Use the procedures specified in paragraphs (e)(3)(i)(B)(*1*) and (*2*) of this section when performing an EPA Method 311 test.

(*1*) Count each VOHAP that is measured to be present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each VOHAP you count as a value truncated to four places after the decimal point (e.g., 0.3791).

(*2*) Calculate the total mass fraction of VOHAP in the test material by adding up the individual VOHAP mass fractions and truncating the result to three places after the decimal point (e.g., 0.763).

(C) *Method 24*. For paints, as defined in § 63.11522, ''Definitions,'' you may use EPA Method 24 (appendix A to 40 CFR part 60, ''Test Methods'') to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of VOHAP. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may use the alternative method contained in appendix A to subpart PPPP (Plastic Parts NESHAP) of this part, rather than EPA Method 24. You may use the volatile fraction that is emitted, as measured by the alternative method in appendix A to subpart PPPP (Plastic Parts NESHAP) of this part, as a substitute for the mass fraction of VOHAP.

(D) *Alternative method*. You may use an alternative test method for determining the mass fraction of VOHAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(E) *Solvent blends*. Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain VOHAP which must be counted toward the total VOHAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of VOHAP in these solvent blends listed in Table 2 or 3 to this subpart. If you use the tables, you must use the values in Table 2 for all solvent blends that match Table 2 entries according to the instructions for Table 2, and you may use Table 2 only if the solvent blends in the materials you use do not match any of the solvent blends in Table 2 and you know only whether the blend is aliphatic or aromatic. However, if the results of an EPA Method 311 test indicate higher values than those listed on Table 2 or 3 to this subpart, the EPA Method 311 results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(ii) *Determine the volume fraction of paint solids*. You must determine the volume fraction of paint solids (liters (gal) of paint solids per liter (gal) of paint) for each paint used during the compliance period by a test, by calculation, or by information provided by the supplier or the manufacturer of the material, using one of the options in paragraphs (e)(3)(ii)(A) through (C) of this section. If test results obtained according to paragraph (e)(3)(ii)(A) of this section do not agree with the information obtained under paragraph (e)(3)(ii)(B) or (C) of this section, the test results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(A) ASTM Method D2697–03 or ASTM Method D6093–97 (Reapproved 2003). You may use ASTM Method D2697–03, ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' (incorporated by

reference, see § 63.14), or ASTM Method D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, see § 63.14), to determine the volume fraction of paint solids for each paint. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of paint solids.

(B) *Alternative method.* You may use an alternative test method for determining the solids content of each coating once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(C) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of paint solids for each paint from the supplier or manufacturer.

(iii) *Calculation of volume fraction of paint solids.* You may determine the volume fraction of paint solids using Equation 1 of this section:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \qquad \text{(Eq. 1)}$$

Where:

V_s = Volume fraction of paint solids, liters (gal) paint solids per liter (gal) paint.

m = Total volatile matter content of the paint, including HAP, volatile organic compounds (VOC), water, and exempt compounds, determined according to EPA Method 24, grams volatile matter per liter paint.

D_{avg} = Average density of volatile matter in the paint, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(iv) *Determine the density of each paint.* Determine the density of each paint used during the compliance period from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material can be used, or specific gravity data for pure chemicals. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(v) *Determine the VOHAP content of each paint.* Calculate the VOHAP content, kg (lb) of VOHAP emitted per liter (gal) paint solids used, of each paint used during the compliance period using Equation 2 of this section:

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 2)}$$

Where:

H_c = Organic HAP content of the paint, kg organic HAP emitted per liter (gal) paint solids used.

D_c = Density of paint, kg paint per liter (gal) paint, determined according to paragraph (e)(3)(iv) of this section.

W_c = Mass fraction of organic HAP in the paint, kg organic HAP per kg paint, determined according to paragraph (e)(3)(i) of this section.

V_s = Volume fraction of paint solids, liter (gal) paint solids per liter (gal) paint, determined according to paragraph (e)(3)(ii) of this section.

(vi) *Compliance demonstration for paint VOHAP content limit option.* To demonstrate continuous compliance, you must comply with the requirements in paragraphs (e)(3)(vi)(A) through (D) of this section.

(A) The calculated VOHAP content for each paint used must be less than or equal to the applicable HAP content limit in paragraph (e)(1) of this section, and each thinner and/or other additive used must contain no VOHAP, determined according to paragraph (e)(3)(i) of this section.

(B) You must keep all records required by § 63.11519(c)(8) and (9), ''Notification, recordkeeping, and reporting requirements.''

(C) As part of the notification of compliance status required in § 63.11519(a)(2), ''Notification, recordkeeping, and reporting requirements,'' you must identify the paint operation(s) for which you used the VOHAP content limit option and submit a statement that the paint operation(s) was (were) in compliance with the HAP content limit because you used no paints for which the VOHAP content exceeded the applicable limit in paragraph (e)(1) of this section, and you used no thinners and/or other additives that contained VOHAP, determined according to the procedures in paragraphs (e)(3)(i) through (v) of this section.

(D) If at any time the calculated VOHAP content for any paint exceeded the applicable limit in paragraph (e)(1) of this section, or any thinner and/or other additive used contained any VOHAP, this is an exceedence of the limitation for that compliance period and must be reported as specified in § 63.11519(b)(8)(i), ''Notification, recordkeeping, and reporting requirements.''

(4) *Compliance with weighted-average paint VOHAP content limit option.* If you comply with the weighted-average VOHAP content in paragraph (e)(2) of this section, you must demonstrate compliance by complying with the requirements in paragraphs (e)(4)(i) through (ix) of this section. When calculating the weighted-average VOHAP content according to this section, do not include any paints, thinners and/or other additives used on painting operations for which you use the HAP content limit option of paragraph (e)(1) of this section. You do not need to determine the mass of VOHAP in paints, thinners and/or other additives that have been reclaimed on-site (or reclaimed off-site if you have documentation showing that you received back the exact same materials that were sent off-site) and reused in the painting operation. If you use paints, thinners and/or other additives that have been reclaimed on-site, the amount of each used in a month may be reduced by the amount of each that is reclaimed. That is, the amount used may be calculated as the amount consumed to account for materials that are reclaimed.

(i) *Mass fraction of VOHAP.* Determine the mass fraction of VOHAP for each paint, thinner and/or other additive used during each month according to the requirements in paragraph (e)(3)(i) of this section.

(ii) *Volume fraction of paint solids.* Determine the volume fraction of paint solids for each paint used during each month according to the requirements in paragraph (e)(3)(ii) of this section.

(iii) *Density of materials.* Determine the density of each liquid paint, thinner and/or other additive used during each month from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other such information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. If

you purchase materials or monitor consumption by weight instead of volume, you do not need to determine material density. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 3A, 3B, and 4 of this section.

(iv) *Volume of materials.* Determine the volume of each paint, thinner and/or other additive used during each month by measurement or usage records. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine the volume of each material used. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 3A and 3B of this section.

(v) *Mass of VOHAP.* The mass of VOHAP is the combined mass of VOHAP contained in all paints, thinners and/or other additives used during each month minus the VOHAP in certain waste materials. Calculate the mass of VOHAP using Equation 3 of this section.

$$H_e = A + B + R_w \qquad \text{(Eq. 3)}$$

Where:

H_e = Total mass of organic HAP used during the month, kg.

A = Total mass of organic HAP in the paints used during the month, kg, as calculated in Equation 3A of this section.

B = Total mass of organic HAP in the thinners and/or other additives used during the month, kg, as calculated in Equation 3B of this section.

R_w = Total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste treatment, storage, and disposal facility (TSDF) for treatment or disposal during the month, kg, determined according to paragraph (e)(4)(vi) of this section. (You may assign a value of zero to R w if you do not wish to use this allowance.)

Calculate the mass VOHAP in the paints used during the month using Equation 3A of this section:

$$\sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

Where:

A = Total mass of organic HAP in the paints used during the month, kg.

Vol = Total volume of paint, i, used during the month, liters.

D_c= Density of paint, i, kg paint per liter paint.

W_c= Mass fraction of organic HAP in paint, i, kg organic HAP per kg paint. For reactive adhesives as defined in § 63.11522, ''Definitions,'' use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

m = Number of different paints used during the month.

Calculate the mass of VOHAP in the thinners and/or other additives used during the month using Equation 3B of this section:

$$\sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B = Total mass of organic HAP in the thinners and/or other additives used during the month, kg.

$Vol_{t,j}$ = Total volume of thinner and/or other additive, j, used during the month, liters.

$D_{t,j}$ = Density of thinner and/or other additive, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner and/or other additive, j, kg organic HAP per kg thinner and/or other additive. For reactive adhesives as defined in § 63.11522, ''Definitions,'' use the mass fraction of organic HAP that is emitted as determined using the method in appendix A to subpart PPPP of this part.

n = Number of different thinners and/or other additives used during the month.

(vi) *HAP in waste materials.* If you choose to account for the mass of VOHAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 3 of this section, then you must determine the mass according to paragraphs (e)(4)(vi)(A) through (D) of this section.

(A) You may only include waste materials in the determination that are generated by painting operations in the affected source for which you use Equation 3 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include VOHAP contained in wastewater.

(B) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(C) Determine the total mass of VOHAP contained in the waste materials specified in paragraph (e)(4)(vi)(A) of this section.

(D) You must document the methodology you use to determine the amount of waste materials and the total mass of VOHAP they contain, as required in § 63.11519(c)(9)(viii), ''Notification, recordkeeping, and reporting requirements.'' If waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of VOHAP contained in them.

(vii) *Paint solids.* Determine the total volume of paint solids used, in liters, which is the combined volume of paint solids for all the paints used during each month, using Equation 4 of this section:

$$V_{st} = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 4)}$$

Where:

V_{st} = Total volume of paint solids used during the month, liters.

$Vol_{c,i}$ = Total volume of paint, i, used during the month, liters.

$V_{s,i}$ = Volume fraction of paint solids for paint, i, liter solids per liter paint, determined according to paragraph (e)(3)(ii) of this section.

m = Number of paints used during the month.

(viii) *Weighted-average VOHAP Content.* Calculate the weighted-average VOHAP content for all the paints used in the compliance period, in kg (lb) VOHAP emitted per liter (gal) paint solids used, using Equation 5 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{n} H_e}{\sum_{y=1}^{n} V_{st}} \qquad \text{(Eq. 5)}$$

Where:

H_{yr} = Weighted-average organic HAP content of all paints used in the compliance period, kg VOHAP per liter paint solids used.

H_e = Total mass of organic HAP from all materials used during month, y, kg, as calculated by Equation 3 of this section.

V_{st} = Total volume of paint solids used during month, y, liters, as calculated by Equation 4 of this section.

y = Identifier for months.

n = Number of months in the compliance period (n equals 12).

(ix) *Compliance demonstration for weighted-average paint VOHAP content limit option.* To demonstrate continuous compliance, you must comply with the requirements in paragraphs (e)(4)(ix)(A) through (F) of this section.

(A) Calculate the weighted-average VOHAP content for each compliance period using Equation 5 of this section. A compliance period consists of 12 months. Each month is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in paragraph (e)(4) of this section on a monthly basis using data from the previous 12 months of operation.

(B) If the weighted-average VOHAP content of the total mass of paints applied via spray-applied coating operations for any 12-month compliance period exceeded the applicable VOHAP content limit in paragraph (e)(2) of this section this is an exceedence of the VOHAP content limitation for that compliance period and must be reported as specified in § 63.11519(b)(8)(ii), ''Notification, recordkeeping, and reporting requirements.''

(C) As part of the notification of compliance status required by § 63.11519(a)(2), ''Notification, recordkeeping, and reporting requirements,'' you must include a list of processes that will comply with the weighted-average VOHAP content limit option, in accordance with paragraph (e)(2) of this section.

(D) As part of each annual compliance report required by § 63.11519(b)(1), ''Notification, recordkeeping, and reporting requirements,'' you must include a list of the rolling 12-month monthly calculated values of the VOHAP content calculated according to paragraph (e)(4)(viii) of this section, for each month for which 11 previous consecutive months of data are available. Thus, for the first annual report, no monthly VOHAP content will be reported, for the second, monthly VOHAP content will be reported for a portion of the year, and for subsequent reports, a full year (12 months) of monthly VOHAP content will be reported.

(E) As part of each annual compliance report required by § 63.11519(b)(1), ''Notification, recordkeeping, and reporting requirements,'' you must identify the painting operation(s) for which you used the weighted-average VOHAP content limit option. If there were no exceedences of the VOHAP content limitations, you must submit a statement that the painting operation was in compliance with the VOHAP content limit during the reporting period because the VOHAP content for each compliance period was less than or equal to the applicable VOHAP limit in paragraph (e)(2) of this section, determined according to paragraph (e)(4) of this section.

(F) You must maintain records as specified in § 63.11519(c)(8) and (9), ''Notification, recordkeeping, and reporting requirements.''

(5) You must implement the management practices described in paragraphs (e)(5)(i) through (v) of this section to minimize VOHAP emissions from mixing and storage.

(i) All VOHAP-containing paints, thinners and/or other additives, cleaning materials, and waste materials must be stored in closed containers.

(ii) Spills of VOHAP-containing paints, thinners and/or other additives, cleaning materials, and waste materials must be minimized.

(iii) VOHAP-containing paints, thinners and/or other additives, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(iv) Mixing vessels which contain VOHAP-containing paints and other materials must be closed except when adding to, removing, or mixing the contents.

(v) Emissions of VOHAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(f) *Standards for welding.* If you own or operate a new or existing welding metal fabrication or finishing affected source, you must comply with the requirements in paragraphs (f)(1) and (2) of this section. You must demonstrate that management practices or fume control measures are being implemented by complying with the requirements in paragraphs (f)(3) through (8) of this section.

(1) You must operate all equipment, capture, and control devices associated with welding operations according to manufacturer's instructions. You must demonstrate compliance with this requirement by maintaining a record of the manufacturer's specifications for the capture and control devices, as specified by the requirements in § 63.11519(c)(4), ''Notification, recordkeeping, and reporting requirements.''

(2) You must implement management practices, as practicable, to minimize emissions of MFHAP as specified in paragraphs (f)(2)(i) through (xi) of this section. Alternatively, you may use a welding fume control system that achieves at least 85 percent overall control of MFHAP, and operate this equipment according to the manufacturer's specifications.

(i) Use low fume welding processes whenever possible. These welding processes include but are not limited to: Gas metal arc welding (GMAW)—also called metal inert gas welding (MIG); gas tungsten arc welding (GTAW)—also called tungsten inert gas (TIG); plasma arc welding (PAW); submerged arc welding (SAW); and all welding processes that do not use a consumable electrode.

(ii) Use shielding gases, as appropriate to the type of welding used;

(iii) Use an inert carrier gas, such as argon, as appropriate to the type of welding used;

(iv) Use low or no-HAP welding materials and substrates;

(v) Operate with a welding angle close to 90°;

(vi) Optimize electrode diameter;

(vii) Operate with lower voltage and current;

(viii) Use low fume wires, as appropriate to the type of welding used;

(ix) Optimize shield gas flow rate, as applicable to the type of welding used;

(x) Use low or optimized torch speed; and

(xi) Use pulsed-current power supplies, as appropriate to the type of welding used.

(3) *Tier 1 compliance requirements for welding.* You must perform visual determinations of welding fugitive emissions as specified in § 63.11517(b), ''Monitoring requirements,'' at the primary vent, stack, exit, or opening from the building containing the welding metal fabrication or finishing operations. You must keep a record of all visual determinations of fugitive emissions along with any corrective action taken in accordance with the requirements in § 63.11519(c)(2), ''Notification, recordkeeping, and reporting requirements.''

(4) *Requirements upon initial detection of visible emissions from welding.* If visible fugitive emissions are detected during any visual determination required in paragraph (f)(3) of this section, you must comply with the requirements in paragraphs (f)(4)(i) and (ii) of this section.

(i) Perform corrective actions that include, but are not limited to, inspection of welding fume sources, and evaluation of the proper operation and effectiveness of the management practices or fume control measures implemented in accordance with paragraph (f)(2) of this section. After completing such corrective actions, you must perform a follow-up inspection for visible fugitive emissions in accordance with § 63.11517(a), ''Monitoring Requirements,'' at the primary vent, stack, exit, or opening from the building containing the welding metal fabrication or finishing operations.

(ii) Report all instances where visible emissions are detected, along with any corrective action taken and the results of subsequent follow-up inspections for visible emissions, and submit with your annual compliance report as required by § 63.11519(b)(5), ''Notification, recordkeeping, and reporting requirements.''

(5) *Tier 2 requirements upon subsequent detection of visible emissions.* If visible fugitive emissions are detected more than once during any consecutive 12-month period (notwithstanding the results of any follow-up inspections), you must

comply with paragraphs (f)(5)(i) through (iv) of this section.

(i) Within 24 hours of the end of the visual determination of fugitive emissions in which visible fugitive emissions were detected, you must conduct a visual determination of emissions opacity, as specified in § 63.11517(c), ''Monitoring requirements,'' at the primary vent, stack, exit, or opening from the building containing the welding metal fabrication or finishing operations.

(ii) In lieu of the requirement of paragraph (f)(3) of this section to perform visual determinations of fugitive emissions with EPA Method 22, you must perform visual determinations of emissions opacity in accordance with § 63.11517(d), ''Monitoring Requirements,'' using EPA Method 9, at the primary vent, stack, exit, or opening from the building containing the welding metal fabrication or finishing operations.

(iii) You must keep a record of each visual determination of emissions opacity performed in accordance with paragraphs (f)(5)(i) or (ii) of this section, along with any subsequent corrective action taken, in accordance with the requirements in § 63.11519(c)(3), ''Notification, recordkeeping, and reporting requirements.''

(iv) You must report the results of all visual determinations of emissions opacity performed in accordance with paragraphs (f)(5)(i) or (ii) of this section, along with any subsequent corrective action taken, and submit with your annual compliance report as required by § 63.11519(b)(6), ''Notification, recordkeeping, and reporting requirements.''

(6) *Requirements for opacities less than 20 percent.* For each visual determination of emissions opacity performed in accordance with paragraph (f)(5) of this section for which the average of the six-minute average opacities recorded is less than 20 percent, you must perform corrective actions, including inspection of all welding fume sources, and evaluation of the proper operation and effectiveness of the management practices or fume control measures implemented in accordance with paragraph (f)(2) of this section.

(7) *Tier 3 requirements for opacities exceeding 20 percent.* For each visual determination of emissions opacity performed in accordance with paragraph (f)(5) of this section for which the average of the six-minute average opacities recorded exceeds 20 percent, you must comply with the requirements in paragraphs (f)(7)(i) through (v) of this section.

(i) You must submit a report of exceedence of 20 percent opacity, along with your annual compliance report, as specified in § 63.11519(b)(8)(iii), ''Notification, recordkeeping, and reporting requirements,'' and according to the requirements of § 63.11519(b)(1), ''Notification, recordkeeping, and reporting requirements.''

(ii) Within 30 days of the opacity exceedence, you must prepare and implement a Site-Specific Welding Emissions Management Plan, as specified in paragraph (f)(8) of this section. If you have already prepared a Site-Specific Welding Emissions Management Plan in accordance with this paragraph, you must prepare and implement a revised Site-Specific Welding Emissions Management Plan within 30 days.

(iii) During the preparation (or revision) of the Site-Specific Welding Emissions Management Plan, you must continue to perform daily visual determinations of emissions opacity as specified in § 63.11517(c), ''Monitoring Requirements,'' using EPA Method 9, at the primary vent, stack, exit, or opening from the building containing the welding metal fabrication or finishing operations.

(iv) You must maintain records of daily visual determinations of emissions opacity performed in accordance with paragraph (f)(7)(iii) of this section, during preparation of the Site-Specific Welding Emissions Management Plan, in accordance with the requirements in § 63.11519(b)(9), ''Notification, recordkeeping, and reporting requirements.''

(v) You must include these records in your annual compliance report, according to the requirements of § 63.11519(b)(1), ''Notification, recordkeeping, and reporting requirements.''

(8) *Site-Specific Welding Emissions Management Plan.* The Site-Specific Welding Emissions Management Plans must comply with the requirements in paragraphs (f)(8)(i) through (iii) of this section.

(i) Site-Specific Welding Emissions Management Plans must contain the information in paragraphs (f)(8)(i)(A) through (F) of this section.

(A) Company name and address;

(B) A list and description of all welding operations which currently comprise the welding metal fabrication or finishing affected source;

(C) A description of all management practices and/or fume control methods in place at the time of the opacity exceedence;

(D) A list and description of all management practices and/or fume control methods currently employed for the welding metal fabrication or finishing affected source;

(E) A description of additional management practices and/or fume control methods to be implemented pursuant to paragraph (f)(7)(ii) of this section, and the projected date of implementation; and

(F) Any revisions to a Site-Specific Welding Emissions Management Plan must contain copies of all previous plan entries, pursuant to paragraphs (f)(8)(i)(D) and (E) of this section.

(ii) The Site-Specific Welding Emissions Management Plan must be updated annually to contain current information, as required by paragraphs (f)(8)(i)(A) through (C) of this section, and submitted with your annual compliance report, according to the requirements of § 63.11519(b)(1), ''Notification, recordkeeping, and reporting requirements.''

(iii) You must maintain a copy of the current Site-Specific Welding Emissions Management Plan in your records in a readily-accessible location for inspector review, in accordance with the requirements in § 63.11519(c)(11), ''Notification, recordkeeping, and reporting requirements.''

§ 63. 11517 What are my monitoring requirements?

(a) *Visual determination of fugitive emissions, general.* Visual determination of fugitive emissions must be performed according to the procedures of EPA Method 22, of 40 CFR part 60, appendix A. You must conduct the EPA Method 22 test while the affected source is operating under normal conditions. The duration of each EPA Method 22 test must be at least 15 minutes, and visible emissions will be considered to be present if they are detected for more than six minutes of the fifteen minute period.

(b) *Visual determination of fugitive emissions, graduated schedule.* Visual determinations of fugitive emissions must be performed in accordance with paragraph (a) of this section and according to the schedule in paragraphs (b)(1) through (3) of this section.

(1) *Daily Method 22 Testing.* Perform visual determination of fugitive emissions once per day, on each day the process is in operation, during operation of the process.

(2) *Weekly Method 22 Testing.* If no visible fugitive emissions are detected in consecutive daily EPA Method 22 tests, performed in accordance with paragraph (b)(1) of this section for 10 days of work day operation of the process, you may decrease the frequency of EPA Method 22 testing to

once per every five days of operation of the process. If visible fugitive emissions are detected during these tests, you must resume EPA Method 22 testing of that operation once per day during each day that the process is in operation, in accordance with paragraph (b)(1) of this section.

(3) *Monthly Method 22 Testing*. If no visible fugitive emissions are detected in four consecutive weekly EPA Method 22 tests performed in accordance with paragraph (b)(2) of this section, you may decrease the frequency of EPA Method 22 testing to once per 21 days of operation of the process. If visible fugitive emissions are detected during these tests, you must resume weekly EPA Method 22 in accordance with paragraph (b)(2) of this section.

(c) *Visual determination of emissions opacity for welding Tier 2 or 3, general*. Visual determination of emissions opacity must be performed in accordance with the procedures of EPA Method 9, of appendix A of part 60, and while the affected source is operating under normal conditions. The duration of the EPA Method 9 test shall be thirty minutes.

(d) *Visual determination of emissions opacity for welding Tier 2 or 3, graduated schedule*. You must perform visual determination of emissions opacity in accordance with paragraph (c) of this section and according to the schedule in paragraphs (d)(1) through (4) of this section.

(1) *Daily Method 9 testing for welding, Tier 2 or 3*. Perform visual determination of emissions opacity once per day during each day that the process is in operation.

(2) *Weekly Method 9 testing for welding, Tier 2 or 3*. If the average of the six minute opacities recorded during any of the daily consecutive EPA Method 9 tests performed in accordance with paragraph (d)(1) of this section does not exceed 20 percent for 10 days of operation of the process, you may decrease the frequency of EPA Method 9 testing to once per five days of consecutive work day operation. If opacity greater than 20 percent is detected during any of these tests, you must resume testing every day of operation of the process according to the requirements of paragraph (d)(1) of this section.

(3) *Monthly Method 9 testing for welding Tier 2 or 3*. If the average of the six minute opacities recorded during any of the consecutive weekly EPA Method 9 tests performed in accordance with paragraph (d)(2) of this section does not exceed 20 percent for four consecutive weekly tests, you may decrease the frequency of EPA Method 9 testing to once per every 21 days of operation of the process. If visible emissions opacity greater than 20 percent is detected during any monthly test, you must resume testing every five days of operation of the process according to the requirements of paragraph (d)(2) of this section.

(4) *Return to Method 22 testing for welding, Tier 2 or 3*. If, after two consecutive months of testing, the average of the six minute opacities recorded during any of the monthly EPA Method 9 tests performed in accordance with paragraph (d)(3) of this section does not exceed 20 percent, you may resume monthly EPA Method 22 testing as in paragraph (f)(2) of this section. In lieu of this, you may elect to continue performing monthly EPA Method 9 tests in accordance with paragraph (d)(3) of this section.

§ 63.11518 [Reserved]

§ 63.11519 What are my notification, recordkeeping, and reporting requirements?

(a) *What notifications must I submit?*

(1) *Initial Notification*. If you are the owner or operator of a metal fabrication or finishing operation as defined in § 63.11514 ''Am I subject to this subpart?,'' you must submit the Initial Notification required by § 63.9(b) ''General Provisions,'' for a new affected source no later than 120 days after initial startup or August 1, 2008, whichever is later. For an existing affected source, you must submit the Initial Notification no later than April 3, 2009. Your Initial Notification must provide the information specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The name, address, phone number and e-mail address of the owner and operator;

(ii) The address (physical location) of the affected source;

(iii) An identification of the relevant standard (i.e., this subpart); and

(iv) A brief description of the type of operation. For example, a brief characterization of the types of products (e.g., aerospace components, sports equipment, etc.), the number and type of processes, and the number of workers usually employed.

(2) *Notification of compliance status*. If you are the owner or operator of an existing metal fabrication or finishing affected source, you must submit a notification of compliance status on or before June 2, 2010. If you are the owner or operator of a new metal fabrication or finishing affected source, you must submit a notification of compliance status within 120 days after initial startup, or by August 1, 2008, whichever is later. You are required to submit the information specified in paragraphs (a)(2)(i) through (iii) of this section with your notification of compliance status:

(i) Your company's name and address;

(ii) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart;

(iii) If you operate any spray painting affected sources, the information required by § 63.11516(e)(3)(vi)(C), ''Compliance demonstration,'' or § 63.11516(e)(4)(ix)(C), ''Compliance demonstration,'' as applicable; and

(iv) The date of the notification of compliance status.

(b) *What reports must I prepare or submit?*

(1) *Annual compliance reports*. You must prepare annual compliance reports for each affected source according to the requirements of paragraphs (b)(2) through (7) of this section. The annual compliance reporting requirements may be satisfied by reports required under other parts of the CAA, as specified in paragraph (b)(3) of this section. These reports do not need to be submitted unless an exceedence of the requirements of this subpart has occurred. In this case, the annual compliance report must be submitted along with the exceedence reports.

(2) *Dates*. Unless the Administrator has approved or agreed to a different schedule for submission of reports under § 63.10(a), ''General Provisions,'' you must prepare and, if applicable, submit each annual compliance report according to the dates specified in paragraphs (b)(2)(i) through (iii) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first annual compliance report must cover the first annual reporting period which begins the day after the compliance date and ends on December 31.

(ii) Each subsequent annual compliance report must cover the subsequent semiannual reporting period from January 1 through December 31.

(iii) Each annual compliance report must be prepared no later than January 31 and kept in a readily-accessible location for inspector review. If an exceedence has occurred during the year, each annual compliance report must be submitted along with the

exceedence reports, and postmarked or delivered no later than January 31.

(3) *Alternate dates.* For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, ''Title V.''

(i) If the permitting authority has established dates for submitting annual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), ''Title V,'' you may prepare or submit, if required, the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (b)(2)(iii) of this section.

(ii) If an affected source prepares or submits an annual compliance report pursuant to this section along with, or as part of, the monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), ''Title V,'' and the compliance report includes all required information concerning exceedences of any limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same exceedences in the annual monitoring report. However, submission of an annual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(4) *General requirements.* The annual compliance report must contain the information specified in paragraphs (b)(4)(i) through (iii) of this section, and the information specified in paragraphs (b)(5) through (7) of this section that is applicable to each affected source.

(i) Company name and address;

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report; and

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 12-month period ending on December 31. Note that the information reported for the 12 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(5) *Visual determination of fugitive emissions requirements.* The annual compliance report must contain the information specified in paragraphs (b)(5)(i) through (iii) of this section for each affected source which performs visual determination of fugitive emissions in accordance with § 63.11517(a), ''Monitoring requirements.''

(i) The date of every visual determination of fugitive emissions which resulted in detection of visible emissions;

(ii) A description of the corrective actions taken subsequent to the test; and

(iii) The date and results of the follow-up visual determination of fugitive emissions performed after the corrective actions.

(6) *Visual determination of emissions opacity requirements.* The annual compliance report must contain the information specified in paragraphs (b)(6)(i) through (iii) of this section for each affected source which performs visual determination of emissions opacity in accordance with § 63.11517(c), ''Monitoring requirements.''

(i) The date of every visual determination of emissions opacity;

(ii) The average of the six-minute opacities measured by the test; and

(iii) A description of any corrective action taken subsequent to the test.

(7) *Paint limit reports.* The annual compliance report must contain the information specified in paragraphs (b)(7)(i) through (v) of this section for each spray painting affected source.

(i) Identification of the compliance option or options specified in § 63.11516(e), ''Spray painting VOHAP content requirements,'' that you used on each spray painting operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates of each option you used.

(ii) If you used the weighted-average VOHAP content compliance option in § 63.11516(e)(2), ''Weighted-average VOHAP content limit option,'' your annual compliance report must include the calculation results for rolling 12-month weighted-average VOHAP content, according to § 63.11516(e)(4)(ix)(C), ''Compliance Demonstration.''

(iii) If there were no exceedences of the limitations in § 63.11516(e)(1), ''VOHAP content limit option,'' or § 63.11516(e)(2) ''Weighted-average VOHAP content limit option,'' the annual compliance report must include a statement that there were no exceedences of the limitations during the reporting period.

(iv) *Exceedences of the VOHAP content limit option.* If you used the HAP content limit option and there was an exceedence of the applicable VOHAP content requirement in § 63.11516(e)(1), ''VOHAP content limit option,'' an exceedence report must be prepared to contain the information in paragraphs (b)(7)(iv)(A) through (D) of this section. This exceedence report must be submitted along with your annual compliance report, as required by paragraph (b)(1) of this section.

(A) Identification of each paint used that exceeded the applicable limit, and each thinner and/or other additive used that contained VOHAP, and the dates and time periods each was used.

(B) The calculation of the VOHAP content (via Equation 2 of § 63.11516(e)(3), ''Spray painting VOHAP content requirements'') for each paint identified in paragraph (b)(7)(iv)(A) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by paint suppliers or manufacturers, or test reports).

(C) The determination of mass fraction of VOHAP for each thinner and/or other additive identified in paragraph (b)(7)(iv)(A) of this section (as determined according to § 63.11516(e)(3)(i), ''Spray painting VOHAP content requirements''). You do not need to submit background data supporting this calculation (e.g., information provided by material suppliers or manufacturers, or test reports).

(D) A statement of the cause of each exceedence of the VOHAP content requirement in § 63.11516(e)(1), ''VOHAP content limit option.''

(v) *Exceedences of the weighted-average VOHAP content limit option.* If you used the weighted-average VOHAP content limit option and there was an exceedence of the applicable limit in § 63.11516(e)(2), ''Weighted-average VOHAP content limit option,'' an exceedence report must be prepared to contain the information in paragraphs (b)(7)(v)(A) through (C) of this section. This exceedence report must be submitted along with your annual compliance report, as required by paragraph (b)(1) of this section.

(A) The beginning and ending dates of each compliance period during which the 12-month weighted-average VOHAP content exceeded the applicable limit in § 63.11516(e)(2), ''Weighted-average VOHAP content limit option.''

(B) The calculations used to determine the weighted-average 12-month VOHAP content for the compliance period in which the exceedence of the limit in § 63.11516(e)(2), ''Weighted-average VOHAP content limit option'' occurred. You must submit the calculations for Equations 3, 3A, 3B, and 4 of § 63.11516(e)(4), ''Spray painting VOHAP content requirements,'' and if applicable, the calculation used to determine mass of VOHAP in waste materials according to § 63.11516(e)(4)(vi). You do not need to submit background data supporting

these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(C) A statement of the cause of each exceedence of the limit in § 63.11516(e)(2), ''Spray Painting VOHAP content requirements.''

(8) *Exceedence reports*. You must prepare and submit exceedence reports according to the requirements of paragraphs (b)(8)(i) through (iii) of this section, and submit these reports along with your annual compliance report, as required by paragraph (b)(1) of this section.

(i) *Exceedences of spray painting VOHAP content limits*. As required by § 63.11516(e)(3)(vi)(D), ''Spray painting VOHAP content requirements,'' you must prepare an exceedence report whenever the calculated VOHAP content for any paint used exceeded the applicable limit, or any thinner and/or other additive used contained any VOHAP. This report must be submitted with your annual compliance report, according to the requirements of paragraph (b)(1) of this section, and must contain the information in paragraphs (b)(7)(iv)(A) through (D) of this section.

(ii) *Exceedences of spray painting weighted-average VOHAP content limits*. As required by § 63.11516(e)(4)(ix)(B), ''Spray painting VOHAP content requirements,'' you must prepare an exceedence report whenever the weighted-average VOHAP content of paints used in any 12-month compliance period exceeds the applicable limit. This report must be submitted along with your annual compliance report, according to the requirements of paragraph (b)(1) of this section, and must contain the information in paragraphs (b)(7)(v)(A) through (C) of this section.

(iii) *Exceedences of 20 percent opacity for welding affected sources*. As required by § 63.11516(f)(7)(i), ''Requirements for opacities exceeding 20 percent,'' you must prepare an exceedence report whenever the average of the six-minute average opacities recorded during a visual determination of emissions opacity exceeds 20 percent. This report must be submitted along with your annual compliance report according to the requirements in paragraph (b)(1) of this section, and must contain the information in paragraphs (b)(8)(iii)(A) and (B) of this section.

(A) The date on which the exceedence occurred; and

(B) The average of the six-minute average opacities recorded during the visual determination of emissions opacity.

(9) *Site-specific Welding Emissions Management Plan reporting*. You must submit a copy of the records of daily visual determinations of emissions recorded in accordance with § 63.11516(f)(7)(iv), ''Tier 3 requirements for opacities exceeding 20 percent,'' and a copy of your Site-Specific Welding Emissions Management Plan and any subsequent revisions to the plan pursuant to § 63.11516(f)(8), ''Site-specific Welding Emissions Management Plan,'' along with your annual compliance report, according to the requirements in paragraph (b)(1) of this section.

(c) *What records must I keep*? You must collect and keep records of the data and information specified in paragraphs (c)(1) through (12) of this section, according to the requirements in paragraph (c)(13) of this section.

(1) *General compliance and applicability records*. Maintain information specified in paragraphs (c)(1)(i) through (ii) of this section for each affected source.

(i) Each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(ii) Records of the applicability determinations as in § 63.11514(b)(1) through (5), ''Am I subject to this subpart,'' listing equipment included in its affected source, as well as any changes to that and on what date they occurred, for 5 years to be made available for inspector review at any time.

(2) *Visual determination of fugitive emissions records*. Maintain a record of the information specified in paragraphs (c)(2)(i) through (iii) of this section for each affected source which performs visual determination of fugitive emissions in accordance with § 63.11517(a), ''Monitoring requirements.''

(i) The date and results of every visual determination of fugitive emissions;

(ii) A description of any corrective action taken subsequent to the test; and

(iii) The date and results of any follow-up visual determination of fugitive emissions performed after the corrective actions.

(3) *Visual determination of emissions opacity records*. Maintain a record of the information specified in paragraphs (c)(3)(i) through (iii) of this section for each affected source which performs visual determination of emissions opacity in accordance with § 63.11517(c), ''Monitoring requirements.''

(i) The date of every visual determination of emissions opacity; and

(ii) The average of the six-minute opacities measured by the test; and

(iii) A description of any corrective action taken subsequent to the test.

(4) Maintain a record of the manufacturer's specifications for the control devices used to comply with § 63.11516, ''Standards and management practices.''

(5) *Spray paint booth filter records*. Maintain a record of the demonstration of filter efficiency and regular spray paint booth filter maintenance and performed in accordance with § 63.11516(d)(1)(ii), ''Spray painting of objects less than 15 feet in all dimensions requirements.''

(6) *HVLP or other high transfer efficiency spray delivery system documentation records*. Maintain documentation of HVLP or other high transfer efficiency spray paint delivery systems, in compliance with § 63.11516(d)(3), ''Requirements for spray painting of all objects.'' This documentation must include the manufacturer's specifications for the equipment and any manufacturer's operation instructions. If you have obtained written approval for an alternative spray application system in accordance with § 63.11516(d)(2), ''Spray painting of all objects,'' you must maintain a record of that approval along with documentation of the demonstration of equivalency.

(7) *HVLP or other high transfer efficiency spray delivery system employee training documentation records*. Maintain certification that each worker performing spray painting operations has completed the training specified in § 63.11516(d)(6), ''Requirements for spray painting of all objects,'' with the date the initial training and the most recent refresher training was completed.

(8) *General records detailing compliance with the spray painting VOHAP limits*. Maintain a current copy of the information detailed in paragraphs (c)(8)(i) through (iii) of this section.

(i) Information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of VOHAP and density for each paint, thinner and/or other additive and the volume fraction of paint solids for each paint.

(ii) Results of testing to determine mass fraction of VOHAP, density, or volume fraction of paint solids. You must keep a copy of the complete test report.

(iii) If you use information provided to you by the manufacturer or supplier of the material that was based on

testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(9) *Periodic records detailing compliance with the VOHAP limits.* For each compliance period, you must keep the records specified in paragraphs (c)(9)(i) through (ix) of this section.

(i) The painting operations on which you used each compliance option and the time periods (beginning and ending dates and times) for each option you used.

(ii) For the HAP content limit option, a record of the calculation of the VOHAP content for each paint, using Equation 2 of § 63.11516(e)(3), ''Spray Painting VOHAP content requirements.''

(iii) For the weighted-average VOHAP content limit option, you must keep the records of the information in paragraphs (c)(9)(iii)(A) through (C) of this section.

(A) Calculation of the total mass of VOHAP content for the paints, thinners and/or other additives used each month using Equations 3, 3A, and 3B of § 63.11516(e)(4), ''Spray painting VOHAP content requirements;''

(B) If applicable, the calculation used to determine mass of VOHAP in waste materials according to § 63.11516(e)(4)(vi), ''Spray painting VOHAP content requirements;''

(C) Calculation of the total volume of paint solids used each month using Equation 4 of § 63.11516(e)(4), ''Spray painting VOHAP content requirements,'' and

(D) Calculation of the 12-month weighted-average VOHAP content using Equation 5 of § 63.11516(e)(4), ''Spray painting VOHAP content requirements.''

(iv) The name and volume of each paint, thinner and/or other additive used during each compliance period. If you are using the HAP content limit option for all paints at the source, you may maintain purchase records for each material used rather than a record of the volume used.

(v) The mass fraction of VOHAP for each paint, thinner and/or other additive used during each compliance period unless the material is tracked by weight.

(vi) The volume fraction of paint solids for each paint used during each compliance period.

(vii) Records of the density for each paint, thinner and/or other additive used during each compliance period.

(viii) If you use an allowance in Equation 3 of § 63.11516(e)(4), ''Spray painting VOHAP content requirements,'' for VOHAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.11516(e)(4)(vi), you must keep records of the information specified in paragraphs (c)(9)(viii)(A) through (C) of this section.

(A) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 3 of § 63.11516(e)(4), ''Spray painting VOHAP content requirements;'' a statement of which subparts under 40 CFR parts 262, 264, 265, and 266, ''Hazardous Waste Management,'' apply to the facility; and the date of each shipment.

(B) Identification of the painting operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.11516(e)(4), ''Spray painting VOHAP content requirements.''

(C) The methodology used in accordance with § 63.11516(e)(4), ''Spray painting VOHAP content requirements,'' to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of VOHAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(ix) The date, time, and duration of each exceedence of the VOHAP content limits in § 63.11516(e)(1),''VOHAP content limit option,'' or § 63.11516(e)(2) ''Weighted-average VOHAP content limit option.''

(10) *Visual determination of emissions opacity performed during the preparation (or revision) of the Site-Specific Welding Emissions Management Plan.* You must maintain a record of each visual determination of emissions opacity performed during the preparation (or revision) of a Site-Specific Welding Emissions Management Plan, in accordance with § 63.11516(f)(7)(iii), ''Requirements for opacities exceeding 20 percent.''

(11) *Site-Specific Welding Emissions Management Plan.* If you have been required to prepare a plan in accordance with § 63.11516(f)(7)(iii), ''Site-Specific Welding Emissions Management Plan,'' you must maintain a copy of your current Site-Specific Welding Emissions Management Plan in your records and readily available for inspector review.

(12) *Manufacturer's instructions.* If you comply with this subpart by operating any equipment according to manufacturer's instruction, you must keep these instructions readily available for inspector review.

(13) Your records must be maintained according to the requirements in paragraphs (c)(13)(i) through (iii) of this section.

(i) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1), ''General Provisions.'' Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(ii) As specified in § 63.10(b)(1), ''General Provisions,'' you must keep each record for 5 years following the date of each occurrence, measurement, corrective action, report, or record.

(iii) You must keep each record on-site for at least 2 years after the date of each occurrence, measurement, corrective action, report, or record according to § 63.10(b)(1), ''General Provisions.'' You may keep the records off-site for the remaining 3 years.

§ 63. 11520 [Reserved]

Other Requirements and Information

§ 63. 11521 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g), of the General Provisions of this part.

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9), of the General Provisions of this part.

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f), of the General Provisions of this part. A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f), of the General Provisions of this part. A ''major change to monitoring'' under is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f), of the General Provisions of this part. A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11522 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; and in this section as follows:

Add-on control device means equipment installed on a process vent or exhaust system that reduces the quantity of a pollutant that is emitted to the air.

Adequate emission capture methods are hoods, enclosures, or any other duct intake devices with ductwork, dampers, manifolds, plenums, or fans designed to draw greater than 85 percent of the airborne dust generated from the process into the control device.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to an add-on control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Cartridge collector means a type of add-on control device that uses perforated metal cartridges containing a pleated paper or non-woven fibrous filter media to remove PM from a gas stream by sieving and other mechanisms. Cartridge collectors can be designed with single use cartridges, which are removed and disposed after reaching capacity, or continuous use cartridges, which typically are cleaned by means of a pulse-jet mechanism.

Confined abrasive blasting enclosure means an enclosure that includes a roof and at least two complete walls, with side curtains and ventilation as needed to insure that no air or PM exits the enclosure while dry abrasive blasting is performed. Apertures or slots may be present in the roof or walls to allow for mechanized transport of the blasted objects with overhead cranes, or cable and cord entry into the dry abrasive blasting chamber.

Dry abrasive blasting means cleaning, polishing, conditioning, removing or preparing a surface by propelling a stream of abrasive material with compressed air against the surface. Hydroblasting, wet abrasive blasting, or other abrasive blasting operations which employ liquids to reduce emissions are not dry abrasive blasting.

Dry grinding and dry polishing with machines means grinding or polishing without the use of lubricating oils or fluids.

Fabric filter means a type of add-on air control device used for collecting PM by filtering a process exhaust stream through a filter or filter media; a fabric filter is also known as a baghouse.

Facility maintenance means operations performed as part of the routine repair or renovation of equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity. Facility maintenance also includes operations associated with the installation of new equipment or structures, and any processes as part of janitorial activities. Facility maintenance includes operations on stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Facility maintenance also includes operations performed on mobile equipment, such as fork trucks, that are used in a manufacturing facility and which are maintained in that same facility. Facility maintenance does not include surface coating of motor vehicles, mobile equipment, or items that routinely leave and return to the facility, such as delivery trucks, rental equipment, or containers used to transport, deliver, distribute, or dispense commercial products to customers, such as compressed gas canisters.

Grinding means a process performed on a workpiece prior to fabrication or finishing operations to remove undesirable material from the surface or to remove burrs or sharp edges. Grinding is done using belts, disks, or wheels consisting of or covered with various abrasives.

Machining means dry metal turning, milling, drilling, boring, tapping, planing, broaching, sawing, cutting, shaving, shearing, threading, reaming, shaping, slotting, hobbing, and chamfering with machines. Shearing operations cut materials into a desired shape and size, while forming operations bend or conform materials into specific shapes. Cutting and shearing operations include punching, piercing, blanking, cutoff, parting, shearing and trimming. Forming operations include bending, forming, extruding, drawing, rolling, spinning, coining, and forging the metal. Processes specifically excluded are hand-held devices and any process employing fluids for lubrication or cooling.

Manufacturer's formulation data means data on a material (such as a paint) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.11516(e), ''Spray Painting VOHAP content requirements.'' Manufacturer's formulation data may include, but are not limited to, information on density, VOHAP content, volatile organic matter content, and paint solids content.

Mass fraction of VOHAP means the ratio of the mass of volatile organic HAP (VOHAP) to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Metal fabrication and finishing HAP (MFHAP) means cadmium, chromium, lead, manganese, or nickel.

Metal fabrication and finishing source categories are limited to operations described in Table 1 to this subpart.

Metal fabrication or finishing operations means dry abrasive blasting, machining, spray painting, or welding in any one of the nine metal fabrication and finishing source categories listed in Table 1 to this subpart.

Organic HAP content means the mass of volatile organic HAP (VOHAP) emitted per volume of paint solids used for a paint calculated using Equation 2 of § 63.11516(e), ''Spray Painting VOHAP content requirements.'' The VOHAP content is determined for the paint in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Paint means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, coatings, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances, or paper film or plastic film which may be pre-coated with an adhesive by the film manufacturer, are not considered paints for the purposes of this subpart.

Paint solids means the nonvolatile portion of the paint that makes up the dry film.

Polishing means an operation which removes fine excess metal from a surface to prepare the surface for more refined finishing procedures prior to plating or other processes. Polishing

may also be employed to remove burrs on castings or stampings. Polishing is performed using hard-faced wheels constructed of muslin, canvas, felt or leather, and typically employs natural or artificial abrasives. Polishing performed by hand without machines is not considered polishing for the purposes of this subpart.

Responsible official means responsible official as defined in 40 CFR 70.2.

Spray-applied painting means application of paints using a hand-held device that creates an atomized mist of paint and deposits the paint on a substrate. For the purposes of this subpart, spray-applied painting does not include the following materials or activities:

(1) Paints applied from a hand-held device with a paint cup capacity that is less than 3.0 fluid ounces (89 cubic centimeters).

(2) Surface coating application using powder coating, hand-held, non-refillable aerosol containers, or non-atomizing application technology, including, but not limited to, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, or marking pens.

(3) Painting operations that normally require the use of an airbrush or an extension on the spray gun to properly reach limited access spaces; the application of paints that contain fillers that adversely affect atomization with HVLP spray guns, and the application of paints that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.).

(4) Thermal spray operations (also known as metallizing, flame spray, plasma arc spray, and electric arc spray, among other names) in which solid metallic or non-metallic material is heated to a molten or semi-molten state and propelled to the work piece or substrate by compressed air or other gas, where a bond is produced upon impact.

Thinner means an organic solvent that is added to a paint after the paint is received from the supplier.

Tool or equipment repair means equipment and devices used to repair or maintain process equipment or to prepare molds, dies, or other changeable elements of process equipment.

Totally enclosed and unvented means enclosed so that no air enters or leaves during operation.

Totally enclosed and unvented dry abrasive blasting chamber means a dry abrasive blasting enclosure which has no vents to the atmosphere, thus no emissions. A typical example of this sort of abrasive blasting enclosure would be a small ''glove box'' enclosure, where the worker places their hands in openings or gloves that extend into the box and enable the worker to hold the objects as they are being blasted without allowing air and blast material to escape the box.

Vented dry abrasive blasting means dry abrasive blasting where the blast material is moved by air flow from within the chamber to outside the chamber into the atmosphere or into a control system.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of paint solids means the ratio of the volume of paint solids (also known as the volume of nonvolatiles) to the volume of a paint in which it is contained; liters (gal) of paint solids per liter (gal) of paint.

Welding means a process which joins two metal parts by melting the parts at the joint and filling the space with molten metal.

Wind event means an occurrence when the 60-minute average wind speed is greater than 25 miles per hour.

§ 63.11523 What General Provisions apply to this subpart?

The provisions in 40 CFR part 63, subpart A, applicable to sources subject to § 63.11514(a) are specified in Table 4 of this subpart.

TABLE 1 TO SUBPART XXXXXX OF PART 63.—DESCRIPTION OF SOURCE CATEGORIES AFFECTED BY THIS SUBPART

Metal fabrication and finishing source category	Description
Electrical and Electronic Equipment Finishing Operations	Establishments primarily engaged in high energy particle acceleration systems and equipment, electronic simulators, appliance and extension cords, bells and chimes, insect traps, and other electrical equipment and supplies not elsewhere classified. Also, establishments primarily engaged in manufacturing electric motors (except engine starting motors) and power generators; motor generator sets; railway motors and control equipment; and motors, generators and control equipment for gasoline, electric, and oil-electric buses and trucks.
Fabricated Metal Products	Establishments primarily engaged in manufacturing fabricated metal products, such as fire or burglary resistive steel safes and vaults and similar fire or burglary resistive products; and collapsible tubes of thin flexible metal. Also, establishments primarily engaged in manufacturing powder metallurgy products, metal boxes; metal ladders; metal household articles, such as ice cream freezers and ironing boards; and other fabricated metal products not elsewhere classified.
Fabricated Plate Work (Boiler Shops)	Establishments primarily engaged in manufacturing power marine boilers, pressure and nonpressure tanks, processing and storage vessels, heat exchangers, weldments and similar products.
Fabricated Structural Metal Manufacturing	Establishments primarily engaged in fabricating iron and steel or other metal for structural purposes, such as bridges, buildings, and sections for ships, boats, and barges.

TABLE 1 TO SUBPART XXXXXX OF PART 63.—DESCRIPTION OF SOURCE CATEGORIES AFFECTED BY THIS SUBPART—Continued

Metal fabrication and finishing source category	Description
Heating Equipment, except Electric	Establishments primarily engaged in manufacturing heating equipment, except electric and warm air furnaces, including gas, oil, and stoker coal fired equipment for the automatic utilization of gaseous, liquid, and solid fuels. Products produced in this source category include low-pressure heating (steam or hot water) boilers, fireplace inserts, domestic (steam or hot water) furnaces, domestic gas burners, gas room heaters, gas infrared heating units, combination gas-oil burners, oil or gas swimming pool heaters, heating apparatus (except electric or warm air), kerosene space heaters, gas fireplace logs, domestic and industrial oil burners, radiators (except electric), galvanized iron nonferrous metal range boilers, room heaters (except electric), coke and gas burning salamanders, liquid or gas solar energy collectors, solar heaters, space heaters (except electric), mechanical (domestic and industrial) stokers, wood and coal-burning stoves, domestic unit heaters (except electric), and wall heaters (except electric).
Industrial Machinery and Equipment Finishing Operations	Establishments primarily engaged in manufacturing heavy machinery and equipment of types used primarily by the construction industries, such as bulldozers; concrete mixers; cranes, except industrial plant overhead and truck-type cranes; dredging machinery; pavers; and power shovels. Also establishments primarily engaged in manufacturing forestry equipment and certain specialized equipment, not elsewhere classified, similar to that used by the construction industries, such as elevating platforms, ship cranes, and capstans, aerial work platforms, and automobile wrecker hoists. In addition, establishments primarily engaged in manufacturing machinery and equipment for use in oil and gas fields or for drilling water wells, including portable drilling rigs. Also, establishments primarily engaged in manufacturing pumps and pumping equipment for general industrial, commercial, or household use, except fluid power pumps and motors. This category includes establishments primarily engaged in manufacturing domestic water and sump pumps.
Iron and Steel Forging	Establishments primarily engaged in the forging manufacturing process, where purchased iron and steel metal is pressed, pounded or squeezed under great pressure into high strength parts known as forgings. The forging process is different from the casting and foundry processes, as metal used to make forged parts is never melted and poured.
Primary Metals Products Manufacturing	Establishments primarily engaged in manufacturing products such as fabricated wire products (except springs) made from purchased wire. These facilities also manufacture steel balls; nonferrous metal brads and nails; nonferrous metal spikes, staples, and tacks; and other primary metals products not elsewhere classified.
Valves and Pipe Fittings	Establishments primarily engaged in manufacturing metal valves and pipe fittings; flanges; unions, with the exception of purchased pipes; and other valves and pipe fittings not elsewhere classified.

Instructions for Table 2—You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data and which match either the solvent blend name or the chemical abstract series (CAS) number. If a solvent blend matches both the name and CAS number for an entry, that entry's organic HAP mass fraction must be used for that solvent blend. Otherwise, use the organic HAP mass fraction for the entry matching either the solvent blend name or CAS number, or use the organic HAP mass fraction from Table 2 to this subpart if neither the name nor CAS number match.

TABLE 2 TO SUBPART XXXXXX OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, Ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.

TABLE 2 TO SUBPART XXXXXX OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

Solvent/solvent blend	CAS No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard Solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol [reg] solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixtures	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

Instructions for Table 3—You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 3 TO SUBPART XXXXXX OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS[a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic[b]	0.03	1% Xylene, 1% Toluene, 1% Ethylbenzene, 1% Ethylbenzene, 1% Toluene, 1% Ethylbenzene.
Aromatic[c]	0.06	4% Xylene, 1% Toluene, 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 2 to this subpart by either solvent blend name or CAS number and you only know whether the blend is aliphatic or aromatic.

[b] E.g., Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] E.g., Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

Instructions for Table 4—As required in § 63.11523, ''General Provisions Requirements,'' you much meet each requirement in the following table that applies to you.

TABLE 4 TO SUBPART XXXXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO METAL FABRICATION OR FINISHING AREA SOURCES

Citation	Subject
63.1[1]	Applicability.
63.2	Definitions.
63.3	Units and abbreviations.
63.4	Prohibited activities.
63.5	Construction/reconstruction.
63.6(a), (b)(1)–(b)(5), (c)(1), (c)(2), (c)(5), (g), (i), (j)	Compliance with standards and maintenance requirements.
63.9(a)–(d)	Notification requirements.
63.10(a), (b) except for (b)(2), (d)(1), (d)(4)	Recordkeeping and reporting.
63.12	State authority and delegations.
63.13	Addresses of State air pollution control agencies and EPA regional offices.
63.14	Incorporation by reference.
63.15	Availability of information and confidentiality.
63.16	Performance track provisions.

[1] § 63.11514(g), ''Am I subject to this subpart?'' exempts affected sources from the obligation to obtain title V operating permits.

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Part III

Department of Homeland Security
Department of State

8 CFR Parts 212 and 235

22 Parts 41 and 53

Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere; Designation of an Enhanced Driver's License and Identity Document Issued by the State of Washington as a Travel Document Under the Western Hemisphere Travel Institute; Final Rule and Notice

DEPARTMENT OF HOMELAND SECURITY

[USCBP 2007–0061]

RIN 1651–AA69

8 CFR Parts 212 and 235

DEPARTMENT OF STATE

22 CFR Parts 41 and 53

Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the second phase of a joint Department of Homeland Security and Department of State plan, known as the Western Hemisphere Travel Initiative, to implement new documentation requirements for U.S. citizens and certain nonimmigrant aliens entering the United States. This final rule details the documents U.S. citizens[1] and nonimmigrant citizens of Canada, Bermuda, and Mexico will be required to present when entering the United States from within the Western Hemisphere at sea and land ports-of-entry.

DATES: This final rule is effective on June 1, 2009.

FOR FURTHER INFORMATION CONTACT:
Department of Homeland Security: Colleen Manaher, WHTI, Office of Field Operations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.4–D, Washington, DC 20229, telephone number (202) 344–1220.
Department of State: Consuelo Pachon, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, telephone number (202) 663–2662.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Documentation Requirements for Arrivals at Sea and Land Ports-of-Entry Prior to This Rule
1. U.S. Citizens
2. Nonimmigrant Aliens From Canada and the British Overseas Territory of Bermuda
3. Mexican Nationals
B. Statutory and Regulatory History
1. Intelligence Reform and Terrorism Prevention Act
2. Advance Notice of Proposed Rulemaking
3. Rules for Air Travel From Within the Western Hemisphere
4. Amendments to Section 7209 of IRTPA
5. Other Relevant Legislation
6. Passport Cards
7. Certifications to Congress
II. Documentation at the Border
III. Summary of Document Requirements in the Proposed Rule
IV. Discussion of Comments
A. General
B. Implementation
1. General
2. Timeline
3. Security/Operational Considerations
4. Technology
5. Cruise Ships
6. MODUs/OCS
C. Passports
1. General
2. Cost of Passports
3. Obtaining Passports
4. DOS Issuance Capacity
5. Passport Cards
D. Alternative Documents
1. General
2. Driver's License and Birth Certificate
3. Trusted Traveler Documents
4. Children/Groups of Children/Alternative Approaches/Parental Consent
5. State Enhanced Driver's License Projects
6. Mexican/Canadian/Bermudian Documents
7. REAL ID Driver's Licenses
E. Native Americans and Canadian Indians
F. Outside the Scope of This Rulemaking
1. General
2. Air Rule
3. IBWC
4. Lawful Permanent Residents
5. Dual Nationals
G. Public Relations
1. General
2. Outreach
H. Regulatory Analyses
1. Regulatory Assessment
2. Regulatory Flexibility Act
V. Final Document Requirements
A. U.S. Citizens Arriving by Sea or Land
B. Canadian Citizens and Citizens of Bermuda Arriving by Sea or Land
C. Mexican Nationals Arriving by Sea or Land
D. State Enhanced Driver's Licenses and Identification Documents
E. Future Documents
VI. Special Rules for Specific Populations
A. U.S. Citizen Cruise Ship Passengers
B. U.S. and Canadian Citizen Children
1. Children Under Age 16
2. Children Under Age 19 Traveling in Groups
C. American Indian Card Holders from Kickapoo Band of Texas and Tribe of Oklahoma
D. Members of United States Native American Tribes
E. Canadian Indians
F. Individual Passport Waivers
G. Summary of Document Requirements
VII. Regulatory Analyses
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
C. Executive Order 13132: Federalism
D. Executive Order 12988: Civil Justice Reform
E. Unfunded Mandates Reform Act Assessment
F. Paperwork Reduction Act
G. Privacy Statement
List of Subjects
Amendments to the Regulations

Abbreviations and Terms Used in This Document

ANPRM—Advance Notice of Proposed Rulemaking
BCC—Form DSP–150, B–1/B–2 Visa and Border Crossing Card
CBP—U.S. Customs and Border Protection
CBSA—Canada Border Services Agency
DHS—Department of Homeland Security
DOS—Department of State
FAST—Free and Secure Trade
FBI—Federal Bureau of Investigation
IBWC—International Boundary and Water Commission
INA—Immigration and Nationality Act
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
LPR—Lawful Permanent Resident
MMD—Merchant Mariner Document
MODU—Mobile Offshore Drilling Unit
MRZ—Machine Readable Zone
NATO—North Atlantic Treaty Organization
NEPA—National Environmental Policy Act of 1969
NPRM—Notice of Proposed Rulemaking
OARS—Outlying Area Reporting System
OCS—Outer Continental Shelf
PEA—Programmatic Environmental Assessment
SENTRI—Secure Electronic Network for Travelers Rapid Inspection
TBKA—Texas Band of Kickapoo Act
UMRA—Unfunded Mandates Reform Act
USCIS—U.S. Citizenship and Immigration Services
US-VISIT—United States Visitor and Immigrant Status Indicator Technology Program
WHTI—Western Hemisphere Travel Initiative

I. Background

For a detailed discussion of the document requirements for travelers entering the United States from within the Western Hemisphere before January 31, 2008, the statutory and regulatory histories through June 26, 2007, and the applicability of the rule related to specific groups, please see the NPRM published at 72 FR 35088. For the document requirements which went into effect on January 31, 2008, please see the Notice ''Oral Declarations No Longer Satisfactory as Evidence of Citizenship and Identity'' which was published in the **Federal Register** on December 21, 2007, at 72 FR 72744.

[1] ''U.S. citizens'' as used in this rule refers to both U.S. citizens and U.S. non-citizen nationals.

A. Documentation Requirements for Arrivals at Land and Sea Ports-of-Entry Prior to the Effective Date of This Rule

The following is an overview of the documentation requirements for citizens of the United States, Canada, British Overseas Territory of Bermuda (Bermuda), and Mexico who enter the United States at sea and land ports-of-entry prior to the effective date of this rule.

1. U.S. Citizens

Generally, U.S. citizens must possess a valid U.S. passport to depart from or enter the United States.[2] However, U.S. citizens who depart from or enter the United States by land or sea from within the Western Hemisphere other than from Cuba have historically been exempt from this passport requirement.[3] U.S. citizens have always been required to satisfy the inspecting officers of their identity and citizenship.[4] Since January 31, 2008, U.S. citizens ages 19 and older have been asked to present documents proving citizenship, such as a birth certificate, and government-issued documents proving identity, such as a driver's license, when entering the United States through land and sea ports-of-entry. Children under the age of 19 have only been asked to present proof of citizenship, such as a birth certificate.[5]

2. Nonimmigrant Aliens From Canada and the British Overseas Territory of Bermuda

Each nonimmigrant alien arriving in the United States must present a valid unexpired passport issued by his or her country of nationality and, if required, a valid unexpired visa issued by a U.S. embassy or consulate abroad.[6] Nonimmigrant aliens entering the United States must also satisfy any other applicable admission requirements (e.g., United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT)). However, the passport requirement is currently waived for most citizens of Canada and Bermuda when entering the United States as nonimmigrant visitors from countries in the Western Hemisphere at land or sea ports-of-entry.[7] These travelers have been required to satisfy the inspecting CBP officer of their identities and citizenship at the time of their applications for admission. Since January 31, 2008, these nonimmigrant aliens also have been asked to present document proving citizenship, such as a birth certificate, and government-issued documents proving identity, such as a driver's license, when entering the United States through land and sea ports-of-entry.[8]

3. Mexican Nationals

Mexican nationals are generally required to present a valid unexpired passport and visa when entering the United States. However, Mexican nationals arriving in the United States at land and sea ports-of-entry who possess a Form DSP–150, B–1/B–2 Visa and Border Crossing Card (BCC)[9] currently may be admitted without presenting a valid passport if they are coming by land or sea from contiguous territory.[10]

B. Statutory and Regulatory History

This final rule sets forth the second phase of a joint Department of Homeland Security (DHS) and Department of State (DOS) plan, known as the Western Hemisphere Travel Initiative (WHTI), to implement section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended (IRTPA) on June 1, 2009.[11] A brief discussion of IRTPA, amendments to IRTPA, and related regulatory efforts follows. For a more detailed description of these efforts through June 26, 2007, please refer to the NPRM at 72 FR 35088.

1. Intelligence Reform and Terrorism Prevention Act

On December 17, 2004, the President signed IRTPA into law.[12] IRTPA mandates that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require travelers for whom the President had waived the passport requirement to present a passport or other document, or combination of documents, that are ''deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship'' when entering the United States. WHTI thus requires U.S. citizens and nonimmigrant aliens from Canada, Mexico, and Bermuda to comply with the new documentation requirements.

2. Advance Notice of Proposed Rulemaking

On September 1, 2005, DHS and DOS published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) that announced that DHS and DOS were planning to amend their respective regulations to implement section 7209 of IRTPA. For further information, please see the ANPRM document that was published in the **Federal Register** on September 1, 2005, at 70 FR 52037. Comments to the ANPRM related to arrivals at sea and land ports-of-entry are addressed in this final rule.

3. Rules for Air Travel From Within the Western Hemisphere

On August 11, 2006, DHS and DOS published an NPRM for air and sea arrivals. The NPRM proposed that, subject to certain narrow exceptions, beginning January 2007, all U.S. citizens and nonimmigrant aliens, including those from Canada, Bermuda, and Mexico, entering the United States by air and sea would be required to present a valid passport or NEXUS Air card; U.S. citizens would also be permitted to present a Merchant Mariner Document (MMD). The NPRM provided that the requirements would not apply to members of the United States Armed Forces. For a detailed discussion of what was proposed for air and sea arrivals, please see the NPRM at 71 FR 41655 (hereinafter, Air and Sea NPRM).

The final rule for travelers entering or departing the United States at air ports-of-entry (hereinafter, Air Final Rule) was published in the **Federal Register** on November 24, 2006. Beginning January 23, 2007,[13] U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering and departing the United States at air ports-of-entry, which now includes from within the Western Hemisphere, are generally required to bear a valid passport. The main exceptions to this requirement are for U.S. citizens who present a valid, unexpired MMD

[2] Section 215(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1185(b).

[3] *See* 22 CFR 53.2(b), which waived the passport requirement pursuant to section 215(b) of the INA, 8 U.S.C. 1185(b).

[4] In lieu of a passport, travelers claiming U.S. citizenship long have been permitted to enter on an oral declaration or to present a variety of documents to establish their identity and citizenship and right to enter the United States as requested by the CBP officer. A driver's license issued by a state motor vehicle administration or other competent state government authority is a common form of identity document. Citizenship documents generally include birth certificates issued by a United States jurisdiction, Consular Reports of Birth Abroad, Certificates of Naturalization, and Certificates of Citizenship.

[5] 72 FR 72744.

[6] Section 212(a)(7)(B)(i) of the INA, 8 U.S.C. 1182(a)(7)(B)(i).

[7] 8 CFR 212.1(a)(1) (Canadian citizens) and 8 CFR 212.1(a)(2) (Citizens of Bermuda). *See also* 22 CFR 41.2.

[8] 72 FR 72744.

[9] A BCC is a machine-readable, biometric card, issued by the Department of State, Bureau of Consular Affairs.

[10] 8 CFR 212.1(c)(1)(i). *See also* 22 CFR 41.2(g).

[11] Pub. L. 108–458, as amended, 118 Stat. 3638 (Dec. 17, 2004).

[12] Pub. L. 108–458, 118 Stat. 3638 (Dec. 17, 2004).

[13] DHS and DOS determined that delaying the effective date of the Air Rule to January 23, 2007, was appropriate for air travel because of operational considerations and available resources. *See id.*

traveling in conjunction with maritime business and U.S. and Canadian citizens who present a NEXUS Air card for use at a NEXUS Air kiosk.[14] The Air Rule made no changes to the requirements for members of the United States Armed Forces. Please see the Air Final Rule at 71 FR 68412 for a full discussion of documentation requirements in the air environment.

In the Air Final Rule, DHS and DOS deferred a final decision on the document requirements for arrivals by sea until the second phase. Complete responses to the comments relating to sea travel that were submitted in response to the Air and Sea NPRM are presented in this final rule.

4. Amendments to Section 7209 of IRTPA

On October 4, 2006, the President signed into law the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act of 2007).[15] Section 546 of the DHS Appropriations Act of 2007 amended section 7209 of IRTPA by stressing the need for DHS and DOS to expeditiously implement the WHTI requirements no later than the earlier of two dates, June 1, 2009, or three months after the Secretaries of Homeland Security and State certify that certain criteria have been met. The section required ''expeditious[]'' action and stated that requirements must be satisfied by the ''earlier'' of the dates identified.[16] Congress also expressed an interest in having the requirements for sea and land implemented at the same time and having alternative procedures for groups of children traveling under adult supervision.[17] However, on December 26, 2007, the President signed into law the Department of Homeland Security Appropriations Act of 2008 (''Omnibus Bill'', Pub. L. 110–161) which amended section 7209(b)(1) of IRTPA to require that WHTI ''may not be implemented earlier than the date that is the later of 3 months after the Secretary of State and the Secretary of Homeland Security make the certification required in subparagraph (B) or June 1, 2009.'' (Section 545, Omnibus Bill).

5. Other Relevant Legislation

On August 4, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act of 2007).[18] Section 723 of the 9/11 Commission Act of 2007 called on the Secretary of Homeland Security to begin to develop pilot programs with states to develop state-issued secure documents that would denote identity and citizenship. Section 724 of the 9/11 Commission Act of 2007 called on the Secretary of State to examine the feasibility of lowering the execution fee for the proposed passport card.

6. Passport Cards

On October 17, 2006, to meet the documentation requirements of WHTI and to facilitate the frequent travel of persons living in border communities, DOS, in consultation with DHS, proposed to develop a card-format passport for international travel by U.S. citizens through land and sea ports-of-entry between the United States and Canada, Mexico, or the Caribbean and Bermuda.[19] The passport card will contain security features similar to the traditional passport book. The passport card will be particularly useful for citizens in border communities who regularly cross the border and will be considerably less expensive than a traditional passport. The validity period for the passport card will be the same as for the traditional passport—ten years for adults and five years for minors under age 16. The final rule on the passport card was published on December 31, 2007 at 72 FR 74169.

7. Certifications to Congress

In Section 546 of the DHS Appropriations Act of 2007, Congress called for DHS and DOS to make certain certifications before completing the implementation of the WHTI plan. The Departments have been working toward making these certifications since October 2006. In Section 723 of the 9/11 Commission Act, Congress required the submission of a report to the appropriate congressional committees regarding the state enhanced driver's license pilot program required by a separate provision of the Act.

Congress has asked for the following certifications:

1. *National Institute of Standards and Technology (NIST) Certification.* Acquire NIST certification for the passport card concerning security standards and best practices for protection of personal identification documents.

On May 1, 2007, NIST certified that the proposed card architecture of the passport card meets or exceeds the relevant standard and best practices, as specified in the statute.

2. *Technology Sharing.* Certify that passport card technology has been shared with Canada and Mexico.

DHS and DOS continue to share information and meet regularly with both Mexican and Canadian officials regarding the radio frequency identification (RFID) technology for the passport card.

3. *Postal Service Fee Agreement.* Certify that an agreement has been reached and reported to Congress on the fee collected by the U.S. Postal Service for acceptance agent services.

DOS and the Postal Service have memorialized their agreement on the fees for the passport card set by DOS, including the execution fee which the Postal Service retains.

4. *Groups of Children.* Certify that an alternative procedure has been developed for border crossings by groups of children.

The final rule contains an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent as proposed in the land and sea NPRM.

5. *Infrastructure.* Certify that the necessary passport card infrastructure has been installed and employees have been trained.

WHTI is a significant operational change in a series of changes that are aimed at transforming the land border management system. DHS will utilize the technology currently in place at all ports-of-entry to read any travel document with a machine-readable zone, including passports and the new passport card. CBP Officers have been trained in use of this infrastructure. In addition, CBP will deploy an integrated RFID technical infrastructure to support advanced identity verification in incremental deployment phases. CBP Officers receive ongoing training on WHTI policies and procedures and that will continue as we approach full WHTI implementation, including technology deployment, technology capability, and documentary requirements. CBP will develop training requirements and plans, perform the required training, provide on-site training support and monitor its effectiveness through assessment and ongoing support. Initial training was completed in January 2008.

[14] The Air Rule did not change the requirements for lawful permanent residents. Lawful Permanent Residents of the United States continue to need to carry their I–551 cards and permanent residents of Canada continue to be required to present a passport and a visa, if necessary, as they did before the rule came into effect.

[15] Pub. L. 109–295, 120 Stat. 1355 (Oct. 4, 2006).

[16] *Id.* at 546. See Congressional Record, 109th Cong., 2nd sess., September 29, 2006 at H7964.

[17] *Id.*

[18] Pub. L. 110–53, 121 Stat. 266 (Aug. 4, 2007).

[19] 71 FR 60928.

6. *Passport Card Issuance*. Certify that the passport card is available to U.S. citizens.

DOS has developed an ambitious and aggressive schedule to develop the passport card and is making progress toward that goal. DOS issued the final rule on December 31, 2007. DOS has accepted applications for the passport card since February 1, 2008, and expects to issue cards in spring 2008.

7. *Common Land and Sea Implementation*. Certify to one implementation date.

The final rule provides for one implementation date for land and sea travel.

8. *State Enhanced Driver's License Projects*. Certify to agreement for at least one voluntary program with a state to test a state-issued enhanced driver's license and identification document.

On March 23, 2007, the Secretary of Homeland Security and the Governor of Washington signed a Memorandum of Agreement to develop, issue, test, and evaluate an enhanced driver's license and identification card with facilitative technology to be used for border crossing purposes. On September 26, 2007, the Secretary of Homeland Security and the Governor of Vermont signed a similar Memorandum of Agreement for an enhanced driver's license and identification card to be used for border crossing purposes; on October 27, 2007, the Secretary and the Governor of New York also signed a Memorandum of Agreement. On December 6, 2007, the Secretary of Homeland Security and the Governor of Arizona also signed a similar Memorandum of Agreement to develop, issue, test, and evaluate an enhanced driver's license and identification card.[20]

The Departments have worked very closely to update the appropriate congressional committees on the status of these certifications and will continue to do so until final certifications are made. DOS and DHS believe that these certifications will be made well in advance of the June 1, 2009, deadline for implementation. In the unlikely event that the Departments are unable to complete all the necessary certifications by June 1, 2009, the Departments will provide notice to the public and amend the date(s) for compliance with the document requirements for land and sea border crossings as necessary.

II. Documentation at the Border

In the Land and Sea NPRM, the Departments announced that, separate from WHTI implementation, beginning January 31, 2008, CBP would begin requesting documents that help establish identity and citizenship from all U.S. and Canadian citizens entering the United States. This announcement was made to reduce the well-known vulnerability posed by those who might illegally purport to be U.S. or foreign citizens trying to enter the U.S. by land or sea on a mere oral declaration. A person claiming U.S. citizenship must establish that fact to the examining CBP Officer's satisfaction, including by presenting documentation as necessary. Historically, a U.S. citizen has had to present a U.S. passport only if such passport is required under the provisions of 22 CFR part 53. Since January 31, 2008, DHS has expected the evidence of U.S., Bermudian, or Canadian citizenship to include either of the following documents or groups of documents: (1) Document specified in CBP's regulations as WHTI-compliant for that individual's entry; or (2) a government-issued photo identification document presented with proof of citizenship, such as a birth certificate. CBP retains its discretionary authority to request additional documentation when warranted and to make individual exceptions in extraordinary circumstances when oral declarations alone or with other alternative documents may be accepted.

As of January 31, 2008, CBP has required proof of citizenship, such as a birth certificate or other similar documentation as noted in the final rule for U.S. and Canadian children under age 19.

III. Summary of Document Requirements in the Proposed Rule

In the June 26, 2007, NPRM, the Departments proposed new documentation requirements for U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States by land from Canada and Mexico, or by sea[21] from within the Western Hemisphere. The proposed document requirements are summarized below; for a full discussion of the proposed requirements, please refer to the NPRM at 72 FR 35088 (hereinafter Land and Sea NPRM).

The Departments proposed that most U.S. citizens entering the United States at all sea or land ports-of-entry would be required to present either: (1) A U.S. passport book; (2) a U.S. passport card; (3) a valid trusted traveler card (NEXUS, FAST, or SENTRI); (4) a valid MMD when traveling in conjunction with official maritime business; or (5) a valid U.S. Military identification card when traveling on official orders or permit.

The Departments proposed that Canadian citizens entering the United States at sea and land ports-of-entry would be required to present, in addition to a visa, if required:[22]

1. A passport issued by the Government of Canada; or

2. A valid trusted traveler program card issued by the Canada Border Services Agency (CBSA) or DHS, e.g. FAST, NEXUS, or SENTRI.[23]

In the Land and Sea NPRM, DHS and DOS also noted that they had engaged with the Government of Canada in discussions of alternative documents that could be considered for border crossing use at land and sea ports-of-entry under the proposed rule. DHS and DOS pledged continued engagement in discussions of alternatives and welcomed comments suggesting alternative Canadian documents.

Under the proposed rule, all Bermudian citizens would be required to present a passport issued by the Government of Bermuda or the United Kingdom when seeking admission to the United States at all sea or land ports-of-entry, including travel from within the Western Hemisphere.

In the Land and Sea NPRM, the Departments proposed that all Mexican nationals would be required to present either: (1) A passport issued by the Government of Mexico and a visa when seeking admission to the United States or (2) a valid Form DSP–150, B–1/B–2 visa Border Crossing Card (BCC) when seeking admission to the United States at land ports-of-entry or arriving by pleasure vessel or by ferry from Mexico. The Departments proposed that BCCs alone would no longer be acceptable by a Mexican national to enter the United States from Canada; instead, a Mexican national would need to present a passport and visa when entering the United States from Canada.

The Departments proposed that Mexican nationals who hold BCCs would be allowed to use their BCCs for

[20] For more information on these enhanced driver's license projects, see *http://www.dhs.gov*.

[21] In some circumstances under this rule, it is important to distinguish between types of sea travel. Those circumstances are so noted in the discussion of the final requirements.

[22] *See* 8 CFR 212.1(h), (l), and (m) and 22 CFR 41.2(k) and (m).

[23] Canadian citizens who demonstrate a need may enroll in the SENTRI program and currently may use the SENTRI card in lieu of a passport. To enroll in SENTRI, a Canadian participant must present a valid passport and a valid visa, if required. Other foreign participants in the SENTRI program must present a valid passport and a valid visa, if required, when seeking admission to the United States, in addition to the SENTRI Card. The proposed rule did not alter the passport and visa requirements for other foreign enrollees in SENTRI (i.e., other than Canadian foreign enrollees).

entry at the land border from Mexico and, when arriving by ferry or pleasure vessel from Mexico. For travel outside of certain geographical limits or for a stay over 30 days, Mexican nationals who entered the United States from Mexico possessing a BCC would also be required to obtain a Form I–94 from CBP as is currently the practice.[24] The BCC would not be permitted in lieu of a passport for commercial or other sea arrivals in the United States.

The Departments also proposed continuing the current practice that Mexican nationals may not use the FAST or SENTRI card in lieu of a passport or BCC. Mexican national FAST and SENTRI participants, however, would continue to benefit from expedited border processing.

The Departments also proposed to eliminate the exception to the passport requirement for Mexican nationals who enter the United States from Mexico solely to apply for a Mexican passport or other ''official Mexican document'' at a Mexican consulate in the United States located directly adjacent to a land port-of-entry and who currently are not required to present a valid passport. This type of entry generally occurs at land borders.[25]

In the Land and Sea NPRM, DHS and DOS encouraged U.S. states to consider participation in enhanced driver's license pilot programs and the Government of Canada to propose acceptable WHTI-compliant documents that it would issue to its citizens. DHS proposed to consider, as appropriate, documents such as driver's licenses that satisfy WHTI requirements by denoting identity and citizenship. These documents could be from a state, tribe, band, province, territory, or foreign government if developed in accordance with enhanced driver's license project agreements between those entities and DHS. In addition to denoting identity and citizenship, these documents will have compatible technology, security criteria, and respond to CBP's operational concerns.

On January 29, 2008, DHS published in the **Federal Register** a final rule concerning minimum standards for state-issued driver's licenses and identification cards that can be accepted for official purposes in accordance with the REAL ID Act.[26] In the January 29, 2008 rule, DHS indicated its intent to work with states interested in developing driver's licenses that will meet both the REAL ID and WHTI requirements.

In the Land and Sea NPRM, the Departments also proposed special circumstances for specific groups of travelers permitting other documents:

- U.S. citizens on cruise ship voyages that originate and end in the United States may carry government-issued photo identification (IDs) and birth certificates, consular reports of birth abroad or certificates of naturalization;
- U.S. and Canadian citizen children under age 16 and children age 16 to 18 traveling in groups may carry originals or certified copies of birth certificates; U.S. citizen children may also carry consular reports of birth abroad or certificates of naturalization;
- Members of the Kickapoo Band of Texas and Tribe of Oklahoma may carry the Form I–872, American Indian Card;

The Land and Sea NPRM indicated that document requirements for Lawful Permanent Residents (LPRs) of the United States, employees of the International Boundary and Water Commission (IBWC) between the United States and Mexico, workers on the Outer Continental Shelf (OCS), active duty alien members of the U.S. Armed Forces, and members of NATO-Member Armed Forces would remain unchanged.

The Departments also outlined certain approaches with regard to Native Americans and Canadian Indians, as well as alternative approaches to children and requested comments on the proposed alternatives for inclusion in this final rule. A discussion of those approaches and the comments received follows in the comment response section.

IV. Discussion of Comments

In the ANPRM, the Air and Sea NPRM, and Land and Sea NPRM, DHS and DOS sought public comment to assist the Secretary of Homeland Security to make a final determination concerning which document, or combination of documents, other than valid passports, would be accepted at sea and land ports-of-entry.

DHS and DOS received 2,062 written comments in response to the ANPRM and over 1,350 written comments in response to the Land and Sea NPRM. The Departments also received several comments to the August 11, 2006, Air and Sea NPRM that addressed sea or land travel or the WHTI plan generally, which have been included and addressed in these comment responses. The majority of the comments (1,910 from the ANPRM) addressed only potential changes to the documentation requirements at land border ports-of-entry. One hundred and fifty-two comments from the ANPRM addressed changes to the documentation requirements for persons arriving at air or sea ports-of-entry. Comments in response to both the ANPRM and the Land and Sea NPRM were received from a wide range of sources including: Private citizens; businesses and associations; local, state, federal, and tribal governments; members of the United States Congress; and foreign government officials.

The comments received in response to the ANPRM and the Land and Sea NPRM regarding arrivals by land and sea are addressed in this rulemaking. A summary of the comments from the ANPRM, the Air and Sea NPRM, and the Land and Sea NPRM follows with complete responses to the comments.

A. General

DHS and DOS received thirty-nine comments to the Land and Sea NPRM expressing general agreement with the proposed requirements.

DHS and DOS received several comments to the August 11, 2006, Air and Sea NPRM for implementation of WHTI in the air and sea environments that opposed any requirements for land-border crossings. DHS and DOS received thirty comments to the Land and Sea NPRM expressing general disagreement with the proposed rule. One commenter requested more stringent document requirements than proposed.

B. Implementation

1. General

Comment: One commenter to the Land and Sea NPRM noted that a U.S. citizen cannot be denied entry to the United States.

Response: U.S. citizens cannot be denied entry to the United States; however, the documents that this rule requires are designed to establish citizenship and identity. Travelers without WHTI-compliant documents who claim U.S. citizenship will undergo additional inspection and processing until the inspecting officer is satisfied that the traveler is a U.S. citizen, which could lead to lengthy delays.

Comment: Two commenters to the Land and Sea NPRM expressed concern that the manner by which DHS is certifying itself as being ready to implement WHTI does not allow

[24] *See* 8 CFR 212.1(c)(1)(i); *also* 22 CFR 41.2(g). If Mexicans are only traveling within a certain geographic area along the United States' border with Mexico; usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, they do not need to obtain a form I–94. If they travel outside of that geographic area, they must obtain an I–94 from CBP at the port-of-entry. 8 CFR 235.1(h)(1).

[25] *See* 8 CFR 212.1(c)(1)(ii).

[26] *See* REAL ID Final Rule at 73 FR 5272.

Congress to exercise the necessary oversight of the WHTI program.

Response: DOS and DHS disagree. The Departments are in the process of taking the necessary steps to be able to make all certifications to Congress as required by statute. WHTI is a significant operational change in a series of changes that are aimed at transforming the land border management system. DHS will utilize the technology currently in place at all ports-of-entry to read any travel document with a machine-readable zone, including passports and the new passport card. CBP Officers have been trained in use of this infrastructure. In addition, CBP will deploy an integrated RFID technical infrastructure to support advanced identity verification in incremental deployment phases. CBP Officers receive ongoing training on WHTI policies and procedures and that will continue as we approach full WHTI implementation, including technology deployment, technology capability, and documentary requirements. CBP will develop training requirements and plans, perform the required training, provide on-site training support and monitor its effectiveness through assessment and ongoing support, with initial training having been completed in January 2008.

The Departments have worked very closely to update the appropriate congressional committees on the status of the certifications and will continue to do so until final certifications are made. Moreover, the National Institute of Standards and Technology (NIST) certified on May 1, 2007, that the architecture of the passport card meets or exceeds the relevant standard and the best practices for protection of personal identification documents as specified in the statute. DOS and DHS are on track to make all certifications well in advance of the June 1, 2009 implementation date.

Comment: Approximately two hundred commenters to the Land and Sea NPRM requested that the Departments commit sufficient resources to fully implement WHTI, including technology, staffing, funding, training, and marketing.

Response: DOS and DHS are fully committed to providing the necessary resources to implement WHTI, including technology, staffing, funding, training, and outreach to the traveling public.

Comment: Several commenters raised concerns about requiring passports or other forms of documentation during emergency situations. One commenter stated that the passport waiver for U.S. citizens during unforeseen emergencies or for humanitarian or national interest reasons should also extend to Canadian and Mexican citizens. One commenter to the Land and Sea NPRM requested that DHS consult with local emergency responders so that WHTI does not compromise their ability to protect American and Canadian communities.

Response: Pursuant to IRTPA, this final rule provides for situations in which documentation requirements may be waived for U.S. citizens on a case-by-case basis for unforeseen emergencies or ''humanitarian or national interest reasons.'' Similarly, CBP has authority to temporarily admit non-immigrant aliens into the United States on a temporary basis in case of a medical or other emergency, which is not changed by this final rule. Finally, local emergency responders routinely consult with local CBP offices regarding entry procedures into the United States during emergency situations.

Comment: One commenter stated that the Land and Sea NPRM would be contrary to U.S. obligations under international human rights law, free trade agreements, and U.S. statutes, including the International Covenant on Civil and Political Rights, the Charter of the Organization of American States, the North American Free Trade Agreement (NAFTA), and the NAFTA Implementation Act because the rules restrict free movement of people in the Western Hemisphere.

Response: DHS and DOS are not denying U.S. or non-U.S. citizens the ability to travel to and from the United States by requiring an appropriate document for admission. Pursuant to 8 U.S.C. 1182(a)(7)(A) and 1185, DHS and DOS have authority to require sufficient proof of identity and citizenship via presentation of a passport or alternative document when seeking entry to the United States. By requiring a valid passport or other alternative document for entry to the United States from within the Western Hemisphere, DHS and DOS are eliminating a historical exemption of the requirement that all U.S. citizens and other travelers must posses a passport to enter the country.

2. Timeline

Comment: DHS and DOS received one hundred and ten comments to the ANPRM regarding the timeline for implementation of WHTI. Ten of the ANPRM commenters believed that WHTI should be implemented sooner than proposed. Nine of these commenters approved of the timelines proposed, and ninety-four commenters believed that the timeline should be extended.

Several comments to the Air and Sea NPRM and to the Land and Sea NPRM asked for an extended implementation timeline. One commenter stated that WHTI in the land and sea environments should be implemented as soon as possible. A few commenters urged that the Departments give the public ample opportunity to prepare for the final implementation. Twenty-four commenters recommended delaying implementation until pilot projects and field trials had been completed. Two hundred and six commenters recommended that DHS should set a clear implementation date of June 2009.

Six commenters requested a flexible and phased implementation approach for WHTI. Thirty-six commenters recommended ensuring that there is a critical mass of WHTI-compliant documentation (*i.e.*, passports, NEXUS, FAST, and enhanced driver's licenses) in circulation prior to WHTI implementation at land and sea ports-of-entry. One commenter to the Land and Sea NPRM requested that key benchmarks relating to document availability and installation of required infrastructure be developed to determine the timeline for full implementation.

Response: Since the publication of the NPRM, Congress has amended section 7209 by the 200 Omnibus Bill, to prohibit WHTI from being implemented before June 1, 2009, at the earliest. DHS and DOS will transition toward WHTI secure document requirements over the next 16 months, with implementation on June 1, 2009. This allows ample time for the public to prepare for the change.

Comment: Two commenters stated that ending oral declarations on January 31, 2008, without a plan would cause substantial delays at ports-of-entry and suggested a single implementation date of 2009 rather than a phased implementation. Three commenters were concerned about how the elimination of the practice of accepting oral declarations of citizenship and how processing of travelers without documents in the transition phase will impact the flow of traffic at busy border crossings.

Response: In the Land and Sea NPRM, the Departments announced that, separate from WHTI implementation, beginning January 31, 2008, CBP would begin requesting documents that evidence identity and citizenship from all U.S. and Canadian citizens entering the United States at land and sea ports-of-entry. This change was made to reduce the well-known vulnerability posed by those who might illegally purport to be U.S. or foreign citizens trying to enter the United States by land

or sea on a mere oral declaration. As of January 31, 2008, a person claiming U.S. citizenship must establish that fact to the examining CBP Officer's satisfaction, generally through the presentation of a birth certificate and government-issued photo identification. CBP retains its discretionary authority to request additional documentation when warranted and to make individual exceptions in extraordinary circumstances when oral declarations alone or with other alternative documents may be accepted.

CBP has relied on its operational experience in processing travelers entering the United States by land to ensure that the elimination of oral declarations is implemented in a manner that will minimize delays while achieving the security benefit underlying WHTI. The changes that took place January 31, 2008, have gone smoothly. Compliance rates are high and continue to increase. There have been no increases in wait times attributable to the end of accepting oral declarations alone at the border.

Comment: One commenter to the Land and Sea NPRM stated that WHTI implementation should be delayed until a study underway at the Government Accountability Office (GAO) is completed. Another commenter called upon DHS to conduct a more comprehensive economic impact analysis before the proposed rule is promulgated.

Response: The Departments welcome congressional oversight and have cooperated with several GAO engagements that have directly or indirectly touched on WHTI. The Departments intend to fully implement WHTI on June 1, 2009, the earliest possible date, which the Departments believe is in the best interests of national security. Additionally, the Departments are providing ample time for robust communication efforts to and preparation by the traveling public. While the Departments will consider the findings of these GAO engagements with regard to WHTI implementation, it is not necessary, nor would it be appropriate, to delay implementation of WHTI until any particular GAO report is completed. Moreover, CBP has also conducted a robust economic analysis of the proposed rule, as detailed in the Land and Sea NPRM and elsewhere in this document, in accordance with applicable laws, regulations, and policies.

3. Security and Other Operational Considerations

Comment: DHS and DOS received approximately thirty-five comments to the ANPRM stating that the implementation of WHTI at the land borders would result in travel delays at the ports-of-entry. Ten commenters to the Land and Sea NPRM recommended that the ''border crossing agencies'' implement a plan to anticipate and mitigate longer waits at key border crossings.

Response: DHS has analyzed the potential for travel delays at the ports-of-entry in the document ''Western Hemisphere Travel Initiative in the Land and Sea Environments: Programmatic Environmental Assessment.'' The public was invited to comment on this analysis. DHS has concluded that implementation of WHTI in the land environment will not have an adverse impact on wait times. By using documents that contain an MRZ or employ RFID technology, the Departments anticipate that wait times will decrease. The final Programmatic Environmental Assessment is available at *http://www.cbp.gov.*

4. Technology

Comment: Eight commenters to the Land and Sea NPRM stated that WHTI should not be implemented until RFID technology has been deployed. These commenters also stated that RFID technology should be deployed at all land-border crossings. Six hundred and thirty-eight commenters stated that appropriate infrastructure and personnel should be in place for a program of this magnitude.

Response: DHS is committed to ensuring that infrastructure and fully trained personnel are in place to successfully implement WHTI in the land environment. DHS believes that deploying new RFID technology at certain land ports-of-entry, in combination with existing technology, is the most cost-effective way to enhance security while ensuring the efficient flow of trade and travelers. DHS believes that RFID deployment to low-volume land-border ports-of-entry in the near future is unnecessary given the current traffic volumes.

Comment: Two commenters to the Land and Sea NPRM stated that DHS and DOS should reconsider the use of vicinity RFID technology in the passport card because of the substantial privacy and security risks. Four commenters stated that the implementation of WHTI should protect the personal privacy of travelers.

Response: Based on experience to date with the use of RFID technology, DHS is confident that existing and future vicinity RFID-enabled documents can be used at the border in a manner that safeguards personal privacy. RFID technology is currently used as part of existing trusted traveler programs. The RFID chip contained in the passport card issued by DOS will not contain any personal information. The vicinity RFID technology to be deployed would act as a pointer to a secure CBP database and does not transmit personal information. The information is presented to CBP officers as the traveler pulls up to an inspection booth, thus facilitating faster processing of the individual.

5. Cruise Ships

Comment: Four commenters to the Land and Sea NPRM stated their appreciation that passports will not be required for those cruise passengers departing and returning to the United States. One commenter disagreed with the proposed alternative document requirement for certain U.S. citizen cruise ship passengers.

Response: DHS and DOS appreciate these comments, and have decided to adopt in the final rule the NPRM provision addressing U.S. citizens on round-trip cruises. Thus, U.S. citizens traveling entirely within the Western Hemisphere may present a government-issued photo ID along with an original or a copy of a birth certificate instead of a document designated in this final rule if they: (1) Board a cruise ship at a port or place within the United States and (2) return to the same U.S. port or place from where they originally departed. In addition, DHS and DOS added a new provision that clarifies that U.S. citizens under the age of 16 are required to present either an original or a copy of his or her birth certificate without having to provide a photo ID.

Regarding the comment opposing alternative document requirements for cruise ship passengers, because of the nature of round trip cruise ship travel, DHS has determined that when U.S. citizens depart from and reenter the United States on board the same cruise ship, they pose a low security risk in contrast to cruise ship passengers who embark in foreign ports. Therefore, under certain conditions, U.S. citizen cruise ship passengers traveling within the Western Hemisphere will be permitted to present alternative documentation as described in section V.A. of this document.

6. MODUs/OCS

Comment: One commenter to the Land and Sea NPRM supported the clarification on document requirements for workers returning to and from Mobile Offshore Drilling Units (MODUs) within the United States Outer Continental Shelf (OCS).

Response: DHS and DOS appreciate this comment. DHS and DOS clarified in the Land and Sea NPRM that offshore workers who work aboard Mobile Offshore Drilling Units (MODUs) attached to the United States Outer Continental Shelf (OCS), and who travel to and from MODUs, would not need to possess a passport or other designated document to re-enter the United States if they do not enter a foreign port or place. Upon return to the United States from a MODU, such an individual would not be considered an applicant for admission for inspection purposes under 8 CFR 235.1. Therefore, this individual would not need to possess a passport or other designated document when returning to the United States. DHS and DOS note that, for immigration purposes, offshore employees on MODUs underway, which are not considered attached to the OCS, would not need to present a passport or other designated document for re-entry to the United States mainland or other territory if they do not enter a foreign port or place during transit. However, an individual who travels to a MODU directly from a foreign port or place and, therefore, has not been previously inspected and admitted to the United States, would be required to possess a passport or other designated document when arriving at the United States port-of-entry by sea.

C. Passports

1. General

Comment: Thirty-one commenters to the Land and Sea NPRM stated that increasing the number of documents in circulation will increase the number of documents that are lost, stolen or misplaced, and thus individuals in these circumstances will need expedited replacement. One commenter to the Land and Sea NPRM expressed concern about how to enter the United States if his passport had been lost or stolen.

Response: U.S. citizens whose passports are lost or stolen can apply for replacements and request expedited service if necessary. Individuals who are abroad and have an urgent need to travel are generally issued a one-year, limited validity passport that will enable them to continue their trips. That passport will be replaced within the year for no additional fee either domestically or abroad. Individuals who are within the United States and have an urgent need to travel may pay a fee for expedited processing as defined in 22 CFR 51.56.

Comment: One commenter to the Land and Sea NRPM raised concerns about the security of U.S. and foreign passports, stating that passports are easily falsified or altered. One commenter stated that passports can be intercepted in the mail and falsified.

Response: A primary purpose of the passport has always been to establish citizenship and identity. It has been used to facilitate travel to foreign countries by displaying any appropriate visas or entry/exit stamps. Passports are globally interoperable, consistent with worldwide standards, and usable regardless of the international destination of the traveler. As such, we recognize that false passports are valuable assets for dangerous people. We take precautionary measures to verify passports and share information with international partners regarding lost and stolen passports.

U.S. passports incorporate a host of security features. These security features include, but are not limited to, rigorous adjudication standards and document security features. The adjudication standards establish the individual's citizenship and identity and ensure that the individual meets the qualifications for a U.S. passport. The document authentication features include digitized photographs, embossed seals, watermarks, ultraviolet and fluorescent light verification features, security laminations, micro-printing, and holograms.

An application for a U.S. passport is adjudicated by trained DOS experts and issued to persons who have documented their identity and United States citizenship by birth, naturalization or derivation. Applications are subject to additional Federal government checks to ensure the applicants are eligible to receive a U.S. passport under applicable standards.

U.S. passports are delivered by priority mail with delivery confirmation providing proof of receipt at the addressee's zip code. Mail carriers are instructed to scan the Priority Mail piece at the time it is delivered to the address indicated on the envelope. Priority Mail envelopes also help protect the passport from loss or theft. The envelopes are sturdy and less likely to become damaged or unsealed during mail processing.

Foreign passports accepted for admission to the United States must meet the standards set out in the International Civil Aviation Organization (ICAO) 9303, and a CBP inspecting officer verifies and authenticates such passports presented for admission to the United States.

2. Cost of Passports

Comment: In response to the Air and Sea NPRM and Land and Sea NPRM, DHS and DOS received many comments stating that passports are too expensive for routine cross-border visits and that the cost of the passport book should be reduced or eliminated. Several commenters requested that DOS offer lower rates for families, the elderly, and children under 18. One commenter was concerned about the eventual cost of the passport card. One commenter stated that the cost of the passport card should be reasonable and it should remain less expensive than a passport. One commenter to the Land and Sea NPRM requested a no-cost passport card for travelers who cross international borders at unique geographical locations. One commenter urged the State Department to provide expedited passport service to truck drivers at no additional charge. Five commenters to the Land and Sea NPRM suggested that U.S. passport fees be waived for Indian tribal members. One commenter stated that the cost of obtaining a passport would cause people not to travel, negatively affecting commerce.

Response: Title 22 of the United States Code mandates that DOS charge a fee for each passport application and a fee for executing each application, where applicable. The law and implementing regulations provide for certain exemptions from passport fees, but the law does not provide DOS the discretion to create additional exemptions or a reduced fee category based on the personal circumstances of the individual. Children do benefit from a lower application fee but it reflects the reduced validity period of the passport rather than a concession based on age. Please see the passport card final rule () for more information on the cost structure of the passport card. *See* 72 FR 74169.

3. Obtaining Passports

Comment: DHS and DOS received seven comments to the Land and Sea NPRM asking why a birth certificate had to be submitted with the passport application or an old passport had to be submitted along with a renewal application, thus potentially leaving travelers without a passport or a birth certificate to use for international travel.

Response: To prevent fraud, original birth certificates must be examined by passport examiners who are trained in fraud detection before they are returned to the applicant. For the same reason, a person is not permitted to hold two valid passports of the same type except on DOS authorization. DOS physically cancels current passports when it issues new passports, therefore, current or old passports have to be submitted during the renewal process. If a passport is

needed for urgent travel, the traveler can request expedited service.

4. DOS Issuance Capacity

Comment: DHS and DOS received one hundred eighty-four comments to the Land and Sea NPRM that expressed concern that DOS would not be able to timely process the increased numbers of passport applications that will result from implementation of the rule. One commenter stated that standard applications should be processed in six weeks and expedited applications in one week. One commenter stated that with the increase of passport applications, adjudicators within DOS are not given enough time to thoroughly check them. One commenter stated that the wait time in applying for the passport card should be less than thirty days.

Response: Prior to the implementation of the first phase of WHTI in January 2007, DHS and DOS conducted a successful campaign to alert the traveling public and stakeholders in the private sector to the new document requirements implemented in the air phase, particularly in the aviation and travel and tourism industries.

DOS has taken numerous measures in response to the increased demand resulting from the implementation of WHTI. DOS has created hundreds of new positions and is currently producing more than 1.6 million passports per month. DOS anticipates increasing passport issuance to 500,000 documents a week. DOS is also planning to open additional passport facilities around the country. Through these efforts, DOS expects to be able to meet the increased demand resulting from the implementation of WHTI in the land and sea environments.

5. Passport Cards

Comment: DHS and DOS received four comments to the Air and Sea NPRM for implementation of WHTI in the air and sea environments requesting that the passport card be designated as an acceptable document in the air environment. Two commenters to the Land and Sea NPRM did not support the issuance of passport cards because the cards cannot be used for international travel beyond Canada, Mexico, the Caribbean, or Bermuda.

Response: The passport card is intended as a lower cost means of establishing identity and nationality for U.S. citizens in two limited situations—for U.S. citizens crossing U.S. land borders and traveling by sea between the United States, Canada, Mexico, the Caribbean, or Bermuda. The passport card is not designed to be a globally interoperable travel document as defined by the International Civil Aviation Organization (ICAO). In fact, designating the card format passport for wider use, including by air travelers, would inadvertently undercut the broad-based international effort to strengthen civil aviation security and travel document specifications to address the post 9/11 threat environment because it would not meet all the international standards for passports and other official travel documents. Moreover, in its consideration of the 2007 Appropriations Act for the Department of Homeland Security, Congress, while allowing for the use of the passport card by citizens traveling by sea between the United States, Canada, Mexico, the Caribbean, or Bermuda, did not make parallel changes regarding international air travel.

Comment: DHS and DOS received five comments to the Land and Sea NPRM stating that the implementation of WHTI should not take place until the passport card is available. One commenter suggested that the passport card should be issued in conjunction with existing state licensing agencies with federal support. Four commenters stated that the passport card could not possibly be designed, tested, publicized, and be readily obtainable by the summer of 2008. One commenter stated that the issuance of a passport card would not facilitate spontaneous travel.

Response: As stated in the Land and Sea NPRM, in which the Departments jointly announced the next phase of WHTI addressing entry into U.S. land and sea ports-of-entry, DHS and DOS have considered the operational challenges posed by the new requirements. As a result, the Departments are taking a flexible, practical approach to land implementation that considers a variety of factors, including the availability of passports, passport cards, and state-issued enhanced driver's licenses pursuant to project agreements with DHS. During this transition period, U.S. citizens will be able to obtain the documents necessary to satisfy WHTI.

Comment: The Government of Canada commented on the Land and Sea NPRM and encouraged the sharing of the technological and procurement specifications of the U.S. passport card in order to assist in the development of comparable passport card options in other countries.

Response: DHS and DOS have engaged with the Government of Canada in discussions of alternative documents proposed by the Canadian federal government and several provinces that could be considered for border crossing use at land and sea ports-of-entry. DHS and DOS have shared technology and procurement specifications with the Government of Canada regarding alternative travel documents and welcome continued engagement with Canadian counterparts to implement WHTI. Alternative identity and citizenship documents issued by the Government of Canada will be considered in the future.

Comment: One commenter to the NPRM recommended that the card should expire not less than ten years from the date issued.

Response: Passport cards, like passport books, will be valid for ten years for adults and five years for children less than 16 years of age.

D. Alternative Documents

1. General

Comment: DHS and DOS received approximately 230 comments to the ANPRM requesting alternative documentation to the traditional passport book. Almost half of those commenters wanted a low-cost identification card that could be used for crossing the border. Many commenters requested that existing CBP Trusted Traveler cards be accepted. Several commenters asked for a clear definition of the documents that would be acceptable under WHTI for land travel. A few commenters stated that only the passport should be acceptable. Two commenters asked that a Transportation Worker Identification Card (TWIC) be designated as an acceptable document.

DHS and DOS received three comments to the Land and Sea NPRM requesting a low-cost identification card that could be used for crossing the border. Eleven commenters to the Land and Sea NPRM supported the opportunity for travelers to present a variety of government-approved identifications. Three commenters requested DHS and DOS to further study the possibility for alternative identification that would be accepted in place of a passport.

Response: Other acceptable documents are designated in this rule by the Secretary of Homeland Security as sufficient to establish identity and citizenship at land and sea ports-of-entry. For U.S. citizens, along with the passport and lower-cost passport card, CBP Trusted Traveler cards under the NEXUS, SENTRI, and FAST programs will be accepted under this rule. In addition, identification cards issued to military members of the U.S. Armed Forces will be accepted when such

personnel are traveling on official travel orders. Merchant Mariner Documents (MMDs) issued by the U.S. Coast Guard to U.S. citizens will also be accepted when traveling for official maritime business.

Canadian citizens will be able to present CBP Trusted Traveler Cards. The Border Crossing Card (BCC) issued by DOS to Mexican nationals will be accepted when coming from Mexico.

Documents issued as part of a DHS-approved state enhanced driver's license project will be acceptable according to the agreement between the individual state and DHS, or the Government of Canada and DHS. Details on state enhanced driver's license projects will be published as notices in the **Federal Register** as they are finalized.

In addition to the documents described above, DHS and DOS are providing alternatives to the passport requirement for children under 16, children under 18 traveling in groups, Native American U.S. citizens, Canadian Indians, and certain U.S. cruise passengers on ''closed-loop'' voyages that originate in the United States. DHS and DOS encourage U.S. states and Canadian provinces (through the Government of Canada) to participate in enhanced driver's license projects.

Comment: Four commenters to the Land and Sea NPRM asked for a definition of ''availability'' concerning documents that will be accepted under WHTI.

Response: In the Land and Sea NPRM, the Departments stated, in the context of implementation and the effective date of the final rule:

> At a date to be determined by the Secretary of Homeland Security, in consultation with the Secretary of State, the Departments will implement the full requirements of the land and sea phase of WHTI. The implementation date will be determined based on a number of factors, including the progress of actions undertaken by the Department of Homeland Security to implement the WHTI requirements and the availability of WHTI compliant documents on both sides of the border. * * *[27]

In this context, ''availability'' means that WHTI-designated documents exist and the public can obtain them. The Departments are publishing this final rule with ample notice to the traveling public. This will also allow sufficient time for the traveling public to obtain documents before June 1, 2009.

Comment: Thirteen commenters to the Land and Sea NPRM asked that the Departments include a provision in the final rule for a non-photo identification document (e.g., fingerprint verification) for persons who object to being photographed based on their religious beliefs.

Response: While DHS and DOS remain sensitive to the concerns of different religious groups, the Departments must balance those concerns against the need to secure our borders through the implementation of the document standards required by WHTI. In particular, photographs serve a unique and essential function and significantly minimize the opportunities for document fraud, unlike fingerprints, by allowing an inspecting CBP officer or any law enforcement officer to immediately compare the picture on the document against the traveler. In order to be consistent with international travel standards, DHS is requiring all adult travelers to carry a government-issued photographic identification document. Failure to do so may result in delays at the border as officers try to determine identity and citizenship.

2. Driver's License and Birth Certificate

Comment: DHS and DOS received almost 300 comments to the ANPRM stating that the combination of a driver's license and birth certificate should be acceptable to denote an individual's citizenship and identity. DOS and DHS received several comments to the Land and Sea NPRM stating that a driver's license and birth certificate should be acceptable to denote an individual's citizenship and identity. One commenter stated that because Native Americans can use their tribal identification cards, northern-border citizens should be allowed to use their state or province-issued birth certificates and driver's licenses. Thirty-eight commenters stated that they should be exempt from a passport requirement due to their unique geographic location. Two commenters requested special provisions for waiving passport requirements for North American Indians traveling through the U.S. border. One commenter disagreed with the cruise ship exemption for U.S. citizens.

Response: The Departments agree that U.S. citizens may use the combination of a driver's license and birth certificate when traveling on ''closed loop'' cruise ship voyages, where the U.S. citizen departs from a U.S. port or place and returns to the same U.S. port upon completion of the voyage. Accordingly, we disagree with the commenter advocating that the Departments not adopt a special provision for cruise travel. DHS and DOS have determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment. In contrast, because of the myriad government entities that issue birth certificates and because of the greater potential for counterfeiting or adulteration associated with general use in the land and sea environments, the Departments have determined that it is not prudent to permit the combination of birth certificates and driver's licenses generally for adults when single, secure documents are available. CBP recognizes that residents of unique geographic locations face special challenges in that some must travel through Canada to get from their homes in the United States to their schools, jobs, and hospitals in other areas of the United States. CBP has worked with many of these communities over the years to facilitate travel. Full implementation of WHTI will not diminish CBP's ability to utilize existing protocols and other inspection processes to admit travelers to and from unique geographic locations. The Departments have elected not to adopt any of the remaining comments.

Comment: DHS and DOS received several comments to the Land and Sea NPRM stating that because the combination of a driver's license and birth certificate is acceptable aboard a cruise ship, it should also be acceptable documentation for land-border entries. One commenter stated that because the land-border tourist industry has a far larger impact on the U.S. economy than the cruise-ship industry, the land border deserves no less protection and consideration.

Response: DHS and DOS disagree. As mentioned previously, due to the operational environment and the security risks assessed, the Departments have determined that U.S. citizens may use the combination of a driver's license and birth certificate when traveling on certain cruise-ship voyages. As detailed in the Land and Sea NPRM, the security risks associated with designating this document combination for U.S. citizens on round-trip cruises are low. *See* 72 FR 35096. DHS and DOS have carefully considered the issues surrounding protection of our land borders and have determined that the documents designated in this rule for entry at land ports-of-entry reflect the best approach to balance security and travel efficiency considerations in the land environment.

Comment: Three commenters to the Land and Sea NPRM recommended that senior citizens be permitted entry to the United States using government-issued photo identification with proof of citizenship based on their low security

[27] 72 FR at 35096.

risk, significant cross-border linkages, and limited financial resources.

Response: DHS and DOS appreciate this comment. DHS and DOS are sensitive to the needs of senior citizens and note that DOS will be offering a lower cost passport card as an alternative to the passport book. Senior citizens who live in participating states or provinces may also be eligible to obtain an enhanced driver's license.

3. Trusted Traveler Documents

Comment: Three commenters to the Land and Sea NPRM expressed concern that the existing NEXUS card is not considered an acceptable form of ID at the border. One commenter sought early written assurances that NEXUS cards will be recognized as entry documents in non-dedicated commuter lanes. One commenter stated that DHS should make it a priority to expand both NEXUS and FAST.

Response: Existing NEXUS cards are already acceptable documents for entry at land and sea ports-of-entry. CBP is upgrading the card format/features and is conducting a robust training program for its personnel at these ports of entry to ensure that CBP Officers enforce both the current documentation procedures recognizing trusted traveler cards and the WHTI requirements uniformly.

Comment: Twenty-six commenters to the Land and Sea NPRM requested the expansion of the NEXUS, SENTRI, and FAST programs. Four commenters requested that the Trusted Traveler Programs be promoted more aggressively. Two commenters requested that the government explore opportunities and technologies to further develop frequent border crossing programs. Two commenters requested the expansion of the NEXUS program to include driver's licenses. Three commenters stated it is imperative that the phrase ''as a participant in the program'' be interpreted broadly enough to cover situations where truck drivers are crossing the border in a regular commercial or traveler lane for both NEXUS and FAST.

Response: CBP is expanding the NEXUS, SENTRI, and FAST Trusted Traveler programs to accommodate an increase in applications expected as a result of the implementation of WHTI.

4. Children/Groups of Children/ Alternative Approaches/Parental Consent

Comment: Thirty-one commenters to the ANPRM asked to allow travelers under the age of 16 to use a birth certificate as sufficient proof of identity and citizenship. Ninety-three commenters to the Land and Sea NPRM supported the proposed requirements for children. Four commenters to the Land and Sea NPRM suggested the exemption from presenting a passport be raised to age 16 and under. One commenter stated that it would be appropriate to exempt children under the age of 18. Sixty-eight commenters supported the provisions being made for children traveling with their families, in groups, or with chaperones. One commenter stated that there was concern for the treatment of children if they have lost their documentation and were detained at the border. One commenter asked that U.S. and Canadian children traveling in groups for short trips should not be required to carry an original or certified copy of a birth certificate if accompanied by a chaperone. One commenter stated that attendance by students who are not members of athletic teams at high school events is jeopardized by this proposal.

Response: Under this final rule, all U.S. citizen children under the age of 16 are permitted to present at all sea and land ports-of-entry when arriving from contiguous territory either: (1) An original or a copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services. The Departments have decided to expand the list of documents Canadian children may present. Under the final rule, Canadian citizen children under the age of 16 are permitted to present an original or a copy of a birth certificate, a Canadian Citizenship Card, or Canadian Naturalization Certificate at all sea and land ports-of-entry when arriving from contiguous territory. The final rule relaxes the birth certificate requirement by allowing presentation of either an original or copy of a birth certificate, rather than an original or a certified copy as proposed in the NPRM.

DHS and DOS have determined that age 16 is the most appropriate age to begin the requirement to present a passport book, passport card (for U.S. citizens), or other approved document because at that age most states begin issuing photo identification to children, such as a driver's license, and at that point, the child would, consequently, have a known and established identity that could be readily accessed by border security and law enforcement personnel. Also, age 16 is the age at which DOS begins to issue adult passports, valid for 10 years instead of 5 years for children. DHS and DOS also recognize that it is difficult for the majority of children under age 16 to obtain a form of government-issued photo identification other than a passport.

Under this final rule, U.S. citizen children under age 19, who are traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry from contiguous territory, are permitted to present either: (1) An original or a copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS. Under this provision, groups of children must be under the supervision of an adult affiliated with the organization (including a parent of one of the accompanied children who is only affiliated with the organization for purposes of a particular trip) and all the children have parental or legal guardian consent to travel. Canadian citizen children under age 19 who are traveling in groups are permitted to present an original or a copy of a birth certificate, a Canadian Citizenship Card, or Canadian Naturalization Certificate under the same circumstances. For purposes of this alternative procedure, an adult would be considered to be a person age 19 or older, and a group would consist of two or more people.

While DHS and DOS are sensitive to the needs of school groups, carrying an original or copy of a birth certificate represents the minimum travel requirement a person would possess to enable us to secure our borders through the implementation of WHTI.

Comment: Six commenters to the Land and Sea NPRM requested that children of Mexican citizenship be included in the special requirements for children under the age of 16 or under the age of 19 when traveling in groups. One of these commenters questioned why Mexican children under the age of 16 were not included under the special requirements for children as Canadian children were.

Response: IRTPA directs DHS and DOS to implement a plan to require documents for citizens for whom the general passport requirements have previously been waived, not to eliminate document requirements currently in place. All Mexican citizens, including children, are currently required to present either a passport and visa, or a BCC upon arrival in the United States. DHS and DOS are not changing the current document requirements for children of Mexican citizenship entering the United States.

Question From the Proposed Rule: Alternative Approach for Children; Parental Consent

In the Land and Sea NPRM, the Departments solicited comments on whether a traditional passport or a passport card should be required for any child under 16 entering the United States without his/her parents and not in a group. DOS and DHS also solicited comments on what would be the advantages and disadvantages to requiring a traditional passport or a passport card, and not allowing child travelers in such circumstances to rely upon a birth certificate, Consular Record of Birth Abroad, or Certificate of Naturalization.

Comment: Two commenters to the Land and Sea NPRM requested that a child under the age of 16 who is traveling with only one parent not be required to have a letter of consent to travel from the other parent. One commenter stated that there needs to be a solution concerning a child traveling across the border with an extended family member who is not the parent.

Response:: While the Departments take seriously the issue of child abduction, the final rule does not require a passport or passport card for children or evidence of parental consent for the child to cross the international border. Parents are strongly encouraged to check the requirements of the governments of Mexico and Canada for child travelers as well as review the guidance on the DOS and DHS Web sites when planning international travel for their children.

Under this final rule, a U.S. citizen who is under the age of 16 is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by DOS, or a Certificate of Naturalization issued by USCIS when entering the United States from contiguous territory at sea or land ports-of-entry.

Based upon a review of the alternative approach for children and the parental consent questions asked in the Land and Sea NPRM and the comments received in response, DHS and DOS are not implementing any additional requirements regarding children or evidence of parental consent to travel other than those proposed in the Land Sea NPRM, which are adopted in this final rule. The Departments note that obtaining a passport book or card or other document with an MRZ or RFID technology may result in faster processing at the border.

5. State Enhanced Driver's License Projects

Comment: DHS and DOS received two comments to the Air and Sea NPRM stating that the best solution to increasing security at our borders is one that incorporates improved technology in existing documentation, such as a driver's license. Thirty commenters to the Land and Sea NPRM stated that WHTI should not be implemented until all state or provincial enhanced driver's license pilot programs are in place. Six Canadian provinces urged DHS to explicitly recognize their proposed enhanced driver's license in the final rule. Twelve commenters supported proposed state pilot programs. One hundred-eight commenters recommended that DHS recognize an enhanced driver's license denoting identity and citizenship for entry by both Canadian and American citizens. One commenter stated that programs for producing an enhanced driver's license need more time for development and distribution prior to the summer of 2008. Eleven commenters recommended completing an enhanced driver's license pilot project prior to implementation of WHTI. Fifty-six commenters to the Land and Sea NPRM requested financial and technical assistance from the Federal government so that states could produce enhanced driver's licenses.

Response: DHS encourages U.S. states and Canadian provinces acting through the Canadian Government to undertake enhanced driver's license projects. In a separate notice published concurrently in the **Federal Register** with this final rule, DHS will designate the Washington State enhanced driver's license as acceptable and notes that additional such documents will be added by notice. DHS will consider documents such as U.S. state and Canadian provincial enhanced driver's licenses that satisfy the WHTI requirements by denoting identity and citizenship undertaken pursuant to agreements with DHS. These documents also will have compatible facilitative technology and must meet minimum standards of issuance to meet CBP's operational needs. As noted above, the State of Washington has begun a voluntary program to develop an enhanced driver's license and identification card that would denote identity and citizenship. On March 23, 2007, the Secretary of Homeland Security and the Governor of Washington signed a Memorandum of Agreement to develop, issue, test, and evaluate an enhanced driver's license and identification card with facilitative technology to be used for border crossing purposes. Under this final rule, U.S. citizens arriving from contiguous territory and adjacent islands may present the enhanced driver's license and identification card issued by the State of Washington at land and sea ports-of-entry.

To establish an EDL program, each entity individually enters into agreement with DHS based on specific factors such as the entity's level of interest, funding, technology, and other development and implementation factors. As each EDL program is specific to each entity, DHS does not intend to delay the implementation of WHTI until all potential state and provincial enhanced driver's license projects are operational. However, DHS will continue to welcome states and provinces interested in implementing EDL programs—even those that start after WHTI implementation.

Comment: Two commenters recommended a meeting with all state driver's license directors by January 2008 before the completion of the Washington State pilot program.

Response: DHS appreciates this comment and remains committed to working on a continuing basis with and coordinating efforts among states interested in developing, testing, and implementing pilot programs for enhanced driver's licenses. DHS encourages states interested in developing enhanced driver's licenses to work closely with DHS to that end.

6. Mexican/Canadian/Bermudian Documents

Comment: Two commenters to the Land and Sea NPRM mistakenly believed that DHS had accepted Canadian provincial driver's licenses under the proposed rule. Eleven commenters appreciated DHS's acceptance of alternative Canadian citizenship and identity documents. Four commenters urged DHS and DOS to work with border states and Canadian provinces toward acceptable upgrades of existing documents. In its comments to the Land and Sea NPRM, the Government of Canada noted that DHS and DOS would accept the U.S. Merchant Mariner Document (MMD) as a WHTI-compliant document for U.S. citizens traveling on official maritime business and requested that the modernized Canadian Seafarer's Identity Document (SID) issued by Canada also be recognized by DHS and DOS as a WHTI-compliant document at sea and land ports-of-entry.

Response: While DHS appreciates these comments, DHS is not designating the provincial driver's license or the Canadian Seafarer's Identity Document

as acceptable documents in this final rule. As stated in the Land and Sea NPRM, DHS and DOS have engaged with the Government of Canada and various provinces in discussions of alternative documents that could be considered for border crossing use at land and sea ports-of-entry under this rule. DHS and DOS will continue working with the Canadian government to explore potential alternative documents in the future. The Departments clarify that the MMD is being phased out and is not a document that will be accepted in the long term.

7. REAL ID Driver's Licenses

Comment: Four commenters to the Land and Sea NPRM asked for clarification whether enhanced driver's licenses issued as part of a state pilot program under WHTI would comply with the REAL ID requirements as well. Two commenters cautioned against the action of implementing WHTI using the requirements of REAL ID due to concerns regarding privacy, costs, a complicated verification system, and the issues of federalism. One commenter stated that DHS must definitively declare that WHTI-compliant driver's licenses meet the improved driver's license requirements of the REAL ID Act.

Response: DHS has worked to align REAL ID and EDL requirements. EDLs are being developed consistent with the requirements of REAL ID and, as such, can be used for official purposes such as accessing a Federal facility, boarding Federally-regulated commercial aircraft, and entering nuclear power plants. While the REAL ID requirements include proof of legal status in the U.S., the EDL will require that the cardholder be a U.S. citizen. In addition, the EDL will also include technologies that facilitate electronic verification and travel at ports-of-entry. DHS is extremely cognizant of the need to protect privacy, and as such institutes best practices with regard to the collection and use of personal data for all of its programs.

8. IBWC

Comment: DHS and DOS received one comment to the Air and Sea NPRM for implementation of WHTI in the air and sea environments requesting that International Boundary and Water Commission (IBWC) identification be acceptable for land and sea travel. DHS and DOS received one comment to the Land and Sea NPRM requesting that IBWC identification be acceptable for land and sea travel. The comment also noted several improvements in the security of IBWC identification documents.

Response: The Departments appreciate this comment. As stated in the Land and Sea NPRM, U.S. citizens and Mexican national direct and indirect employees of the IBWC crossing the United States-Mexico border may continue to use their IBWC cards while on official business under this final rule.

E. U.S. Native Americans and Canadian Indians

1. Proposed Rule

In the Land and Sea NPRM, the Departments sought comments on what Native American tribal documents could be designated as acceptable in the final rule. The Departments specified general criteria for acceptable Native American documents to meet. To satisfy Section 7209 of IRTPA, the documents must establish the identity and citizenship of each individual. In the Land and Sea NPRM, DHS and DOS proposed to accept tribal enrollment documents only if members of the issuing tribe continue to cross the land border of the United States for a historic, religious or other cultural purpose. It was also proposed that the tribal enrollment card must be satisfactory to CBP, may only be used at that tribe's traditional border crossing points and will only be accepted so long as that tribe cooperates with the verification and validation of the document. Tribes were also obligated to cooperate with CBP on the enhancement of their documents in the future as a condition for the acceptance of the document.

DHS and DOS specifically invited comments from those United States tribes with members who continue to cross the border for a traditional purpose. The Departments sought comments from any tribe wishing to propose its tribal enrollment card as an acceptable alternative document. The Land and Sea NPRM asked that such comments include detailed information about traditional border crossings and the locations of those crossings. The Departments also requested information about the enrollment qualifications employed by each such U.S. tribe. A detailed description of the information sought by the Departments is provided in the Land and Sea NPRM. *See* 72 FR at 35099–35100.

DHS and DOS also stated that they were considering alternative approaches and invited comments on these alternative approaches for U.S. Native Americans:

- Make no special provision for U.S. Native Americans because they have an equal opportunity to obtain the same documents that are available to all other U.S. citizens.
- Consider broader issuance of the American Indian Card now issued to members of the federally recognized Kickapoo Tribes or a similar card.
- Accept tribal enrollment cards from tribes whose members continue traditional border crossings without any limitation on the border crossing point or points where each such tribal enrollment card is accepted.
- Accept all tribal enrollment cards from all federally recognized Native American tribes at some or all border crossing points.

The Land and Sea NPRM proposed that, for Canadian Indians:

> Canadian members of First Nations or ''bands'' would be permitted to enter the United States at traditional border crossing points with tribal membership documents subject to the same conditions applicable to United States Native Americans. Canadian First Nations or bands who seek to have their tribal enrollment cards accepted for border crossing purposes should submit comments for the record which contain the information requested * * *for comparable federally recognized U.S. tribes.[28]

The Land and Sea NPRM also proposed acceptance of the new document to be issued by the Canadian Department of Indian Affairs and Northern Development (hereinafter ''INAC Card'')

2. Summary of Comments

Many tribes and bands commented on the NPRM asking that the Departments include their tribal enrollment cards or other tribal documents as acceptable documents under WHTI. These commenters also proposed that all tribal cards issued by U.S. tribes should be accepted.

Several Canadian First Nations commented on the Land and Sea NPRM to propose that their tribal enrollment cards or other tribal documents be designated as acceptable documents. These commenters also proposed that all such band cards for Canadian Indians be accepted. Commenters suggested that, in the alternative, the Departments should accept the proposed, revised INAC card as an acceptable alternative document.

3. Final Rule—U.S. Native Americans

As stated in the Land and Sea NPRM, the United States has a special relationship, founded in the Constitution, with its Native American tribes.[29] This relationship allows the

[28] 72 FR at 35100.

[29] *See* Constitution, I, § *section* 8, cl.3; *Cherokee Nation* v *Georgia,* 30 U.S. 1, 17 (1831); *Worcester*

federal government, where appropriate, to designate Native American members of federally recognized U.S. tribes for special treatment.[30]

Comments throughout the rulemaking process and consultations with U.S. Native American tribes have emphasized the particular impact which a new document requirement may have on Native Americans belonging to U.S. tribes who continue to cross the land borders for traditional historic, religious, and other cultural purposes. Several of these tribes are concerned that their members will be required to obtain a passport, passport card, or alternative document to maintain contact with ethnically related communities, including, for some tribes, members who live on traditional land in Mexico or Canada.

Based on the record of this rulemaking proceeding, the Departments have adopted an alternative approach from the Land and Sea NPRM for U.S. Native Americans. DHS will work with tribes recognized by the United States government if each tribe (1) Continues to have strong cultural, historic, and religious cross-border ties; and (2) is willing to improve the security of the tribal enrollment documents in the future. Accordingly, paragraph (e) in 8 CFR 235.1 has been revised to capture this change.

As stated in the proposed rule, acceptance of a tribal enrollment document would be contingent upon: (1) The tribe satisfactorily establishing identity and citizenship in connection with the use of its document; (2) the tribe providing CBP with access to appropriate parts of its tribal enrollment records; and (3) the tribe agreeing to improve the security of its tribal documents in cooperation with CBP.

4. Final Rule—Canadian Indians

As requested by Congress, DHS has consulted with the Government of Canada regarding several alternative documents, including a proposed more secure INAC Card. It is anticipated that this new INAC card will be issued by the Canadian Department of Indian Affairs and Northern Development, Director of Land and Trust Services (LTS). DHS proposes to accept this document for Canadian Indians if and when it is available in connection with features and procedures to satisfactorily evidence identity and citizenship.

LTS is responsible for determining the status of all Canadian Indians under Canada's Indian Act of 1876 for purposes of entitlements. Since 1951, the Canadian Government has maintained Indian Registration Lists, which confirm the heritage of each individual for entitlement purposes. Through this long-standing registration process, Canada has formally conferred ''registered'' Indian status on individuals. Only registered Canadian Indians can apply for the LTS issued ''status'' card i.e., the INAC card.

LTS currently issues an INAC card with some security features such as a photograph of the document holder. The Government of Canada proposes to issue a new INAC card that would comply with international document security standards agreed by the Governments of Canada and the United States as part of the Security and Prosperity Partnership (SPP). When the document is issued in accordance with the SPP 1.1.3 security standard it is expected to include a machine-readable zone (MRZ).

It is anticipated that Canada will begin to issue the new INAC cards beginning in 2008. DHS continues to have discussions with the Government of Canada about how to ensure that DHS and CBP will have the capability to electronically validate and verify the identity and citizenship of INAC card holders. Permanent designation of the INAC as an acceptable travel document by the Secretary of Homeland Security will be conditioned on the satisfactory establishment of a process to achieve this validation.

If designated by the Secretary of Homeland Security, the proposed new INAC card will also be accepted as satisfactory evidence of the citizenship and identity of registered Canadian Indians.

In light of the decision to accept an appropriate document issued by the Government of Canada to those recognized by that government as Canadian Indians, the Departments have decided not to accept the multitude of documents issued by the many Canadian First Nations.

5. Specific Comments Objecting to any Document Requirement

Comments: CBP received approximately one hundred comments to the ANPRM and several commenters to the Land and Sea NPRM opposing any regulations that would require Native Americans or Canadian Indians traveling to and from the United States to carry and produce a U.S. or Canadian passport upon entry. These commenters asserted that such a requirement would infringe upon an asserted ''right'' of indigenous peoples living within the United States and Canada to travel freely across the border. Twenty-two tribes and their representatives commented to the Land and Sea NPRM that WHTI infringed upon an asserted ''right'' to unrestricted passage across the U.S.-Canadian border granted under the Jay Treaty and other treaties. DHS and DOS received one comment to the Air and Sea NPRM for implementation of WHTI in the air and sea environments similarly stating that Native Americans should not have any restrictions on travel across the borders of the United States. Two commenters stated that assurance was needed that document requirements would not obstruct or discourage them from obtaining those documents or inhibiting the movement of their people. One commenter to the Land and Sea NPRM observed that while Native Americans are eligible to obtain passports as Canadian or U.S. citizens, many choose not to because they perceive it as a threat to their sovereign status. One commenter is concerned that such documents are required to denote citizenship and identity and many believe that accepting citizenship from the U.S. or Canada would undermine the federal government's treaty obligations. Six individuals and one tribe commented that the rule would have a negative impact on Native Americans' ability to maintain familial ties and exercise religious and cultural practices across international borders. One tribe commented that international crossings were based on proximity to water. One tribe commented that the Departments' attempts to fit border crossing needs into a box are simply unrealistic.

Response: The INA requires the inspection of all applicants for admission, with the purpose of verifying identity and citizenship. The Jay Treaty of 1794 and other treaties do not prevent the Departments from requiring documentary evidence of identity and citizenship from Native Americans and Canadian Indians.

Congress, through the enactment of Section 7209 of IRTPA, specifically mandated that the Departments develop a plan to require documentary evidence of identity and citizenship at the borders. Section 289 of the INA [31] refers to the ''right'' of ''American Indians'' born in Canada to ''pass the borders of the United States,'' provided they possess at least 50 percent of Native American blood. Section 289, however, benefits individuals who establish their identity, their Canadian citizenship, and that they are ''American Indians.''

DHS and DOS have proposed to accept certain tribal documents as an

v *Georgia,* 31 U.S. 515, 561 (1832); *U.S.* v *Sandoval,* 231 U.S. 28, 46–47 (1913).

[30] *Morton* v. *Mancari,* 417 U.S. 535, 551–55.

[31] *See* 8 U.S.C. 1359.

appropriate accommodation to U.S. Native Americans.

6. Specific Native American and Canadian Indian Comments Directed to the Rulemaking Process

Comment: Ten commenters to the Land and Sea NPRM requested that DHS and DOS meet with their tribal governments. One tribe and one individual commented that DHS and DOS have failed to adequately consult with federally recognized Indian tribes on the implementation of this rule in accordance with the law and consequently requested that the entire Land and Sea NPRM be retracted until proper ''government-to-government'' consultations can take place. One tribe expressed concerns that the Land and Sea NPRM would be the ''only opportunity'' for tribal governments to engage in dialogue regarding the proposed regulation. One commenter encouraged DHS to continue the open dialogue with tribal governments along the international borders and to view tribal governments as an asset for protecting and providing security for the international borders.

Response: Throughout the rulemaking process, DHS has met with Native Americans to discuss the WHTI document requirements and tribal concerns. Moreover, DHS specifically solicited comments from Native Americans in an August 6, 2007, letter to all federally recognized tribes. Comment procedures outlined in the Land and Sea NPRM provided Native Americans with the opportunity to provide information about their tribal enrollment documents. The Departments received comments from numerous tribes, and these comments were fully considered in the decision to issue this final rule.

Comment: Two tribes requested an extension of the comment period for the Land and Sea NPRM to be able to study the options available to them.

Response: We have carefully considered the comments and determined that it is not advisable to reopen the comment period for the Land and Sea NPRM. Section 7209 of IRTPA, as amended, calls on the Departments to act expeditiously to implement WHTI. The Departments believe that the expeditious issuance of this Final Rule best advances our national security. Throughout the entire WHTI rulemaking process, DHS has met with Native Americans and Canadian Indians to discuss the WHTI document requirements and tribal concerns. DHS specifically solicited comments from Native Americans in an August 6, 2007, letter to all federally recognized tribes. As stated above, the Departments received comments from numerous tribes, and these comments were fully considered and are addressed in this final rule. Delaying issuance of the final rule would delay notice to the public and consequently the time available for travelers to obtain designated documentation. For these reasons, DHS and DOS did not reopen the comment period for the Land and Sea NPRM.

7. Comments on the Acceptance of Tribal Documents

Comment: Twenty-six tribes, along with three individuals, commented that members should be allowed to use their existing tribal cards at any crossing point. One tribe commented that an independent pilot project is underway for a secure identification document that can be used by that tribe. Seven commenters welcomed the proposal to accept tribal enrollment documents as long as those documents are approved by DHS. Many commenters recommended using tribal documents as an alternative to the passport. Several commenters encouraged DHS to continue working with indigenous peoples to provide a mechanism for border crossing that is as streamlined as possible. One tribe's comment requested that Native Americans be granted the same privileges as U.S. Merchant Mariners if the Departments decide that requiring passports is the only option for entry documents. One commenter requested broader issuance of the American Indian Card now issued to members of the federally recognized Kickapoo Tribe or a similar card. Two commenters requested that existing Canadian Certificates of Indian Status (CIS) be accepted as a WHTI-compliant document for entry into the United States. One commenter urges that secure indigenous, tribal or CIS Identity Cards for the purposes of entry into and from the U.S. and Canada be established within the provisions of WHTI. One tribe requested the acceptance of Canadian First Nations' tribal IDs at all border crossings. One tribe argued that their tribal enrollment records were sufficient to prove citizenship and objected to any notion that state-issued birth certificates were superior to their tribal records. One tribe commented that they support the comments by other tribal governments to develop a national tribal ID card for identification purposes for crossing international borders. One tribe did not understand the reluctance of DHS to accept tribal membership documents as sufficient evidence of identity and citizenship to support the right to enter the United States.

Response: DHS and DOS appreciate these comments. As indicated above, based on the comments received and the information provided to the Departments on the particular impact the document requirement would have on Native American tribes, the Departments have determined that, at the time of full implementation of this final rule, U.S. citizens belonging to a federally-recognized tribe may present tribal enrollment documents designated by the Secretary of Homeland Security as meeting the WHTI standards at land ports-of-entry. If designated by the Secretary of Homeland Security as satisfactory, Canadian citizens may present the new proposed INAC card at land ports-of-entry when arriving from contiguous territory.

Documents that will be designated by the Secretary must establish the identity and citizenship of the Native American and Canadian Indian document holders. Documents that will be designated by the Secretary must be secure, and U.S. tribes must also cooperate with CBP on the enhancement of their documents in the future as a condition for the continued acceptance of the document.

8. Native American Privacy Issues

Comment: Twelve tribes commenting to the Land and Sea NPRM were concerned with disclosure and privacy issues regarding religious and cultural information. One tribe noted that information presumably related to traditional border crossings, which they consider private, was not requested from other state or government entities. These commenters insisted that the request for this information was not necessary.

Response: DHS and DOS remain sensitive to related privacy concerns. In the Land and Sea NPRM, DHS and DOS invited any tribe that wished to propose its tribal enrollment card as an acceptable alternative document at one or more traditional border crossing points to submit comments explaining fully why its card should be accepted for travel while noting any privacy concerns. The privacy of tribes and their members will be of the utmost importance to the Departments when consulting with tribes to enhance their documents to be WHTI compliant.

9. Miscellaneous Comments

Comment: One commenter to the Land and Sea NPRM sought clarification on what would be considered a ''qualifying tribal entity'' under the proposed rule.

Response: A qualifying tribal entity is one that is federally recognized by the government of the U.S. that agrees to

meet WHTI tribal document security standards, including agreeing to provide CBP access to the appropriate entries in its enrollment records. DHS will work with federally recognized tribes to develop, test and produce WHTI-compliant documents. Documents could be produced on behalf of a single tribe or a group of tribes who have agreed to produce a WHTI-compliant tribal document.

Comment: One tribe commented to the Land and Sea NPRM that most members are born at home or on reservations and have difficulty producing a birth certificate, which is an important source document used to obtain documents under the proposed rule.

Response: DHS and DOS have procedures in place to make determinations of citizenship when birth certificates are unavailable.

10. Kickapoo Tribe American Indian Card

Comment: Two commenters to the Land and Sea NPRM asked that DHS and DOS maintain the current practice of allowing members of the Kickapoo Tribe to cross the border under the Texas Band of Kickapoo Act. One commenter is concerned that USCIS has not issued new documents for several years and asks that USCIS resume issuing such form I–872 American Indian Cards.

Response: DHS and DOS agree to continue the current practice of allowing U.S. citizen and Mexican national Kickapoo Indians to enter and exit the United States using their American Indian Cards, issued by USCIS, as an alternative to the traditional passport or passport card at all land and sea border ports-of-entry. There are currently no plans to issue new form I–872 American Indian cards.

F. Outside the Scope of the NPRM and Final Rule

1. General

Comment: DHS and DOS received three comments to the Air and Sea NPRM regarding implementation of WHTI in the air and sea environments that proposed various technical specifications for DOS's passport card.

Response: Comments regarding the technical specifications for the DOS-issued passport card are beyond the scope of this rule; however, the public had the opportunity to comment on DOS's proposed passport card NPRM at 71 FR 60928 (October 17, 2006).

Comment: Two commenters to the Land and Sea NPRM stated that while the economic analysis predicts job losses in border communities, the federal government is not providing a remedy or addressing the impact in any way.

Response: The Departments continue to strive to minimize the potential impact of WHTI implementation, especially on border communities. However, the WHTI plan was mandated by Congress in section 7209 of the IRTPA in response to an important national security imperative identified by the 9/11 Commission. Further, the Departments believe that implementation of WHTI will help facilitate legitimate trade and travel over time. It should also be recognized that a number of factors have a greater effect on the economies of border communities, including overall economic conditions and the current exchange rate. Providing financial support to those communities is beyond the scope of this rule, however.

Comment: Two commenters stated that FAST enrollees are not currently treated as trusted travelers, which defeats the purpose of the FAST program.

Response: Comments regarding the administration of CBP Trusted Traveler programs are beyond the scope of this rule; however, it should be noted that commercial drivers enrolled in FAST are trusted travelers.

Comment: Ten commenters recommended the creation of a NEXUS appeals board. These commenters also recommended a streamlined renewal process for NEXUS. One commenter suggested several changes to the NEXUS program such as a one card/one fee per family program; extending the validity period of the NEXUS card to ten years; streamlining the renewal process; and recognizing NEXUS and FAST cards for entry in non-dedicated commuter lanes. One commenter suggested a clear NEXUS renewal process that ensures no down time for NEXUS members.

Response: Comments regarding the administration of CBP Trusted Traveler programs are beyond the scope of this rule. DHS would note, however, that under the final rule, all CBP Trusted Traveler documents will be acceptable entry documents for United States and Canadian citizens at all lanes and all land ports-of-entry. DHS further notes that, if an individual feels that an application to a CBP Trusted Traveler program was denied based upon inaccurate information, redress may be sought through contacting the local trusted traveler Enrollment Center to schedule an appointment to speak with a supervisor, writing the CBP Trusted Traveler Ombudsman, or using the DHS Traveler Redress Inquire Program (DHS TRIP). CBP has also been making incremental improvements to its trusted traveler programs. See *http://cbp.gov/xp/cgov/travel/trusted_traveler/*.

Comment: Two commenters to the Land and Sea NPRM stated that the cost for a Canadian passport is high and that the process for obtaining a passport should be made easier. Another commenter stated that the process for obtaining a Mexican passport and visa should be made less onerous.

Response: While the U.S. government is working closely with passport agencies throughout the Western Hemisphere on WHTI and other travel document security matters, each nation's government ultimately controls the process and cost for obtaining a passport. The application process for and cost of a Canadian or Mexican government-issued document is outside the scope of this rule and outside the Departments' authorities.

Comment: One commenter requested that a ''full environmental statement'' be prepared prior to implementation of passport or documentation control.

Response: DHS and DOS documented their assessment of the potential for impact on the quality of the human environment in the ''Western Hemisphere Travel Initiative in the Land and Sea Environments: Programmatic Environmental Assessment'' dated September 10, 2007. The public was given an opportunity to comment on a draft of the Programmatic Environmental Assessment (PEA) upon the publication of the Notice of Availability on June 25, 2007. See 72 FR 34710. Comments regarding the draft PEA were addressed in the Final PEA. Based on the final PEA, a determination was made that the travel documents proposed for WHTI and use of the travel documents for implementation of IRTPA will not have a significant impact on the quality of the human environment and that further analysis under the National Environmental Policy Act of 1969 (NEPA) would not be necessary. A Finding of No Significant Impact (FONSI) was issued on September 10, 2007, a copy of which is contained in the final PEA.

Comment: One commenter to the Land and Sea NPRM disagreed with the employee citizenship requirement for the enhanced driver's license projects because it would result in the loss of valuable workforce for state governments.

Response: While DHS appreciates this comment, policies regarding state employee citizenship requirements are beyond the scope of this rule. DHS remains committed to working with and coordinating efforts among states

interested in developing, testing, and implementing enhanced driver's license projects. DHS encourages states interested in developing enhanced driver's licenses to work closely with DHS to that end.

Comment: Two comments to the Land and Sea NPRM requested that DHS support the proposal to establish DOS offices in border communities to provide flexibility for spontaneous trips. Two commenters recommended an increase in the capacity of one of the regional passport offices specifically for passport service companies.

Response: While DHS and DOS appreciate these comments, expansion of DOS passport offices in specific border communities is beyond the scope of this rule.

Comment: One commenter to the Land and Sea NPRM recommended that the number of expedited applications for individual passports submitted by service companies be increased.

Response: While DHS and DOS appreciate these comments, operational policies between passport service providers and DOS are beyond the scope of this rule.

Comment: One commenter to the Land and Sea NPRM recommended that the Departments explore, as part of the proposed pilot project concept, the development of an ''Indigenous lane'' for border crossing/passage purposes.

Response: While DHS remains committed to working with tribal groups, operational policies regarding ''dedicated lanes'' are beyond the scope of this rule.

2. Air Rule

Comment: One commenter to the Land and Sea NPRM requested that the alternative procedure for U.S. and Canadian children entering the United States under age 19 traveling as part of school groups, religious groups, social or cultural organizations, or teams associated with youth support organizations be extended to the air environment in addition to land and sea ports-of-entry.

Response: Comments regarding documentation requirements for U.S. and Canadian children entering the U.S. at air ports-of-entry are beyond the scope of this rule; however, the public had the opportunity to comment on these requirements in the August 11, 2006, NPRM for the air environment. Children under the age of 16 arriving from Western Hemisphere countries are required to present a passport when entering the United States by air. For a more detailed description of documentation requirements for children entering the U.S. through air ports-of-entry, see the Air Final Rule at 71 FR 68416 (November 24, 2006).

Comment: One commenter to the Land and Sea NPRM requested that an alternative procedure for the transfer of medical patients be established for all modes of travel.

Response: The air mode of travel is beyond the scope of this rule; however, IRTPA provides for situations in which documentation requirements may be waived on a case-by-case basis for unforeseen emergencies or ''humanitarian or national interest reasons.'' Please see the Air Final Rule, 71 FR at 68419, for more information.

3. Lawful Permanent Residents

Comment: Three commenters to the Land and Sea NPRM stated that a Lawful Permanent Resident card should be sufficient to travel to and from the United States without the presentation of a passport. One commenter to the NPRM expressed concern about waiting to renew an expired Lawful Permanent Resident card when applying for entry into the United States.

Response: Lawful Permanent Residents (LPRs) of the United States will continue to be able to enter the United States upon presenting a Lawful Permanent Resident card (I–551) or other valid evidence of permanent resident status. There are current regulations that already address the entry of LPRs into the United States, which remain unchanged by WHTI.

4. Dual Nationals

Comment: One commenter to the Land and Sea NPRM sought clarification on what documents would be required for travelers who have dual citizenship.

Response: The WHTI rule lists the new documentation requirements for U.S., Canadian, Bermudan citizens, and Mexican nationals entering the United States by land or sea from within the Western Hemisphere. WHTI does not alter United States immigration law or regulations regarding citizenship.

G. Public Relations

1. General

Comment: DHS and DOS received fifty comments to the ANPRM asking for a partnership between the U.S. and Canada to address WHTI issues. One hundred commenters to the Land and Sea NPRM expressed a strong desire to see a more robust coordination between Canada and the United States. Nineteen commenters recommended a joint public communications campaign with Canada.

Response: The Secretaries of DHS and DOS have worked and continue to work closely with the Canadian and Mexican governments on numerous fronts, including the Security and Prosperity Partnership (SPP) of North America, the Smart Border Declaration, and the Shared Border Accord. The objectives of the initiatives are to establish a common approach to security to protect North America from external threats, prevent and respond to threats within North America, and further streamline the secure and efficient movement of legitimate traffic across our shared borders. The Secretaries are committed to working with our international partners to establish a common security strategy.

Comment: One commenter stated that a new comment period should be opened or else the Land and Sea NPRM should be withdrawn.

Response: The Departments have carefully considered the comment and determined that it is not advisable to reopen the comment period for the Land and Sea NPRM. Section 7209 of the IRTPA, as amended, calls on the Departments to implement WHTI expeditiously, which the Departments believe is in the best interests of national security. The procedures for the 60-day comment period outlined in the Land and Sea NPRM provided the public the opportunity to provide meaningful comments on the proposed rule and questions asked. The Departments received over 1,350 comments, which were fully considered and are addressed in this document. Moreover, delaying issuance of the final rule would delay notice to the public and shorten the time available to the traveling public to obtain designated documentation. For these reasons, DHS and DOS did not open a new comment period and did not withdraw the Land and Sea NPRM.

2. Outreach

Comment: DHS and DOS received thirteen comments to the ANPRM that recommended the Departments work with the travel industry to launch an effective communications campaign to inform and educate the traveling public about any new documentation requirements. One hundred seventy comments were received to the Land and Sea NPRM stating that all the changes taking place during implementation of WHTI are confusing. Seven hundred and seventeen commenters encouraged DHS to formulate, implement, and fully fund a public awareness communications campaign immediately, particularly as it could add clarity. Six commenters recommended that a public relations/marketing firm be hired. One

commenter encouraged DHS and DOS to timely convey information concerning the plan to end oral declarations on January 31, 2008. One commenter requested that the DHS undertake a full review of the public education plan for WHTI.

Response: DHS and DOS are committed to an effective and intensive communications strategy during the implementation of WHTI. As was done in preparation for the changes at the border that took place on January 31, 2008, the Departments will continue to issue detailed press releases, address the public's frequently asked questions, supply travel information on their Web sites, and hold public meetings in affected communities. During the early phase of the implementation of WHTI in the air environment, DHS and CBP worked closely with the travel industry and other industries to disseminate timely, accurate information, and aggressively publicize the new requirements. CBP found that the overwhelming majority of affected air travelers, approximately 99 percent, presented acceptable documentation upon entry to the United States from within the Western Hemisphere from the earliest stages of implementation. This figure included not only U.S. citizens but also the citizens of Canada, Mexico, and Bermuda. The Departments believe that this coordinated public outreach effort will continue to serve as a useful model for implementation in the land and sea phase of WHTI.

H. Regulatory Analyses

1. Regulatory Assessment

Comment: DHS and DOS received over 1,700 comments to the ANPRM that expressed concern that WHTI would have a negative impact on trade and tourism. Twenty-four comments to the Air and Sea NPRM for WHTI stated that implementation would have a negative impact on cross-border travel. Five commenters to the Land and Sea NPRM stated that implementation would have a negative impact on day trips across the border. Approximately nine hundred commenters stated that WHTI would have a negative impact on trade and tourism resulting in revenue losses. Twenty-two commenters to the Land and Sea NPRM recommended that security be improved without damaging healthy cross-border trade and commerce.

Response: Pursuant to Executive Order 12866, CBP conducted an economic analysis to address the potential impacts of reduced travel that could result from the implementation of WHTI in the land and sea environments. This analysis was published concurrently with the Land and Sea NPRM, and CBP requested comments on the documents. Based on the Regulatory Assessment, CBP acknowledges that WHTI could have a negative impact on travel in both environments; however, as demonstrated in intensive case studies of eight representative U.S. communities along both the Canadian and Mexican borders, reduced travel attributable to WHTI is predicted to have a less-than-1 percent impact on local output and employment levels in those communities. Additionally, CBP found that the cruises covered by the rule would not likely be greatly affected because obtaining a travel document represents a small portion of overall cost for most cruise passengers. Finally, the analysis for travel in the air environment was finalized with the Air Final Rule (Documents Required for Travelers Departing From or Arriving in the United States at Air Ports-of-Entry From Within the Western Hemisphere published November 24, 2006 (71 FR 68412)).

Comment: CBP received three comments to the Regulatory Assessment for the Land and Sea NPRM stating that the analysis understated the economic losses that would result from implementation of the rule. Eight commenters to the Regulatory Assessment for the Land and Sea NPRM contended that the economic analysis was incomplete and insufficient. Two commenters stated that the underlying assumptions in the analysis were arbitrary and low. Several commenters stated that there must be a meaningful, third-party economic impact assessment of any proposed measures before proceeding.

Response: While these commenters were dissatisfied with the economic analysis, they did not submit specific information that would enhance the current analysis, nor did they submit alternative analyses that more robustly considered the impacts on the U.S. and foreign economies. The analysis prepared by CBP for the Land and Sea NPRM was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866 and OMB Circular A–4. According to OMB Circular A–4, a good regulatory analysis should include: (1) A statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs—quantitative and qualitative—of the proposed action and the main alternatives identified by the analysis. The two Regulatory Assessments that were published in the public docket concurrently with the Land and Sea NPRM (see USCBP–2007–0061–0002 and USCBP–2007–0061–0004) fully met these criteria. A regulatory analysis conducted by a ''third party'' is not a requirement under either Executive Order 12866 or OMB Circular A–4.

Comment: CBP received one comment to the Regulatory Assessment of the Land and Sea NPRM stating that it did not make sense for predicted forgone cruise travel to have a higher percentage of reduced travel than forgone land travel.

Response: CBP notes that estimated forgone travel was predicted using elasticities of demand for cruise travel and derived demand elasticities for land travel. CBP estimates that cruise travel is more elastic than land-border travel because cruise passengers travel almost exclusively for leisure purposes. Cruise passengers, thus, have many potential substitutes for their cruise trips; in economic terms, cruise passengers' demand for travel is very ''elastic.'' Conversely, land travelers cross the border for a myriad of reasons, including work, shopping, visiting family and friends, as well as vacation purposes. Because land-border trips are less ''elastic'' than cruise trips, the percent of forgone travelers is lower in the land environment than the cruise environment.

Comment: Two commenters to the Land and Sea NPRM stated that the economic analysis cannot be considered reliable because it examines a program that is not yet in place.

Response: Per Executive Order 12866, an economic analysis is required for all major rulemakings prior to final implementation. This analysis must contain an identification of the regulatory ''baseline'' as well as the anticipated costs and benefits of the rule on relevant stakeholders. The analysis prepared for the Land and Sea NPRM was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866 and OMB Circular A–4.

Comment: Two commenters to the Land and Sea NPRM stated that the Regulatory Assessment erroneously analyzed expenditure flows from the Mexican and Canadian border together, when they should actually be analyzed separately.

Response: As described in the detailed Regulatory Assessment for implementation of WHTI in the land environment (USCBP–2007–0061–0002) published concurrently with the Land and Sea NPRM and this final rule, the analysis did address economic impacts on the northern and southern borders separately.

Comment: Two commenters to the Land and Sea NPRM asked about calculated risk reduction that would occur as a result of implementation of WHTI. One commenter stated that a third-party assessment of improved border security should be conducted.

Response: Typically, reductions in the probability of a terrorist attack resulting from a regulation are measured against the baseline probability of occurrence (the current likelihood that a terrorist attack involving an individual arriving in the United States in the sea environment will be attempted and be successful) and combined with information about the consequences of the attack. The difference between the baseline probability of occurrence and the probability of occurrence after the regulation is implemented would represent the incremental probability reduction attributable to the rule.

Historical data on the frequency of terrorist attacks to estimate the current baseline probability of attack within the United States cannot be used for several reasons: existing data does not provide information about whether documented attacks were attributable to the lack of a passport requirement; the data on international events occurring within the United States in the last decade are limited, and little information is available to describe the consequences of most of these events; and use of these data to project future probability of attack requires an understanding of the socioeconomic and political conditions motivating and facilitating these events historically and foresight with regard to how these factors may change in the future. In the absence of more detailed data, DHS and DOS are unable to quantitatively estimate the incremental reduction in the probability of terrorist attack that will result from this rule.

Instead, CBP conducted a ''breakeven analysis'' to determine what the reduction in risk would have to be given the estimated costs of the implementation of WHTI (land environment only). Using the Risk Management Solutions U.S. Terrorism Risk Model (RMS model), CBP estimated the critical risk reduction that would have to occur in order for the costs of the rule to equal the benefits—or break even. As calculated, critical risk reduction required for the rule to break even ranges from 3 percent to 34 percent (for more detail see the section below on Executive Order 12866).

This breakeven analysis prepared by CBP for the Land and Sea NPRM was reviewed by OMB in accordance with Executive Order 12866 and OMB Circular A–4. An analysis conducted by a ''third party'' is not a requirement under either Executive Order 12866 or OMB Circular A–4.

Comment: Two commenters to the Land and Sea NPRM stated that the costs to the State Department to ''catch up'' on the backlog of passport applications were not considered.

Response: The commenter is correct. CBP did not consider the costs to DOS in the Regulatory Assessment because the increased costs to DOS as a result of increased demand for passports due to WHTI can be recouped by a surcharge on the fee for the application of a passport. *See* 22 U.S.C. 214(b). It would be inappropriate, therefore, to present these as costs of the regulation.

Comment: One commenter to the Land and Sea NPRM stated that she was ''mystified'' by the assertion that an economic analysis was not necessary.

Response: DHS and DOS did not make this assertion in the Land and Sea NPRM. CBP conducted two extensive Regulatory Assessments for implementation of WHTI in the land and sea environments that were summarized in the preamble to the Land and Sea NPRM and were available in full for public comment (see USCBP–2007–0061–0002 and USCBP–2007–0061–0004).

Comment: Four commenters to the Land and Sea NPRM stated that the estimated costs of lost trips by Canadian travelers were incorrectly calculated in the Regulatory Assessment for the implementation of WHTI in the land environment.

Response: DHS and DOS appreciate these comments. CBP has modified the Regulatory Assessment for this final rule to more accurately account for potential lost trips from Canadian visitors to the United States. Please refer to the section below titled ''Executive Order 12866'' for a summary of the revised analysis and refer to the public docket and *http://www.cbp.gov* for the complete Regulatory Assessments for the final rule.

Comment: Three commenters to the Land and Sea NPRM stated that the Regulatory Assessment erroneously assumed that lost spending in Canada and Mexico resulting from forgone travel to those countries would instead be spent in border communities. One commenter stated that the Regulatory Assessment erroneously assumed that U.S. dollars that would have been spent in Canada and Mexico would now remain in the United States.

Response: These commenters appear to have misread the Regulatory Assessments. As described in the detailed Regulatory Assessment for Implementation of WHTI in the Land Environment (USCBP–2007–0061–0002) published concurrently with the Land and Sea NPRM, the analysis did not assume that all lost spending in Canada and Mexico would instead be spent exclusively in border communities. CBP made several simplifying assumptions in order to estimate increases in U.S. spending within the regional areas designated for case study. The analysis assumed that only a subset of the U.S. travelers who choose not to obtain documentation and stay in the United States spend in the regional study area what they would have spent in Mexico or Canada. In other words, the analysis assumed U.S. travelers visiting Mexico and Canada for tourist reasons will substitute their forgone trips abroad with trips within the United States outside of the regional study area.

Additionally, as noted in the Regulatory Assessment, CBP made the simplifying assumption that the money these travelers would have spent on foreign travel remains in their home country. The analysis did not attempt to determine the portion of forgone travel-related expenditures that might be used instead for purchasing goods from foreign entities via mail order or the Internet. This factor was acknowledged as a source of uncertainty in the cost estimates for WHTI implementation in the land environment.

Comment: One commenter stated that the analysis of tourism expenditures did not consider the impact of the cost of acquiring documentation on spend rates.

Response: CBP agrees that the impact of the cost of acquiring WHTI-compliant documentation should be included in the estimate of lost expenditures in U.S. border communities. Specifically, in the final Regulatory Assessment, CBP considered whether the costs of obtaining documentation would be offset by reduced spending on the trip itself, or whether the traveler would reduce household spending locally by a commensurate amount. A review of the travel economics literature was inconclusive, but suggests that travelers often do not adhere to a budget while on a trip, particularly vacations. Also, CBP was unable to identify literature predicting whether travelers would amortize documentation costs across all the trips taken in a given time period, or whether they might reduce spending on the first trip taken after obtaining acceptable documentation to offset documentation costs. For these reasons, CBP believes it is most appropriate to assume that individuals who continue traveling after the implementation of WHTI will not spend less on cross-border trips. Rather, the costs of obtaining acceptable documentation

will result in reduced household spending in the travelers' home communities. Therefore, the analysis of the distributional impacts of the final rule includes a reduction in household expenditures by U.S. citizens to offset the cost of obtaining WHTI-compliant documents. Similar changes in spending by Mexican and Canadian travelers are assumed to occur in those travelers home communities, and as a result, do not affect expenditures in the United States. Please refer to the section below titled ''Executive Order 12866'' for a summary of the revised analysis and refer to the public docket and *http://www.cbp.gov* for the complete Regulatory Assessments for the final rule.

Comment: One commenter stated that some of the findings of the Regulatory Assessments analysis is based on surveys of traveler responses that may not be accurate.

Response: CBP disagrees with this comment. Estimation of lost consumer surplus under each of the regulatory alternatives considered requires information about travelers' willingness to pay for access to Mexico or Canada. Willingness to pay is the maximum sum of money an individual would be willing to pay rather than do without a good or amenity. If the cost of access to Mexico or Canada is within the range of costs below this maximum value, the traveler will pay for access and continue to travel. Likewise, if the cost of access exceeds this maximum, travelers will forgo future travel. Therefore, because it represents a maximum value, willingness to pay for access to these countries will not vary depending on the regulatory alternative considered. It is calculated once, and then that value, or in this case demand curve, can be used to evaluate decisions about future travel based on a range of regulatory alternatives with varying access costs.

The Regulatory Assessment relies on the results of a survey conducted for the Department of State. The surveyors informed respondents that after the implementation of WHTI, they would be required to have a valid passport for travel to Mexico and Canada. While the survey did not specify the cost of obtaining the document, a passport is a well-known, familiar form of identification with published fees that has been available for decades. Therefore, CBP believes it is acceptable to assume that the survey respondents had a reasonable idea of the cost of the document when responding to this question. The response to this question and information about the number of travelers making trips is used to estimate travelers' willingness to pay for access to these countries in the form of a linear demand curve. For the reasons discussed previously, this demand curve is relevant regardless of the regulatory option considered. Therefore, CBP used it to predict responses to varying regulatory alternatives not considered in the original survey that incorporate ranges of compliance options and costs.

2. Regulatory Flexibility Act

Comment: One commenter noted several examples of individuals who would be considered small businesses, including sole proprietors, self-employed individuals, and freelancers.

Response: CBP agrees that these ''sole proprietors'' would be considered small businesses and could be directly affected by the rule if their occupation requires travel within the Western Hemisphere where a passport was not previously required. The number of such sole proprietors is not available from the Small Business Administration or other available business databases, but we acknowledge that the number could be considered ''substantial.'' However, as estimated in the Regulatory Assessment for implementation of WHTI in the land environment, the cost to such businesses would be only $125 for a first-time passport applicant, $70 for a first-time passport card applicant plus an additional $60 if expedited service were requested.

V. Final Document Requirements

Based on the analysis of the comments and section 7209 of IRTPA, as amended, DHS and DOS have determined that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States at land and sea ports-of-entry from the Western Hemisphere will be required to present documents or combinations of documents designated by this final rule. DHS and DOS expect the date of full WHTI implementation to be June 1, 2009. As noted, the Congress has mandated that WHTI shall be implemented no earlier than the date that is the later of 3 months after the Secretary of State and the Secretary of Homeland Security make the certification required in subparagraph (B) or June 1, 2009. (Section 545, Omnibus Bill). The Departments will implement on June 1, 2009.

A. U.S. Citizens Arriving by Sea or Land

Under the final rule, most U.S. citizens [32] entering the United States at all sea or land ports-of-entry are required to have either: (1) A U.S. passport; (2) a U.S. passport card; (3) a valid trusted traveler card (NEXUS, FAST, or SENTRI); (4) a valid MMD when traveling in conjunction with official maritime business; or (5) a valid U.S. Military identification card when traveling on official orders or permit.

Under the final rule, cards issued for the DHS Trusted Traveler Programs NEXUS, Free and Secure Trade (FAST), and Secure Electronic Network for Travelers Rapid Inspection (SENTRI) are designated as entry documents for U.S. citizens at all lanes at all land and sea ports-of-entry when traveling from contiguous territory or adjacent islands. Additionally, U.S. citizens who have been pre-screened as part of the NEXUS or Canadian Border Boat Landing Program who arrive by pleasure vessel from Canada are permitted to report their arrival by telephone or by remote video inspection, respectively.

U.S. citizens who arrive by pleasure vessel from Canada are permitted to show the NEXUS card in lieu of a passport or passport card along the northern border under the auspices of the remote inspection system for pleasure vessels, such as the Outlying Area Reporting System (OARS). Currently, as NEXUS members, U.S. citizen recreational boaters can report their arrival to CBP by telephone. Otherwise, these U.S. citizen pleasure vessel travelers arriving from Canada are required to report in person to a port-of-entry in order to enter the United States.[33]

After full implementation of WHTI, dedicated lanes for trusted traveler programs will still exist at certain land ports-of-entry, which will provide program members with the opportunity for expedited inspections.

B. Canadian Citizens and Citizens of Bermuda Arriving by Sea or Land

1. Canadians

Under this final rule, Canadian citizens entering the United States at sea and land ports-of-entry are required to

[32] Unless the U.S. citizen falls into one of the special rule categories listed below.

[33] *See* 8 CFR 235.1(g). U.S. citizen holders of a Canadian Border Boat Landing Permit (Form I–68) are required to possess a passport, passport card, or trusted traveler program document when arriving in the United States in combination with the Form I–68 and are required to show this documentation when applying for or renewing the Form I–68. Participants would continue to benefit from entering the United States from time to time without having to wait for a physical inspection, subject to the applicable regulations. More information on the Canadian Border Boat Landing Program (I–68 Permit Program) is available on the CBP Web site at *http://www.cbp.gov.*

present, in addition to any visa required: [34]

- A valid passport issued by the Government of Canada;[35] or
- A valid trusted traveler program card issued by CBSA or DHS, e.g., FAST, NEXUS, or SENTRI.[36]

Additionally, Canadian citizens in the NEXUS program who arrive by pleasure vessel from Canada are permitted to present a NEXUS membership card in lieu of a passport along the northern border under the auspices of the remote inspection system for pleasure vessels, such as the Outlying Area Reporting System (OARS).[37] Currently, as NEXUS members, Canadian recreational boaters can report their arrival to CBP by telephone.[38] Otherwise, these Canadian pleasure vessel travelers arriving from Canada are required to report in person to a port-of-entry in order to enter the United States.[39]

2. Bermudians

Under this final rule, all Bermudian citizens are required to present a passport [40] issued by the Government of Bermuda or the United Kingdom when seeking admission to the United States at all sea or land ports-of-entry, including travel from within the Western Hemisphere.

C. Mexican Nationals Arriving by Sea or Land

Under this final rule, all Mexican nationals are required to present either: (1) A passport issued by the Government of Mexico and a visa when seeking admission to the United States, or (2) a valid BCC when seeking admission to the United States at land ports-of-entry or arriving by pleasure vessel or by ferry from Mexico.

For purposes of this rule, a pleasure vessel is defined as a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire. A ferry is defined as any vessel: (1) Operating on a pre-determined fixed schedule; (2) providing transportation only between places that are no more than 300 miles apart; and (3) transporting passengers, vehicles, and/or railroad cars. We note that ferries are subject to land border-type processing on arrival from, or departure to, a foreign port or place. Arrivals aboard all vessels other than ferries and pleasure vessels would be treated as sea arrivals.[41]

Mexican nationals who hold BCCs will continue to be allowed to use their BCCs in lieu of a passport for admission at the land border from Mexico and when arriving by ferry or pleasure vessel from Mexico when traveling within the border zone for a limited time period. For travel beyond certain geographical limits or a stay over 30 days, Mexican nationals who enter the United States from Mexico possessing BCCs are required to obtain a Form I–94 from CBP.[42] The BCC is not permitted in lieu of a passport for commercial or other sea arrivals to the United States.

Under current regulations, Mexican nationals may not use the FAST or SENTRI card in lieu of a passport or BCC. This will continue under the final rule, however, these participants would continue to benefit from expedited border processing.

Currently, Mexican nationals who are admitted to the United States from Mexico solely to apply for a Mexican passport or other ''official Mexican document'' at a Mexican consulate in the United States located directly adjacent to a land port-of-entry are not currently required to present a valid passport.[43] This final rule eliminates this exception to the passport requirement for Mexican nationals. Under the final rule, Mexican nationals will be required to have a BCC or a passport with a visa to enter the United States for all purposes.

D. State Enhanced Driver's License Projects

DHS remains committed to considering travel documents developed by the various U.S. states and the Governments of Canada and Mexico in the future that would denote identity and citizenship and would also satisfy section 7209 of IRTPA, as amended by section 723 of the 9/11 Commission Act of 2007.

Under this final rule, DHS will consider as appropriate documents such as state driver's licenses and identification cards that satisfy the WHTI requirements by denoting identity and citizenship. These documents must also have compatible technology, security criteria, and must respond to CBP's operational concerns.

Such acceptable documents will be announced and updated by publishing a notice in the **Federal Register**. A list of such programs and documents will also be maintained on the CBP Web site. It is still anticipated that the Secretary of Homeland Security will designate documents that satisfy section 7209 and the technology, security, and operational concerns discussed above as documents acceptable for travel under section 7209.

To date, DHS has entered into formal Memoranda of Agreement (MOAs) with the States of Washington, Vermont, New York, and Arizona which have begun voluntary programs to develop an ''enhanced driver's license'' and identification card that would denote identity and citizenship.[44] Concurrent with this final rule, DHS is also publishing a separate notice in today's **Federal Register** wherein the Secretary of Homeland Security is designating that the State of Washington enhanced

[34] *See* 8 CFR 212.1(h), (l), and (m) and 22 CFR 41.2(k) and (m).

[35] Foreign passports remain an acceptable travel document under section 7209 of the IRTPA.

[36] Canadian citizens who demonstrate a need may enroll in the SENTRI program and currently may use the SENTRI card in lieu of a passport. To enroll in SENTRI, a Canadian participant must present a valid passport and a valid visa, if required, when applying for SENTRI membership. Other foreign participants in the SENTRI program must present a valid passport and a valid visa, if required, when seeking admission to the United States, in addition to the SENTRI card. This final rule does not alter the passport and visa requirements for other foreign enrollees in SENTRI (i.e., other than Canadian foreign enrollees). Currently, Canadian citizens can show a SENTRI, NEXUS, or FAST card for entry into the United States only at designated lanes at designated land border ports-of-entry.

[37] Permanent residents of Canada must also carry a valid passport and valid visa, if required.

[38] Remote pleasure vessel inspection locations are only located on the northern border.

[39] *See* 8 CFR 235.1(g). Canadian holders of a Canadian Border Boat Landing Permit (Form I–68) are required to possess a passport or trusted traveler card when arriving in the United States in combination with the Form I–68 and would be required to show this documentation when applying for or renewing the Form I–68.

[40] Bermudian citizens must also satisfy any applicable visa requirements. *See* 8 CFR 212.1(h), (l), and (m) and 22 CFR 41.2(k) and (m).

[41] For example, commercial vessels are treated as arrivals at sea ports-of-entry for purposes of this final rule. A commercial vessel is any civilian vessel being used to transport persons or property for compensation or hire to or from any port or place. A charter vessel that is leased or contracted to transport persons or property for compensation or hire to or from any port or place would be considered an arrival by sea under this rule. Arrivals by travelers on fishing vessels, research or seismic vessels, other service-type vessels (such as salvage, cable layers, etc.), or humanitarian service vessels (such as rescue vessels or hospital ships) are considered as arrivals by sea.

[42] *See* 8 CFR 212.1(c)(1)(i); also 22 CFR 41.2 (g). If Mexicans are only traveling within a certain geographic area along the United States border with Mexico, usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, they do not need to obtain a form I–94. If they travel outside of that geographic area, they must obtain an I–94 from CBP at the port-of-entry. 8 CFR 235.1(h)(1).

[43] *See* 8 CFR 212.1(c)(1)(ii).

[44] On September 26, 2007, the Secretary of Homeland Security and the Governor of Vermont signed a similar Memorandum of Agreement for an enhanced driver's license and identification card to be used for border crossing purposes; on October 27, 2007, the Secretary and the Governor of New York also signed a similar Memorandum of Agreement. The state of Arizona has also announced its intention to sign an MOA with DHS to begin an enhanced driver's license project. For more information on these projects, see *http://www.dhs.gov.*

driver's license document is secure. Therefore, U.S. citizens may present the enhanced driver's licenses and identification cards issued by the State of Washington pursuant to the MOA at land and sea ports-of-entry when arriving from contiguous territory and adjacent islands.

DHS is continuing discussions on the development of enhanced driver's license projects with several other states and the Government of Canada. CBSA and several Canadian provinces are planning and developing EDL projects. DHS remains committed to working with and coordinating efforts among states interested in developing, testing, and implementing programs for enhanced driver's licenses on a continuing basis. DHS encourages states interested in developing enhanced driver's licenses to work closely with DHS to that end.

On January 28, 2008, DHS published a final rule in the **Federal Register** concerning minimum standards for state-issued driver's licenses and identification cards that can be accepted for official purposes in accordance with the REAL ID Act of 2005.[45] DHS has worked to align REAL ID and EDL requirements. EDLs are being developed consistent with the requirements of REAL ID and, as such, can be used for official purposes such as accessing a Federal facility, boarding Federally-regulated commercial aircraft, and entering nuclear power plants. The enhanced driver's license will also include technologies that facilitate electronic verification and travel at ports-of-entry. While the proposed REAL ID requirements include proof of legal status in the U.S., the enhanced driver's license will require that the card holder be a U.S. citizen.

E. Future Documents

Additionally, DHS and DOS remain committed to considering travel documents developed by the various U.S. states, Native American tribes and nations, and the Government of Canada in the future that would satisfy section 7209 of IRTPA.

Both DHS and DOS continue to engage with the Government of Canada and various provinces in discussions of alternative documents that could be considered for border crossing use at land and sea ports of entry. Other alternative identity and citizenship documents issued by the Government of Canada will be considered, as appropriate. The Departments welcome comments suggesting alternative Canadian documents.

Various Canadian provinces have indicated their interest or intention in pursuing projects with enhanced driver's licenses similar to the Washington State, Vermont and Arizona programs with DHS. Because documents accepted for border crossing under WHTI must denote citizenship, the participation of the Government of Canada in determinations of citizenship on behalf of its citizens, and recognition of this determination, is a strong consideration by the United States in the acceptance of documents for Canadian citizens. We will consider additional documents in the future, as appropriate.

VI. Special Rules for Specific Populations

A. U.S. Citizen Cruise Ship Passengers

Because of the nature of round trip cruise ship travel, DHS has determined that when U.S. citizens depart from and reenter the United States on board the same cruise ship, they pose a low security risk in contrast to cruise ship passengers who embark in foreign ports.

DHS and DOS have adopted the following alternative document requirement for U.S. cruise ship passengers. For purposes of the final rule, a cruise ship is defined as a passenger vessel over 100 gross tons, carrying more than twelve passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.[46]

U.S. citizen cruise ship passengers traveling within the Western Hemisphere are permitted to present a government-issued photo identification document in combination with either: (1) An original or a copy of a birth certificate, (2) a Consular Report of Birth Abroad issued by DOS, or (3) a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services (USCIS), when returning to the United States, under certain conditions:

- The passengers must board the cruise ship at a port or place within the United States; and
- The passengers must return on the same ship to the same U.S. port or place from where they originally departed.

On such cruises, U.S. Citizens under the age of 16 may present an original or a copy of a birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services. All passengers arriving on a cruise ship that originated at a foreign port or place are required to present travel documents that comply with applicable document requirements otherwise specified in this final rule when arriving in the United States. For voyages where the cruise ship originated in the United States, if any new passengers board the ship at a foreign port or place or another location in the United States, the new passengers will have to present travel documents that comply with applicable document requirements otherwise specified in this final rule when arriving in the United States. U.S. citizen cruise ship passengers that fall under this alternative document requirement are reminded to carry appropriate travel documentation to enter any foreign countries on the cruise. If the ship returns to a U.S. port different from the point of embarkation, all passengers must carry a passport or other WHTI compliant documentation.

B. U.S. and Canadian Citizen Children

The U.S. government currently requires all children arriving from countries outside the Western Hemisphere to present a passport when entering the United States. Currently, children (like adults) from the United States, Canada, and Bermuda are not required to present a passport when entering the United States by land or sea from contiguous territory or adjacent islands, other than Cuba. Mexican children are currently required to present either a passport and visa, or a BCC upon arrival in the United States, as discussed above. DHS, in consultation with DOS, has adopted the procedures below in this final rule.

1. Children Under Age 16

Under the final rule, all U.S. citizen children under age 16 are permitted to present either: (1) An original or a copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS, at all sea and land ports-of-entry when arriving from contiguous territory. Canadian citizen children under age 16 are permitted to present an original or a copy of a birth certificate, a Canadian Citizenship Card, or Canadian Naturalization Certificate at all sea and land ports-of-entry when

[45] The REAL ID Act of 2005 prohibits Federal agencies, effective May 11, 2008, from accepting a driver's license or personal identification card for any official purpose unless the license or card has been issued by a State that is meeting the requirements set forth in the Act. *See* Pub. L. 109–13m 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note). On March 9, 2007, DHS issued a rule proposing to establish minimum standards for State-issued driver's licenses and identification cards that Federal agencies would accept for official purposes after May 11, 2008. *See* 72 FR 10820.

[46] For this final rule, DHS adopts the definition of a cruise ship used by the U.S. Coast Guard. *See* 33 CFR 101.105.

arriving from contiguous territory. U.S. and Canadian children age 16 and over who arrive from contiguous territory are subject to the WHTI document requirements otherwise specified in this final rule.

All Canadian birth certificates are issued from a centralized location within the provinces and territories. Each province or territory can issue two types of birth certificates: a long form, which is a one-page paper document similar to U.S. birth certificates, or a short form, which is a laminated card version of the long form. All versions of the birth certificate throughout the provinces are similar in format (paper form or laminated card).

All Canadian-issued birth certificates are considered by the Government of Canada as certified and are accepted by CBSA. Both the long and short forms of certified Canadian birth certificates issued by the provinces and territories are permissible documents under the final rule.

2. Children Under Age 19 Traveling in Groups

Under this final rule, U.S. citizen children under age 19 who are traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry from contiguous territory, may present either: (1) An original or a copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS, when the groups are under the supervision of an adult affiliated with the organization (including a parent of one of the accompanied children who is only affiliated with the organization for purposes of a particular trip) and when all the children have parental or legal guardian consent to travel. Canadian citizen children under age 19 may present an original or a copy of a birth certificate, a Canadian Citizenship Card, or Canadian Naturalization Certificate at all sea and land ports-of-entry when arriving from contiguous territory. For purposes of this alternative procedure, an adult would be considered to be a person age 19 or older, and a group would consist of two or more people.

The group, organization, or team will be required to contact CBP upon crossing the border at the port-of-entry and provide on organizational letterhead: (1) The name of the group, organization or team and the name of the supervising adult; (2) a list of the children on the trip; (3) for each child, the primary address, primary phone number, date of birth, place of birth, and name of at least one parent or legal guardian; and (4) the written and signed statement of the supervising adult certifying that he or she has obtained parental or legal guardian consent for each participating child. The group, organization, or team would be able to demonstrate parental or legal guardian consent by having the adult leading the group sign and certify in writing that he or she has obtained parental or legal guardian consent for each participating child. For Canadian children, in addition to the information indicated above, a trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay would be required.

To avoid delays upon arrival at a port-of-entry, CBP would recommend that the group, organization, or team provide this information to that port-of-entry well in advance of arrival, and would recommend that each participant traveling on the trip carry in addition to the above mentioned documents a government or school issued photo identification document, if available. Travelers with the group who are age 19 and over are subject to the generally applicable travel document requirements specified in 8 CFR parts 211, 212 or 235 and 22 CFR parts 41 or 53.

Based upon a review of the alternative approach for children and the parental consent questions asked in the Land and Sea NPRM, DHS and DOS are not implementing any additional requirements regarding children such as parental consent to travel.

C. American Indian Card Holders From Kickapoo Band of Texas and Tribe of Oklahoma

Under the final rule, U.S. citizen members of the Kickapoo Band of Texas and Tribe of Oklahoma are permitted to present the Form I–872 American Indian Card in lieu of a passport or passport card at all sea and land ports of entry when arriving from contiguous territory or adjacent islands. Mexican national members of the Kickapoo Band of Texas and Tribe of Oklahoma are permitted to present the I–872 in lieu of either a passport and visa, or a BCC at sea and land ports-of-entry when arriving from contiguous territory or adjacent islands.

D. Members of United States Native American Tribes

For the reasons discussed above, upon full implementation of this final rule and if designated by the Secretary of Homeland Security as acceptable under WHTI, Native American enrollment or identification cards from a federally-recognized tribe or group of federally recognized tribes will be permitted for use at entry at any land and sea port-of-entry when arriving from contiguous territory or adjacent islands.

E. Canadian Indians

For the reasons discussed above, upon full implementation of this final rule and if designated by the Secretary of Homeland Security, the proposed new Indian and Northern Affairs Canada (INAC) card to be issued by LTS and to contain a photograph and an MRZ, may also be presented as evidence of the citizenship and identity of Canadian Indians when they seek to enter the United States from Canada at land ports-of-entry.

F. Individual Cases of Passport Waivers

The passport requirement may be waived for U.S. citizens in certain individual situations on a case-by-case basis, such as an unforeseen emergency or cases of humanitarian or national interest.[47] Existing individual passport waivers for non-immigrant aliens are not changed by the final rule.[48]

G. Summary of Document Requirements

The following chart summarizes the acceptable documents for sea and land arrivals from the Western Hemisphere under WHTI.

The Departments note that document requirements for Lawful Permanent Residents (LPRs) of the United States, employees of the International Boundary and Water Commission (IBWC) between the United States and Mexico, OCS workers, active duty alien members of the U.S. Armed Forces, and members of NATO-member Armed Forces, as discussed in the Land and Sea NPRM, remain unchanged.

[47] *See* section 7209(c)(2) of IRTPA. *See also* 22 CFR 53.2.

[48] *See* 8 CFR Part 212.

Group/population	Acceptable document(s)	Land	Ferry	Pleasure vessel	Sea (all other vessels)
All Travelers (U.S., Can., Mex., Berm.) at all sea and land POEs.	Valid Passport book (and valid visa, if necessary for foreign travelers).	Yes	Yes	Yes	Yes.
U.S. Citizens at all sea and land POEs when arriving from Canada, Mexico, the Caribbean, and Bermuda.	Valid Passport card	Yes	Yes	Yes	Yes.
U.S. and Canadian citizen Trusted Traveler Members at all sea and land POEs when arriving from contiguous territory or adjacent islands.	Trusted Traveler Cards (NEXUS, FAST, SENTRI).	Yes*	Yes*	Yes*	* Yes.
U.S. Citizen Merchant Mariners on official mariner business at all sea and land POEs.	U.S. Merchant Mariner Document (MMD).	Yes	Yes	Yes	Yes.
Mexican Nationals arriving from Mexico	Border Crossing Card (BCC)	Yes**	Yes**	Yes**	No.
U.S. Citizen Cruise Ship Passengers on round trip voyages that begin and end in the same U.S. port.	Government-issued photo ID and original or copy of birth certificate; under age 16, birth certificate.	N/A	N/A	N/A	Yes—for round trip voyages that originate in U.S.
U.S. and Canadian Citizen Children Under 16 at all sea and land POEs when arriving from contiguous territory.	Original or copy of birth certificate*** (government-issued photo ID recommended, but not required).	Yes	Yes	Yes	Yes.
U.S. and Canadian Citizen Children—Groups of Children Under Age 19, under adult supervision with parental/guardian consent at all sea and land POEs when arriving from contiguous territory.	Original or copy of birth certificate*** and parental/guardian consent (government -issued photo ID recommended, but not required).	Yes	Yes	Yes	Yes.
U.S. Citizen/Alien Members of U.S. Armed Forces traveling under official orders or permit at all air, sea and land POEs.	Military ID and Official Orders	Yes	Yes	Yes	Yes.
U.S. and Mexican Kickapoo at land and sea POEs when arriving from contiguous territory and adjacent islands.	Form I–872 American Indian Card	Yes	Yes	Yes	Yes.
U.S. citizen members of Native American tribes recognized by the U.S. Government when arriving from contiguous territory at land and sea POEs.	Tribal Enrollment Documents designated by the Secretary of Homeland Security as meeting WHTI tribal document security.	Yes	Yes	Yes	Yes.
Canadian citizen members of First Nations or bands recognized by the Canadian Government when arriving from Canada at land POEs.	If designated by the Secretary of Homeland Security, the proposed new INAC card issued by the Government of Canada containing an MRZ.	Yes	Yes	Nos	No.

* Approved for Mexican national members traveling with BCC or a passport and visa.
** In conjunction with a valid I–94 for travel outside the 25- or 75-mile geographic limits of the BCC.
*** U.S. children would also be permitted to present a Certificate of Birth Abroad or Certificate of Naturalization; Canadian children would be permitted to present a Canadian Citizenship Card or Canadian Naturalization Certificate.

VII. Regulatory Analyses

A. Executive Order 12866: Regulatory Planning and Review

This final rule implementing the second phase of WHTI for entries by land and sea is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of requirements for U.S. citizens entering the United States from other countries in the Western Hemisphere by land and sea, plus the costs and benefits of several alternatives considered during the rulemaking process.

The regulatory assessments summarized here consider U.S. travelers entering the United States via land ports-of-entry on the northern and southern borders (including arrivals by ferry and pleasure boat) as well as certain cruise ship passengers. Costs to obtain the necessary documentation for air travel were considered in a previous analysis examining the implementation of WHTI in the air environment (the Regulatory Assessment for the November 2006 Final Rule for implementation of WHTI in the air environment can be found at *www.regulations.gov*; document number USCBP–2006–0097–0108). If travelers have already purchased a passport for travel in the air environment, they would not need to purchase a passport for travel in the land or sea environments. CBP does not attempt to estimate with any precision the number of travelers who travel in more than one environment, and, therefore, may have already obtained a passport due to the air rule and will not incur any burden due to this rule. To the extent that the three traveling populations overlap in the air, land, and sea environments, we have potentially overestimated the direct costs of the rule presented here.

The period of analysis is 2005–2018 (14 years). We calculate costs beginning in 2005 because although the suite of WHTI rules was not yet in place, DOS experienced a dramatic increase in passport applications since the WHTI plan was announced in early 2005. We account for those passports obtained prior to full implementation to more accurately estimate the economic impacts of the rule as well as to incorporate the fairly sizable percentage of travelers who currently hold passports in anticipation of the new requirements.

The Secretary of Homeland Security is designating CBP trusted traveler cards (NEXUS, SENTRI, FAST), the Merchant Mariner Document (MMD), and specified documents from DHS-approved enhanced driver's license programs as acceptable travel documents for U.S. citizens to enter the United States at land and sea ports-of-entry. Because DHS and DOS believe that children under the age of 16 pose a low security threat in the land and sea environments, U.S. children may present a birth certificate in lieu of other designated documents. Additionally, DHS and DOS have determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment. To meet the cruise exemption, a passenger must board the cruise ship at a port or place within the United States and the passenger must return on the same ship to the same U.S. port or place from where he or she originally departed.

For the summary of the analysis presented here, CBP assumes that only the passport, trusted traveler cards, and the MMD were available in the first years of the analysis (recalling that the period of analysis begins in 2005 when passport cards and enhanced driver's licenses were not yet available). CBP also assumes that most children under 16 will not obtain a passport or passport card but will instead use alternative documentation (birth certificates). The estimates reflect that CBP trusted traveler cards will be accepted at land and sea ports-of-entry. Finally, CBP assumes that most of the U.S. cruise passenger population will present alternative documentation (government-issued photo ID and birth certificate) because they meet the alternative documentation provision in the rule.

To estimate the costs of the rule, we follow this general analytical framework:

—Determine the number of U.S. travelers that will be covered
—Determine how many already hold acceptable documents
—Determine how many will opt to obtain passports (and passport cards) and estimate their lost ''consumer surplus''
—Determine how many will forgo travel instead of obtaining passports or passport cards and estimate their lost ''consumer surplus''

We estimate covered land travelers using multiple sources, including: crossing data from the Bureau of Transportation Statistics (BTS, 2004 data), a study of passport demand conducted by DOS (completed in 2005), and a host of regional studies conducted by state and local governments and academic research centers.

Other than DOS's passport demand study, no source exists to our knowledge that has estimated the total number of land entrants nationwide. Researchers almost always count or estimate crossings, not crossers and focus on a region or locality, not an entire border. Building on the work conducted for DOS's passport study, we distilled approximately 300 million annual crossings into the number of frequent (defined as at least once a year), infrequent (once every three years), and rare (once every ten years) ''unique U.S. adult travelers.'' We then estimate the number of travelers without acceptable documentation and estimate the cost to obtain a document. The fee for the passport varies depending on the age of the applicant, whether or not the applicant is renewing a passport, whether or not the applicant is requesting expedited service, and whether or not the applicant obtains a passport or a passport card. Additionally, we consider the amount of time required to obtain the document and the value of that time. To estimate the value of an applicant's time in the land environment, we conducted new research that built on existing estimates from the Department of Transportation. To estimate the value of an applicant's time in the sea environment, we use estimates for air travelers' value of time (air and sea travelers share very similar characteristics) from the Federal Aviation Administration (FAA, 2005 data). We use the 2005 DOS passport demand study and CBP statistics on the trusted traveler programs to estimate how many unique U.S. travelers already hold acceptable documents.

We estimate covered cruise passengers using data from the Maritime Administration (MARAD, 2006 data) and itineraries available on the cruise line Web sites (for 2007). The overwhelming majority of Western Hemisphere cruise passengers—92 percent—would fall under the cruise-passenger alternative documentation provision. Passengers not covered by the alternative documentation provision fall into four trade markets—Alaska (72 percent), Trans-Panama Canal (16 percent), U.S. Pacific Coast (8 percent), and Canada/New England (4 percent). We estimate that these passengers will have to obtain a passport rather than one of the other acceptable documents because these travelers will likely have an international flight as part of their cruise vacation, and only the passport is a globally accepted travel document. We use a comment to the August 2006 NPRM for implementation of WHTI in the air and sea environments (71 FR 46155) from the International Council of Cruise Lines to estimate how many unique U.S. cruise travelers already hold acceptable documentation.

Based on CBP's analysis, approximately 3.6 million U.S. travelers are affected in the first year of implementation, 2009 (note that the analysis anticipates a significant number of travelers will obtain WHTI-compliant documents in 2005 through 2008, prior to the implementation of the rule. In addition, travelers who only make trips in the first half of 2009 will not be covered by the rule). Of these, approximately 3.5 million enter through a land-border crossing (via privately owned vehicle, commercial truck, bus, train, on foot) and ferry and recreational boat landing sites. An estimated 0.1 million are cruise passengers who do not meet the alternative documentation provision in the final rule (note that over 90 percent of U.S. cruise passengers are expected to meet the exemption criteria). CBP estimates that the traveling public will acquire approximately 3.1 million passports in 2009, at a direct cost to traveling individuals of $283 million. These estimates are summarized in Table A.

TABLE A.—FIRST-YEAR ESTIMATES FOR U.S. ADULT TRAVELERS

[All estimates in millions]

Affected travelers:	
Land/ferry/pleasure boat crossers	3.5
Cruise passengers	0.1
Total	3.6
Passports demanded:	
Land/ferry/pleasure boat crossers	3.1
Cruise passengers	0.1
Total	3.2
Total cost of passports:	
Land-border crossers	$272
Cruise passengers	11
Total	$283

To estimate potential forgone travel in the land environment, we derive traveler demand curves for access to Mexico and Canada based on survey responses collected in DOS's passport study. We estimate that when the rule is implemented, the number of unique U.S. travelers to Mexico who are frequent travelers decreases by 5.7 percent, the unique U.S. travelers who are infrequent travelers decreases by 6.4 percent, and the unique U.S. travelers who are rare travelers decreases by 15.7 percent. The number of U.S. travelers visiting Canada who are frequent

travelers decreases by 3.3 percent, the unique U.S. travelers who are infrequent travelers decreases by 9.5 percent, and the unique U.S. travelers who are rare travelers decreases by 9.6 percent. These estimates account for the use of a passport card for those travelers who choose to obtain one. For unique travelers deciding to forgo future visits, their implied value for access to these countries is less than the cost of obtaining a passport card.

To estimate potential forgone travel in the sea environment, we use a study from Coleman, Meyer, and Scheffman (2003), which described the Federal Trade Commission investigation into potential impacts of two cruise-line mergers and estimated a demand elasticity for cruise travel. We estimate that the number of travelers decreases by 24 percent, 13 percent, 7 percent, and 6 percent for travelers on short (1 to 5 nights), medium (6 to 8 nights), long (9 to 17 nights), and very long cruises (over 17 nights) once the rule is implemented.

We then estimate total losses in consumer surplus. The first figure below represents U.S. travelers' willingness to pay (D_1) for access to Mexico and Canada. At price P_1, the number of U.S. travelers without passports currently making trips to these countries is represented by Q_1. As seen in the second figure, if the government requires travelers to obtain a passport or passport card in order to take trips to Mexico and Canada, the price of access increases by the cost of obtaining the new document, to P_2. As a result, the number of travelers making trips to these countries decreases to Q_2.

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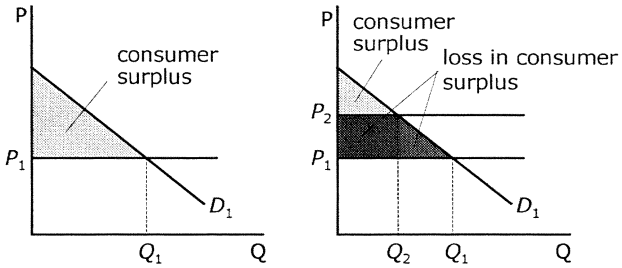

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All travelers in this figure experience a loss in consumer surplus; the size of the surplus loss depends on their willingness to pay for access to these countries. The lost surplus experienced by travelers whose willingness to pay exceeds P_2 is shown in the dark blue rectangle, and is calculated as $(P_2 - P_1) * Q_2$. Travelers whose willingness to pay for access to these countries is less than the price of the passport or passport card will experience a loss equal to the area of the aqua triangle, calculated as $1/2 * (Q_1 - Q_2) * (P_2 - P_1)$.

Costs of the rule (expressed as losses in consumer surplus) are summed by year of the analysis. We then add the government costs of implementing WHTI over the period of analysis. Fourteen-year costs are $3.3 billion at the 3 percent discount rate and $2.7 billion at 7 percent, as shown in Table B. Annualized costs are $296 million at 3 percent and $314 million at 7 percent.

TABLE B.—TOTAL COSTS FOR U.S. TRAVELERS OVER THE PERIOD OF ANALYSIS

[2005–2018, in $millions]

Year	Cost	3% discount rate	7% discount rate
2005	$435	$435	$435
2006	153	148	143
2007	91	85	79
2008	493	451	406

TABLE B.—TOTAL COSTS FOR U.S. TRAVELERS OVER THE PERIOD OF ANALYSIS—Continued

[2005–2018, in $millions]

Year	Cost	3% discount rate	7% discount rate
2009	431	383	333
2010	352	304	255
2011	270	226	183
2012	235	191	149
2013	235	186	140
2014	290	222	159
2015	314	234	161
2016	250	181	120
2017	225	158	101
2018	201	137	84
Total	.....	$3,340	$2,748

The primary analysis for land summarized here assumes a constant number of border crossers over the period of analysis; in the complete Regulatory Assessment we also consider scenarios where the number of border crossers both increases and decreases over the period of analysis. It is worth noting that border crossings have been mostly decreasing at both the northern and southern borders since 1999. The analysis for sea travel assumes a 6 percent annual increase in passenger counts over the period of analysis as the Western Hemisphere cruise industry continues to experience growth.

Finally, we conduct a formal uncertainty (Monte Carlo) analysis to test our assumptions for the analysis in the land environment. We first conducted a preliminary sensitivity analysis to identify the variables that have the most significant effect on consumer welfare losses. We found that the frequency of travel (frequent, infrequent, rare), crossings at multiple ports-of-entry, future annual affected individuals, and the amount of time spent applying for documentation were the most sensitive variables in the analysis. The variables that did not appear to have an impact on consumer losses were the estimated number of crossings by Lawful Permanent Residents or Native Americans and estimated future timing with which travelers will apply for acceptable documentation. After we conducted our formal Monte Carlo analysis we found that our most sensitive assumptions are: The projected crossing growth rate, the frequency of travel, and the number of new unique travelers that enter the population annually. The results of the Monte Carlo analysis are presented in Table C. Note that these estimates do not include the government costs of implementation, estimated to be $0.8 billion over the time period of the analysis (3 percent discount rate) because we have no basis for assigning uncertainty parameters for government costs.

TABLE C.—SUMMARY OF KEY CHARACTERISTICS OF PROBABILITY DISTRIBUTIONS OF TOTAL WELFARE LOSSES IN THE LAND ENVIRONMENT (2005–2018, IN $BILLIONS), 3 PERCENT DISCOUNT RATE

Statistic	Value
Trials	10,000
Mean	$2.2
Median	$2.1
Std Dev	$0.5
Variance	2.4E+08
5th Percentile	$1.5
95th Percentile	$3.1
Point Estimate	$2.3

We then consider the secondary impacts of forgone travel in the land and sea environments. Forgone travel will result in gains and losses in the United States, Canada, and Mexico. For this analysis, we made the simplifying assumption that if U.S. citizens forgo travel to Canada and Mexico, their expenditures that would have been spent outside the country now remain here. In this case, industries receiving the diverted expenditure in the United States experience a gain, while the travel and related industries in Canada and Mexico suffer a loss. Conversely, if Canadian and Mexican citizens forgo travel to the United States, their potential expenditures remain abroad—a loss for the travel and related industries in the United States, but a gain to Canada and Mexico. Note that ''gains'' and ''losses'' in this analysis cannot readily be compared to the costs and benefits of the rule, since they represent primarily transfers in and out of the U.S. economy.

For cruise passengers, we have only rough estimates of where U.S. passengers come from, how they travel to and from the ports where they embark, where they go, and the activities they engage in while cruising. We know even less about how they will alter their behavior if they do, in fact, forgo obtaining a passport. Ideally, we could model the indirect impacts of the rule with an input-output model (either static or dynamic) that could give us a reasonable estimation of the level the impact, the sectors affected, and regional impacts. Unfortunately, given the dearth of data, the assumptions we had to make, the very small numbers of travelers who are estimated to forgo travel, and the fact that much of their travel experience occurs outside the United States, using such a model would not likely produce meaningful results. We recognize, however, that multiple industries could be indirectly affected by forgone cruise travel, including (but not limited to): Cruise lines; cruise terminals and their support services; air carriers and their support services; travel agents; traveler accommodations; dining services; retail shopping; tour operators; scenic and sightseeing transportation; hired transportation (taxis, buses); and arts, entertainment, and recreation.

According to the MARAD dataset used for the sea analysis, there are 17 cruise lines operating in the Western Hemisphere, 9 of which are currently offering cruises that would be indirectly affected by a passport requirement. While we expect that cruise lines will be indirectly affected by the rule, how they will be affected depends on their itineraries, the length of their cruises, their current capacity, and future expansion, as well as by travelers' decisions. We expect short cruises (1 to 5 nights) to be most notably affected because the passport represents a greater percentage of the overall trip cost, passengers on these cruises are less likely to already hold a passport, and travel plans for these cruises are frequently made closer to voyage time. Longer cruises are less likely to be affected because these trips are planned well in advance, passengers on these voyages are more likely to already possess a passport, and the passport cost is a smaller fraction of the total trip cost.

Because border-crossing activity is predominantly a localized phenomenon, and the activities engaged in while visiting the United States are well documented in existing studies, we can explore the potential impacts of forgone travel more quantitatively in the land environment. Using various studies on average spending per trip in the United States, Canada, and Mexico, we estimate the net results of changes in expenditure flows in 2008 (the presumed first year the requirements will be implemented) and subsequent years. Because Mexican crossers already possess acceptable documentation to enter the United States (passport or Border Crossing Card), we do not estimate that Mexican travelers will forgo travel to the United States. The summary of expenditure flows is presented in Table D.

TABLE D.—NET EXPENDITURE FLOWS IN NORTH AMERICA, 2009, 2010, AND SUBSEQUENT YEARS

[In millions]

2009:	
Spending by U.S. travelers who forgo travel to Mexico	+$160
Spending by Mexican travelers who forgo travel to the United States	0
Spending by U.S. travelers who forgo travel to Canada	+60
Spending by Canadian travelers who forgo travel to United States	−400
Net	−180
2010:	
Spending by U.S. travelers who forgo travel to Mexico	+280
Spending by Mexican travelers who forgo travel to the United States	0
Spending by U.S. travelers who forgo travel to Canada	+110
Spending by Canadian travelers who forgo travel to United States	−440
Net	−50
Subsequent years (annual):	
Spending by U.S. travelers who forgo travel to Mexico	+280
Spending by Mexican travelers who forgo travel to United States	0
Spending by U.S. travelers who forgo travel to Canada	+110
Spending by Canadian travelers who forgo travel to United States	−330
Net	+60

To examine these impacts more locally, we conduct eight case studies using a commonly applied input-output model (IMPLAN), which examines regional changes in economic activity given an external stimulus affecting those activities. In all of our case studies but one, forgone border crossings attributable to WHTI have a less-than-1-percent impact on the regional economy both in terms of output and employment. The results of these eight case studies are presented in Table E.

TABLE E.—MODELED DISTRIBUTIONAL EFFECTS IN EIGHT CASE STUDIES

Study area (counties)	State	Change as % of total* * *	
		Output	Employment
San Diego	California	+0.02	+0.03
Pima, Santa Cruz	Arizona	+0.02	+0.02
Hidalgo, Cameron	Texas	+0.1	+0.1
Presidio	Texas	+0.4	+0.4
Niagara, Erie	New York	−0.2	−0.3
Washington	Maine	−1.4	−3.2
Macomb, Wayne, Oakland	Michigan	−0.02	−0.04
Whatcom	Washington	−0.5	−1.3

As shown, we anticipate very small net positive changes in the southern-border case studies because Mexican travelers to the United States use existing documentation, and their travel is not affected. The net change in regional output and employment is negative (though still very small) in the northern-border case studies because Canadian travelers forgoing trips outnumber U.S. travelers staying in the United States and because Canadian travelers to the United States generally spend more per trip than U.S. travelers to Canada. On both borders, those U.S. travelers that forgo travel do not necessarily spend the money they would have spent outside the United States in the case-study region; they may spend it outside the region, and thus outside the model.

Finally, because the benefits of homeland security regulations cannot readily be quantified using traditional analytical methods, we conduct a ''breakeven analysis'' to determine what the reduction in risk would have to be given the estimated costs of the implementation of WHTI (land environment only). Using the Risk Management Solutions U.S. Terrorism Risk Model (RMS model), we estimated the critical risk reduction that would have to occur in order for the costs of the rule to equal the benefits—or break even.

The RMS model has been developed for use by the insurance industry and provides a comprehensive assessment of the overall terrorism risk from both foreign and domestic terrorist organizations. The RMS model generates a probabilistic estimate of the overall terrorism risk from loss estimates for dozens of types of potential attacks against several thousand potential targets of terrorism across the United States. For each attack mode-target pair (constituting an individual scenario) the model accounts for the probability that a successful attack will occur and the consequences of the attack. RMS derives attack probabilities from a semi-annual structured expert elicitation process focusing on terrorists' intentions and capabilities. It bases scenario consequences on physical modeling of attack phenomena and casts target characteristics in terms of property damage and casualties of interest to insurers. Specifically, property damages include costs of damaged buildings, loss of building contents, and loss from business interruption associated with property to which law enforcement prohibits entry immediately following a terrorist attack. RMS classifies casualties based on injury-severity categories used by the worker compensation insurance industry.

The results in Table F are based on the annualized cost estimate (assuming a seven percent discount rate) of the rule presented above. These results show that a decrease in perceived risk (the ''low risk'' scenario generated by RAND to characterize the expected annual losses in the United States from terrorist attacks) leads to a smaller annualized loss and a greater required critical risk reduction for the benefits of the rule to break even with costs. Conversely, an increase in perceived risk (the ''high risk'' scenario) leads to a greater annualized loss and a smaller required critical risk reduction. The total range in critical risk reduction under the standard threat outlook produced by the RMS model is a factor of three and ranges from 5.5 to 14 percent depending on the methodology used to value the benefits of avoided terrorist attacks (the value of avoided injuries and deaths).

TABLE F.—CRITICAL RISK REDUCTION FOR THE RULE

[7 percent discount rate]

Valuation ethodology	Critical risk reduction (%)		
	Low	Standard	High
Cost of injury (fatality = $1.1m)	27	14	6.8
Willingness to pay (VSL = $3m)	21	10	5.2
Quality of life (VSL = $3m)	18	8.8	4.4
Willingness to pay (VSL = $6m)	14	7.0	3.5
Quality of life (VSL = $6m)	11	5.5	2.8

Several key factors affect estimates of the critical risk reduction required for the benefits of the rule to equal or exceed the costs. These factors include: the uncertainty in the risk estimate produced by the RMS model; the potential for other types of baseline losses not captured in the RMS model; and the size of other non-quantified direct and ancillary benefits of the rule. The RMS model likely underestimates total baseline terrorism loss because it only reflects the direct, insurable costs of terrorism. It does not include any indirect losses that would result from continued change in consumption patterns or preferences or that would result from propagating consequences of interdependent infrastructure systems. For example, the RMS model does not capture the economic disruption of a terrorism event beyond the immediate insured losses. Furthermore, the model also excludes non-worker casualty losses and losses associated with government buildings and employees. Finally, the model may not capture less-tangible components of losses that the

public wishes to avoid, such as the fear and anxiety associated with experiencing a terrorist attack. Omission of these losses will cause us to overstate the necessary risk reductions.

Although the risk reduction associated with the final rule cannot be quantified due to data limitations, a separate analysis of the potential benefits resulting from reductions in wait time at the border suggests that the net benefits of the rule (total benefits minus total costs) have the potential to be positive. In a separate effort, CBP estimated the costs and benefits of processing technology investments at ports-of-entry. As part of this analysis, analysts evaluated the wait time impact attributable to each technology alternative. The results suggest that implementing standard documents and RFID technology could result in reductions in wait time valued as highly as $2.4 billion to $3.3 billion between 2009 and 2018 (discount rates of 7 and 3 percent, respectively). Subtracting total present value costs suggests the potential for net benefits as high as $0.9 billion to $1.7 billion (discount rates of 7 and 3 percent, respectively).

Alternatives to the Rule

CBP considered the following alternatives to the final rule—

1. Require all U.S. travelers (including children) to present a valid passport book upon return to the United States from countries in the Western Hemisphere.

2. Require all U.S. travelers (including children) to present a valid passport book, passport card, or CBP trusted traveler document upon return to the United States from countries in the Western Hemisphere.

3. Alternative 2, but without RFID-enabled passport cards.

Calculations of costs for the alternatives can be found in the two Regulatory Assessments for the final rule.

Alternative 1: Require all U.S. travelers (including children) to present a valid passport book.

The first alternative would require all U.S. citizens, including minors under 16 and all cruise passengers, to present a valid passport book only. This alternative was rejected as potentially too costly and burdensome for low-risk populations of travelers. While the passport book will always be an acceptable document for a U.S. citizen to present upon entry to the United States, DHS and DOS believe that the cost of a traditional passport book may be too expensive for some U.S. citizens, particularly those living in border communities where land-border crossings are an integral part of everyday life. As stated previously, DHS and DOS, believe that children under the age of 16 pose a low security threat in the land and sea environments and will be permitted to present a birth certificate when arriving in the United States at all land and sea ports-of-entry from contiguous territory. DHS and DOS have also determined that designating alternative documentation for certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment.

Alternative 2: Require all U.S. travelers (including children) to present a valid passport book, passport card, or trusted traveler document.

The second alternative is similar to the final rule, though it includes children and does not provide a passport exception for cruise passengers. While this alternative incorporates the low-cost passport card and CBP trusted traveler cards as acceptable travel documents, this alternative was ultimately rejected as potentially too costly and burdensome for low-risk populations of travelers (certain cruise passengers and minors under 16).

Alternative 3: Require all U.S. travelers (including children) to present a valid passport book, passport card, or trusted traveler document; no RFID-enabled passport card.

The third alternative is similar to the second; it just now assumes that the passport card is not enabled with RFID technology. For this analysis, we assume that this does not change the fee charged for the passport card; we assume, however, that government costs to test and deploy the appropriate technology at the land borders to read the passport cards are eliminated. This alternative was rejected because DHS and DOS strongly believe that facilitation of travel, particularly at the land borders where wait times are a major concern, should be a primary achievement of WHTI implementation.

Table G presents a comparison of the costs of the final rule and the alternatives considered.

TABLE G.—COMPARISON OF REGULATORY ALTERNATIVES

[In $millions]

Alternative	13-year cost (7%)	Compared to final rule	Reason rejected
Final rule	$2,748	n/a	
Alternative 1: Passport book only for all U.S. travelers	$6,728	+$3,979	Cost of a passport considered too high for citizens in border communities; low-risk traveling populations (certain cruise passengers, children under 16) unduly burdened.
Alternative 2: Passport book, passport card, and other designated documents for all U.S. travelers.	$5,751	+$3,003	Low-risk traveling populations (certain cruise passengers, children under 16) unduly burdened.
Alternative 3: Passport book, passport card, and other designated documents for all U.S. travelers; no RFID-enabled passport card.	$5,340	+$2,591	Low-risk traveling populations (certain cruise passengers, children under 16) unduly burdened, unacceptable wait times at land-border ports of entry.

It is important to note that for scenarios where the RFID-capable passport card is acceptable (the final rule and Alternative 2), the estimates include government implementation costs for CBP to install the appropriate technology at land ports-of-entry to read RFID-enabled passport cards and the next generation of CBP trusted traveler documents. These technology deployment costs are estimated to be substantial, particularly in the early phases of implementation. As a result, the alternatives allowing more documents than just the passport book result higher government costs over thirteen years than alternatives allowing only the passport book or the passport card that is not RFID-enabled, which can be processed with existing readers that scan the passport's machine-readable zone. Allowing presentation of alternative documentation for minors and most cruise passengers results in

notable cost savings over thirteen years (about $2.5 billion to $4.0 billion depending on the documents considered).

Accounting statement

As required by OMB Circular A–4, CBP has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table below provides an estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at 7 percent and 3 percent discount rates. We estimate that the cost of this rule will be approximately $314 million annualized (7 percent discount rate) and approximately $296 million annualized (3 percent discount rate). Non-quantified benefits are enhanced security and efficiency.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2005–2017

[2005 Dollars]

	3% discount rate	7% discount rate
Costs:		
Annualized monetized costs	$296 million	$314 million.
Annualized quantified, but un-monetized costs.	Indirect costs to the travel and tourism industry.	Indirect costs to the travel and tourism industry.
Qualitative (un-quantified) costs	Indirect costs to the travel and tourism industry.	Indirect costs to the travel and tourism industry.
Benefits:		
Annualized monetized benefits	None quantified	None quantified.
Annualized quantified, but un-monetized benefits.	None quantified	None quantified.
Qualitative (un-quantified) benefits	Enhanced security and efficiency	Enhanced security and efficiency.

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the final rule on small entities as required by the Regulatory Flexibility Act (RFA).[49] A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for conducting regulatory flexibility analyses.[50] Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.[51] This guidance document also includes a good discussion describing how direct and indirect costs of a regulation are considered differently for the purposes of the RFA. CBP does not believe that small entities are subject to the requirements of the rule; individuals are subject to the requirements, and individuals are not considered small entities. To wit, ''The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them.'' [52]

As described in the Regulatory Assessment for this rule, CBP could not quantify the indirect impacts of the rule with any degree of certainty; it instead focused the analysis on the direct costs to individuals recognizing that some small entities will face indirect impacts.

Some of the small entities indirectly affected will be foreign owned and will be located outside the United States. Additionally, reductions in international travel that result from the rule could lead to gains for domestic industries. Most travelers are expected to eventually obtain passports and continue traveling. Consequently, indirect effects are expected to be spread over wide swaths of domestic and foreign economies.

Small businesses may be indirectly affected by the rule if international travelers forego travel to affected Western Hemisphere countries. These industry sectors may include (but are not limited to):

—Manufacturing
—Wholesale trade
—Retail trade
—Transportation (including water, air, truck, bus, and rail)
—Real estate
—Arts, entertainment, and recreation
—Accommodation and food services

Because this rule does not directly regulate small entities, we do not believe that this rule has a significant economic impact on a substantial number of small entities. The exception could be certain ''sole proprietors'' who could be considered small businesses and could be directly affected by the rule if their occupations required travel within the Western Hemisphere where a passport was not previously required. However, as estimated in the Regulatory Assessment for implementation of WHTI in the land environment, the cost to such businesses would be only $125 for a first-time passport applicant, $70 for a first-time passport card applicant, plus an additional $60 if expedited service were requested. We believe such an expense would not rise to the level of being a ''significant economic impact.''

CBP thus certifies that this regulatory action does not have a significant economic impact on a substantial number of small entities.

The complete analysis of impacts to small entities for this rule is available on the CBP Web site at: *http://www.regulations.gov;* see also *http://www.cbp.gov.*

C. Executive Order 13132: Federalism

Executive Order 13132 requires DHS and DOS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include rules 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.'' DHS and DOS have analyzed the rule in accordance

[49] *See* 5 U.S.C. 601–612.

[50] *See* Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* May 2003.

[51] *See id.* at 69.

[52] *See id.* at 20.

with the principles and criteria in the Executive Order and have determined that it does not have federalism implications or a substantial direct effect on the States. The rule requires U.S. citizens and nonimmigrant aliens from Canada, Bermuda and Mexico entering the United States by land or by sea from Western Hemisphere countries to present a valid passport or other identified alternative document. States do not conduct activities subject to this rule. For these reasons, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule would not impose a significant cost or uniquely affect small governments. The rule does have an effect on the private sector of $100 million or more. This impact is discussed in the Executive Order 12866 discussion.

E. National Environmental Policy Act of 1969

DHS, in consultation with DOS, the Environmental Protection Agency and the General Services Administration have reviewed the potential environmental and other impacts of this proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management Directive 5100.1, *Environmental Planning Program of April 19, 2006.* A programmatic environmental assessment (PEA) was prepared that examined, among other things, potential alternatives regarding implementation of the proposed rule at the various land and sea ports of entry and what, if any, environmental impacts may result from the rule and its implementation.

The final PEA was published on September 10, 2007, and resulted in a Finding of No Significant Impact (FONSI) for the WHTI sea and land plan. A review of the relative impacts showed that none of the alternatives analyzed would result in a significant impact on the human environment.

A Notice of Availability for the final PEA and FONSI was published on September 26, 2007, in the **Federal Register**, and the PEA and FONSI are available for viewing on *http://www.dhs.gov* and *http://www.cbp.gov.* In addition, copies may be obtained by writing to: U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.4D, *Attn:* WHTI Environmental Assessment, Washington, DC 20229.

F. Paperwork Reduction Act

1. Passports/Passport Cards

The collection of information requirement for passports is contained in 22 CFR 51.20 and 51.21. The required information is necessary for DOS Passport Services to issue a United States passport in the exercise of authorities granted to the Secretary of State in 22 U.S.C. Section 211a *et seq.* and Executive Order 11295 (August 5, 1966) for the issuance of passports to United States citizens and non-citizen nationals. The issuance of U.S. passports requires the determination of identity and nationality with reference to the provisions of Title III of the Immigration and Nationality Act (8 U.S.C. sections 1401–1504), the Fourteenth Amendment to the Constitution of the United States, and other applicable laws. The primary purpose for soliciting the information is to establish nationality, identity, and entitlement to the issuance of a United States passport or related service and to properly administer and enforce the laws pertaining to issuance thereof.

There are currently two OMB-approved application forms for passports, the DS–11 Application for a U.S. Passport (OMB Approval No. 1405–0004) and the DS–82 Application for a U.S. Passport by Mail. Applicants for the passport cards would use the same application forms (DS–11 and DS–82). The forms have been modified to allow the applicant to elect a card or book formal passport, or both. First time applicants must use the DS–11. The rule would result in an increase in the number of persons filing the DS–11 and could result in an increase in the number of persons filing the DS–82, and a corresponding increase in the annual reporting and/or record-keeping burden. In conjunction with publication of the final rule, DOS will amend the OMB form 83–I (Paperwork Reduction Act Submission) relating to the DS–11 to reflect these increases.

The collection of information encompassed within this rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual average reporting and/or recordkeeping burden: 14.7 million hours.

Estimated annual average number of respondents: 9 million.

Estimated average burden per respondent: 1 hour *25* minutes.

Estimated frequency of responses: Every 10 years (adult passport and passport card applications); every 5 years (minor passport and passport card applications) Comments on this collection of information should be sent to the Office of Management and Budget, *Attention:* Desk Officer of the Department of State, Office of Information and Regulatory Affairs, Washington, DC 20503.

2. Groups of Children

The collection of information requirements for groups of children would be contained in 8 CFR 212.1 and 235.1. The required information is necessary to comply with section 7209 of IRTPA, as amended, to develop an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent. DHS, in consultation with DOS, has developed alternate procedures

requiring that certain information be provided to CBP so that these children would not be required to present a passport. Consequently, U.S. and Canadian citizen children through age 18, who are traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry, would be permitted to present an original or a copy of a birth certificate (rather than a passport), when the groups are under the supervision of an adult affiliated with the organization and when all the children have parental or legal guardian consent to travel. U.S. citizen children would also be permitted to present a Certificate of Naturalization or a Consular Report of Birth Abroad. Canadian children would also be permitted to present a Canadian Citizenship Card or Canadian Naturalization Certificate.

When crossing the border at the port-of-entry, the U.S. group, organization, or team would be required to provide to CBP on organizational letterhead the following information: (1) The name of the group; (2) the name of each child on the trip; (3) the primary address, primary phone number, date of birth, place of birth, and name of at least one parent or legal guardian for each child on the trip; (4) the name of the chaperone or supervising adult; and (5) the signed statement of the supervising adult certifying that he or she has obtained parental or legal guardian consent for each child.

The primary purpose for soliciting the information is to allow groups of children arriving at the U.S. border under adult supervision with parental consent to present either an original or a copy of a birth certificate, (either for U.S. children: a Consular Report of Birth Abroad, or Certificate of Naturalization; or for Canadian children: a Canadian Citizenship Card or Canadian Naturalization Certificate), rather than a passport, when the requested information is provided to CBP. This information is necessary for CBP to verify that the group of children entering the United States is eligible for this alternative procedure so that the children would not be required to present a passport or other generally acceptable document.

The collection of information encompassed within this proposed rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 1,625 hours.

Estimated average annual respondent or recordkeeping burden: 15 minutes.

Estimated number of respondents and/or recordkeepers: 6,500 respondents.

Estimated annual frequency of responses: 6,500 responses.

Comments on this collection of information should be sent to the Office of Management and Budget, *Attention:* Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503.

G. Privacy Statement

A Privacy Impact Assessment (PIA) was posted to the DHS Web site (at *http://www.dhs.gov/xinfoshare/publications/editorial_0511.shtm*) regarding the proposed rule. The changes adopted in this final rule involve the removal of an exception for U.S. citizens from having to present a passport in connection with Western Hemisphere travel other than Cuba, such that said individuals would now be required to present a passport or other identified alternative document when traveling from foreign points of origin both within and without of the Western Hemisphere. The rule expands the number of individuals submitting passport information for travel within the Western Hemisphere, but does not involve the collection of any new data elements. Presently, CBP collects and stores passport information from all travelers required to provide such information pursuant to the Aviation and Transportation Security Act of 2001 (ATSA) and the Enhanced Border Security and Visa Reform Act of 2002 (EBSA), in the Treasury Enforcement Communications System (TECS) (for which a System of Records Notice is published at 66 FR 53029). By removing the passport exception for U.S. Citizens traveling within the Western Hemisphere, DHS and DOS are requiring these individuals to comply with the general requirement to submit passport information when traveling to and from the United States.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

22 CFR Part 53

Passports and visas, travel restrictions.

Amendments to the Regulations

■ For the reasons stated above, DHS and DOS amend 8 CFR parts 212 and 235 and 22 CFR parts 41 and 53 as set forth below.

Title 8—Aliens and Nationality

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295 and by section 723 of Pub. L. 110–53).

■ 2. A new § 212.0 is added to read as follows:

§ 212.0 Definitions.

For purposes of § 212.1 and § 235.1 of this chapter:

Adjacent islands means Bermuda and the islands located in the Caribbean Sea, except Cuba.

Cruise ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

Ferry means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars.

Pleasure vessel means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire.

United States means ''United States'' as defined in section 215(c) of the

Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

U.S. citizen means a United States citizen or a U.S. non-citizen national.

United States qualifying tribal entity means a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.

* * * * *

■ 3. Section 212.1 is amended by:

■ a. Revising paragraphs (a)(1) and (a)(2); and

■ b. Revising paragraph (c)(1).

The revisions read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(a) *Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands.* (1) *Canadian citizens.* A visa is generally not required for Canadian citizens, except those Canadians that fall under nonimmigrant visa categories E, K, S, or V as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A valid unexpired passport is required for Canadian citizens arriving in the United States, except when meeting one of the following requirements:

(i) *NEXUS Program.* A Canadian citizen who is traveling as a participant in the NEXUS program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a valid unexpired NEXUS program card.

(ii) *FAST Program.* A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired FAST card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iii) *SENTRI Program.* A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired SENTRI card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iv) *Canadian Indians.* If designated by the Secretary of Homeland Security, a Canadian citizen holder of a Indian and Northern Affairs Canada (''INAC'') card issued by the Canadian Department of Indian Affairs and North Development, Director of Land and Trust Services (''LTS'') in conformance with security standards agreed upon by the Governments of Canada and the United States, and containing a machine readable zone and who is arriving from Canada may present the card prior to entering the United States at a land port-of-entry.

(v) *Children.* A child who is a Canadian citizen arriving from contiguous territory may present for admission to the United States at sea or land ports-of-entry certain other documents if the arrival meets the requirements described below.

(A) *Children Under Age 16.* A Canadian citizen who is under the age of 16 is permitted to present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when arriving in the United States from contiguous territory at land or sea ports-of-entry.

(B) *Groups of Children Under Age 19.* A Canadian citizen, under age 19 who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization is permitted to present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when arriving in the United States from contiguous territory at land or sea ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older.

The following requirements will apply:

(1) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(i) The name of the group, organization or team, and the name of the supervising adult;

(ii) A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(iii) A list of the children on the trip;

(iv) For each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(2) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (a)(1)(v)(B)(1) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(3) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part or parts 211 or 235 of this subchapter.

(2) *Citizens of the British Overseas Territory of Bermuda.* A visa is generally not required for Citizens of the British Overseas Territory of Bermuda, except those Bermudians that fall under nonimmigrant visa categories E, K, S, or V as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A passport is required for Citizens of the British Overseas Territory of Bermuda arriving in the United States.

* * * * *

(c) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who:

(i) Is applying for admission as a temporary visitor for business or pleasure from Mexico at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card issued by the Department of State, containing a machine-readable biometric identifier; or.

(ii) Is applying for admission from contiguous territory or adjacent islands at a land or sea port-of-entry, if the national is a member of the Texas Band of Kickapoo Indians or Kickapoo Tribe of Oklahoma who is in possession of a Form I–872 American Indian Card.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 4. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295 and by section 723 of Pub. L. 110–53).

■ 5. Section 235.1 is amended by:

■ a. Revising paragraph (b);

■ b. Revising paragraph (d); and

■ c. Revise paragraph (e).

The revised text reads as follows:

§ 235.1 Scope of examination.

* * * * *

(b) *U.S. Citizens.* A person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport or alternative documentation as required by 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien. A U.S. citizen must present a valid unexpired U.S. passport book upon entering the United States, unless he or she presents one of the following documents:

(1) *Passport Card.* A U.S. citizen who possesses a valid unexpired United States passport card, as defined in 22 CFR 53.1, may present the passport card when entering the United States from contiguous territory or adjacent islands at land or sea ports-of-entry.

(2) *Merchant Mariner Document.* A U.S. citizen who holds a valid Merchant Mariner Document (MMD) issued by the U.S. Coast Guard may present an unexpired MMD used in conjunction with official maritime business when entering the United States.

(3) *Military Identification.* Any U.S. citizen member of the U.S. Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces, may present a military identification card and the official orders when entering the United States.

(4) *Trusted Traveler Programs.* A U.S. citizen who travels as a participant in the NEXUS, FAST, or SENTRI programs may present a valid NEXUS program card when using a NEXUS Air kiosk or a valid NEXUS, FAST, or SENTRI card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands. A U.S. citizen who enters the United States by pleasure vessel from Canada using the remote inspection system may present a NEXUS program card.

(5) *Certain Cruise Ship Passengers.* A U.S. citizen traveling entirely within the Western Hemisphere is permitted to present a government-issued photo identification document in combination with either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services for entering the United States when the United States citizen:

(i) Boards a cruise ship at a port or place within the United States; and,

(ii) Returns on the return voyage of the same cruise ship to the same United States port or place from where he or she originally departed.

On such cruises, U.S. Citizens under the age of 16 may present an original or a copy of a birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services.

(6) *Native American Holders of an American Indian Card.* A Native American holder of a Form I–872 American Indian Card arriving from contiguous territory or adjacent islands may present the Form I–872 card prior to entering the United States at a land or sea port-of-entry.

(7) *Native American Holders of Tribal Documents.* A U.S. citizen holder of a tribal document issued by a United States qualifying tribal entity or group of United States qualifying tribal entities, as provided in paragraph (e) of this section, who is arriving from contiguous territory or adjacent islands may present the tribal document prior to entering the United States at a land or sea port-of-entry.

(8) *Children.* A child who is a United States citizen entering the United States from contiguous territory at a sea or land ports-of-entry may present certain other documents, if the arrival falls under subsection (i) or (ii).

(i) *Children Under Age 16.* A U.S. citizen who is under the age of 16 is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at land or sea ports-of-entry.

(ii) *Groups of Children Under Age 19.* A U.S. citizen, who is under age 19 and is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving from contiguous territory at land or sea ports-of-entry, when the group, organization, or team is under the supervision of an adult affiliated with the group, organization, or team and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person age 19 or older. The following requirements will apply:

(A) The group or organization must provide to CBP upon crossing the border, on organizational letterhead:

(*1*) The name of the group, organization or team, and the name of the supervising adult;

(*2*) A list of the children on the trip;

(*3*) For each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (b)(8)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part.

* * * * *

(d) *Enhanced Driver's License Projects; alternative requirements.* Upon the designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, U.S. and Canadian citizens may be permitted to present these documents in lieu of a passport upon entering or seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

(e) *Native American Tribal Cards; alternative requirements.* Upon the designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal**

Register, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

* * * * *

Title 22—Foreign Relations

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT

Subpart A—Passport and Visas Not Required for Certain Nonimmigrants

■ 1. The authority citation for part 41 is revised to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. A new § 41.0 is added to read as follows:

§ 41.0 Definitions.

For purposes of this part and part 53:

Adjacent islands means Bermuda and the islands located in the Caribbean Sea, except Cuba.

Cruise ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

Ferry means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars.

Pleasure vessel means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire.

United States means ''United States'' as defined in section 215(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

U.S. citizen means a United States citizen or a U.S. non-citizen national.

United States qualifying tribal entity means a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.

§ 41.1 [Amended]

■ 3. Section 41.1 is amended by removing and reserving paragraph (b).

■ 4. Section 41.2 is amended by revising the heading, the introductory text, and paragraphs (a), (b), (g)(1) and (g)(2) to read as follows:

§ 41.2 Exemption or Waiver by Secretary of State and Secretary of Homeland Security of passport and/or visa requirements for certain categories of nonimmigrants.

Pursuant to the authority of the Secretary of State and the Secretary of Homeland Security under the INA, as amended, a passport and/or visa is not required for the following categories of nonimmigrants:

(a) *Canadian citizens.* A visa is not required for an American Indian born in Canada having at least 50 percentum of blood of the American Indian race. A visa is not required for other Canadian citizens except for those who apply for admission in E, K, V, or S nonimmigrant classifications as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Canadian citizens applying for admission to the United States, except when one of the following exceptions applies:

(1) *NEXUS Program.* A Canadian citizen who is traveling as a participant in the NEXUS program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a NEXUS program card.

(2) *FAST Program.* A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid FAST card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(3) *SENTRI Program.* A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid SENTRI card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(4) *Canadian Indians.* If designated by the Secretary of Homeland Security, a Canadian citizen holder of an Indian and Northern Affairs Canada (''INAC'') card issued by the Canadian Department of Indian Affairs and North Development, Director of Land and Trust Services (LTS) in conformance with security standards agreed upon by the Governments of Canada and the United States, and containing a machine readable zone, and who is arriving from Canada, may present the card prior to entering the United States at a land port-of-entry.

(5) *Children.* A child who is a Canadian citizen who is seeking admission to the United States when arriving from contiguous territory at a sea or land port-of-entry, may present certain other documents if the arrival meets the requirements described in either paragraph (i) or (ii) of this section.

(i) *Children Under Age 16.* A Canadian citizen who is under the age of 16 is permitted to present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when arriving in the United States from contiguous territory at land or sea ports-of-entry.

(ii) *Groups of Children Under Age 19.* A Canadian citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when applying for admission to the United States from contiguous territory at all land and sea ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(*1*) The name of the group, organization or team, and the name of the supervising adult;

(*2*) A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(*3*) A list of the children on the trip;

(*4*) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (a)(5)(ii)(A) of this section

that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team that are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part and 8 CFR parts 212 and 235.

(6) *Enhanced Driver's License Programs.* Upon the designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, Canadian citizens may be permitted to present these documents in lieu of a passport when seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

(b) *Citizens of the British Overseas Territory of Bermuda.* A visa is not required, except for Citizens of the British Overseas Territory of Bermuda who apply for admission in E, K, V, or S nonimmigrant visa classification as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Citizens of the British Overseas Territory of Bermuda applying for admission to the United States.

* * * * *

(g) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who is applying for admission from Mexico as a temporary visitor for business or pleasure at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.

(2) A visa and a passport are not required of a Mexican national who is applying for admission from contiguous territory or adjacent islands at a land or sea port-of-entry, if the national is a member of the Texas Band of Kickapoo Indians or Kickapoo Tribe of Oklahoma who is in possession of a Form I–872 American Indian Card issued by U.S. Citizenship and Immigration Services (USCIS).

* * * * *

PART 53—PASSPORT REQUIREMENT AND EXCEPTIONS

■ 5. The authority citation for part 53 continues to read as follows:

Authority: 8 U.S.C. 1185; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); E.O. 13323, 69 FR 241 (Dec. 23, 2003).

■ 6. Section 53.2 is revised to read as follows:

§ 53.2 Exceptions.

(a) U.S. citizens, as defined in § 41.0 of this chapter, are not required to bear U.S. passports when traveling directly between parts of the United States as defined in § 51.1 of this chapter.

(b) A U.S. citizen is not required to bear a valid U.S. passport to enter or depart the United States:

(1) When traveling as a member of the Armed Forces of the United States on active duty and when he or she is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, when under official orders or permit of such Armed Forces, and when carrying a military identification card; or

(2) When traveling entirely within the Western Hemisphere on a cruise ship, and when the U.S. citizen boards the cruise ship at a port or place within the United States and returns on the return voyage of the same cruise ship to the same United States port or place from where he or she originally departed. That U.S. citizen may present a government-issued photo identification document in combination with either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States; if the U.S. citizen is under the age of 16, he or she may present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services; or

(3) When traveling as a U.S. citizen seaman, carrying an unexpired Merchant Marine Document (MMD) in conjunction with maritime business. The MMD is not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or

(4) Trusted Traveler Programs. (i) *NEXUS Program.* When traveling as a participant in the NEXUS program, he or she may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry. A U.S. citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present a NEXUS program card;

(ii) *FAST Program.* A U.S. citizen who is traveling as a participant in the FAST program may present a valid FAST card when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry;

(iii) *SENTRI Program.* A U.S. citizen who is traveling as a participant in the SENTRI program may present a valid SENTRI card when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry; The NEXUS, FAST, and SENTRI cards are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or

(5) When arriving at land ports of entry and sea ports of entry from contiguous territory or adjacent islands, Native American holders of American Indian Cards (Form I–872) issued by U.S. Citizenship and Immigration Services (USCIS) may present those cards; or

(6) When arriving at land or sea ports of entry from contiguous territory or adjacent islands, U.S. citizen holders of a tribal document issued by a United States qualifying tribal entity or group of United States qualifying tribal entities as provided in 8 CFR 235.1(e) may present that document. Tribal documents are not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or

(7) When bearing documents or combinations of documents the Secretary of Homeland Security has determined under Section 7209(b) of Public Law 108–458 (8 U.S.C. 1185 note) are sufficient to denote identity and citizenship. Such documents are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or

(8) When the U.S. citizen is employed directly or indirectly on the construction, operation, or maintenance of works undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission (IBWC), TS 994, 9 Bevans 1166, 59 Stat. 1219, or other related agreements, provided that the U.S. citizen bears an official identification card issued by the IBWC and is traveling in connection with such employment; or

(9) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Section 2, the requirement with respect to the U.S. citizen because there is an unforeseen emergency; or

(10) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S. citizen for humanitarian or national interest reasons; or

(11) When the U.S. citizen is a child under the age of 19 arriving from contiguous territory in the following circumstances:

(i) *Children Under Age 16.* A United States citizen who is under the age of 16 is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at land or sea ports-of-entry; or

(ii) *Groups of Children Under Age 19.* A U.S. citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving in the United States from contiguous territory at all land or sea ports of entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older.

The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border on organizational letterhead:

(*1*) The name of the group, organization or team, and the name of the supervising adult;

(*2*) A list of the children on the trip; and

(3) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (b)(11)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 8 CFR parts 211, 212, or 235.

Dated: March 26, 2008.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

Patrick Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. E8–6725 Filed 4–2–08; 8:45 am]

BILLING CODE 9111–14–P

Notices

Federal Register
Vol. 73, No. 65
Thursday, April 3, 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 HOMELAND SECURITY

Designation of an Enhanced Driver's License and Identity Document Issued by the State of Washington as a Travel Document Under the Western Hemisphere Travel Initiative

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security is designating enhanced driver's licenses and identity documents (EDL) issued by the State of Washington as acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry upon implementation of Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004. U.S. citizens possessing these EDLs will be permitted to present the EDL as an acceptable document under the Western Hemisphere Travel Initiative when entering the United States from Canada and Mexico at land and sea ports of entry.

DATES: This designation will become effective on June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, Western Hemisphere Travel Initiative, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, 202–344–1220.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, provides that upon implementation, U.S. citizens and Bermudian, Canadian and Mexican nationals will be required to present a passport or such alternative documents as the Secretary of Homeland Security (Secretary) designates as satisfactorily establishing identity and citizenship when entering the United States. In a final rule published concurrently in this issue of the **Federal Register**, the Department of Homeland Security (DHS) and Department of State (DOS) describe the second phase of a joint plan, known as the Western Hemisphere Travel Initiative (WHTI), to implement these new requirements. That final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico will be required to present when entering the United States at land and sea ports-of-entry from within the Western Hemisphere.

As provided for in the WHTI final rule for land and sea, one type of citizenship and identity document that U.S. citizens may present upon entry to the United States is an enhanced driver's license or identification document (EDLs) designated by the Secretary pursuant to section 7209 of IRTPA, as amended. *See* 8 U.S.C. 1185 note. To this end, in the WHTI final rule for land and sea, a new regulatory provision, at 8 CFR 235.1(d), provides:

> Upon the designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, U.S. citizens and Canadian citizens may be permitted to present these documents in lieu of a passport upon entering or seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

EDL Programs

DHS is committed to working with the various U.S. States and the Government of Canada to facilitate the development of state and province issued EDLs as travel documents that denote identity and citizenship; therefore, satisfying section 7209 of IRTPA, as amended. The Secretary believes there is great promise in driver's licenses that are enhanced to satisfy WHTI requirements, namely denoting both identity and citizenship. To establish an EDL program, each State must enter into agreement with DHS to develop an acceptable EDL document. Each EDL program is specific to each entity based on specific factors such as the entity's level of interest, funding, technology, and other development and implementation factors. Based on the individual development of each EDL program, DHS will announce acceptable State and provincial EDL programs on an ongoing basis by publication in the **Federal Register**.

To be acceptable, EDL documents must satisfy section 7209 by denoting identity and citizenship. Acceptable EDL documents must also have compatible technology, security criteria, and must respond to CBP's operational concerns. The EDL must include technologies that facilitate inspection at ports-of-entry. EDL documents must also be issued in a secure process and include technology that facilitates travel to satisfy WHTI requirements. DHS believes that the use of the EDL will have considerable facilitation benefits because CBP officers currently must inspect over 8,000 different types of documents issued by State and local entities when making admissibility determinations at land and seaports. Based on DHS testing and its experience with its trusted traveler programs, DHS expects that each application for admission will be more efficient and travelers will move through the primary inspection process more quickly with EDLs that will incorporate radio frequency identification (RFID) technology.

DHS is coordinating efforts to ensure that a State enhanced driver's license developed to meet the requirements of WHTI, will also adopt standards that REAL ID requires, as they are defined through the REAL ID rulemaking process. DHS published the REAL ID final rule on January 29, 2008 setting minimum standards for state-issued driver's licenses and identifications cards that be accepted for official purposes in accordance with the REAL ID Act of 2005. *See* Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

Although REAL ID-compliant licenses and identification cards can be issued to non-U.S. citizens upon verification of legal status in the United States, EDLs will only be issued to citizens of the United States or Canada by an authority in each individual's country. DHS will

continue to work closely with states to develop EDLs that meet both REAL ID and WHTI requirements.

Washington State EDLs

The State of Washington has established a voluntary program to develop an enhanced driver's license and identification card that would denote identity and citizenship. On March 23, 2007, the Secretary of Homeland Security and the Governor of Washington signed a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate an enhanced driver's license and identification card with facilitative technology to be used for border crossing purposes. Under the terms of the agreement between DHS and Washington State, the EDL will only be issued to U.S. citizens. EDLs also may be issued as photo identification cards to non-drivers.

The Secretary has determined that Washington State EDL documents will satisfy section 7209 by denoting identity and citizenship. The Washington State EDL documents will have compatible facilitative technology to meet CBP's operational needs. These documents contain vicinity RFID chips and machine readable zones that will facilitate processing for the holder. The EDL will also include physical security features that guard against tampering. Washington State has already begun issuing EDLs.

This notice announces that the Secretary designates the EDL issued by the State of Washington, pursuant to the terms of the MOA executed between DHS and the State of Washington, as an acceptable document to denote identity and citizenship for purposes of entering the United States. Therefore, pursuant to 8 CFR 235.1(d), U.S. citizen holders of these Washington State EDLs may present these EDLs as an alternative to a passport upon entering the United States at all land and sea ports of entry when coming from contiguous territory and adjacent islands.

Dated: March 26, 2008.

Michael Chertoff,

Secretary.

[FR Doc. E8–6819 Filed 4–2–08; 8:45 am]

BILLING CODE 9111–14–P

Federal Register

Thursday,
April 3, 2008

Part IV

The President

Proclamation 8229—Cancer Control Month, 2008

Proclamation 8230—National Child Abuse Prevention Month, 2008

Proclamation 8231—National Donate Life Month, 2008

Proclamation 8232—National Fair Housing Month, 2008

Federal Register
Vol. 73, No. 65
Thursday, April 3, 2008

Presidential Documents

Title 3—

The President

Proclamation 8229 of April 1, 2008

Cancer Control Month, 2008

By the President of the United States of America

A Proclamation

During Cancer Control Month, we honor cancer victims and survivors, raise awareness of the impact cancer has on our citizens, and underscore our commitment to battling this deadly disease.

Cancer is the second-leading cause of death in the United States, and we remain committed to making the medical advances necessary to prevent and treat this disease. Scientists and medical professionals have made great progress in developing innovative treatments, improving diagnostic tools, and increasing our understanding of cancer. These advances have helped people with cancer live longer, healthier lives.

All Americans can reduce their risk of developing cancer by following healthy eating habits, exercising regularly, avoiding tobacco and excessive use of alcohol, and controlling their weight. By scheduling regular physicals, getting preventive health screenings, and being aware of their family history, individuals who do develop cancer can increase the likelihood that it will be discovered at an earlier and more treatable stage. I encourage all our citizens to talk to their doctors and learn more about preventive measures that can save lives.

My Administration remains dedicated to finding a cure for cancer. Since 2005, the Cancer Genome Atlas has played a role in advancing cancer research, and it is helping scientists learn more about the genetic sources of cancer. We continue to support the innovative advances needed to bring hope to those affected, and we will continue to fight cancer.

As we observe Cancer Control Month, we honor cancer survivors for their determination, courage, and strength, and we remember those who lost their valiant fight against cancer. Their stories are an inspiration to all Americans. We also recognize medical professionals, researchers, family members, and friends who help support cancer patients. Their efforts improve the quality of life for those suffering from cancer, and their compassion embodies the true spirit of our Nation.

The Congress of the United States, by joint resolution approved March 28, 1938 (52 Stat. 148; 36 U.S.C. 103), as amended, has requested the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim April 2008 as Cancer Control Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that raise awareness about how all Americans can prevent and control cancer.

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

[FR Doc. 08–1098
Filed 4–2–08; 9:03 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8230 of April 1, 2008

National Child Abuse Prevention Month, 2008

By the President of the United States of America

A Proclamation

Children are the hope and promise of our Nation, and our society has a special duty to ensure young Americans get the care and attention they need to succeed in life. During National Child Abuse Prevention Month, we underscore our commitment to preventing child abuse and neglect so that all children can live in safety and security.

Parents have a responsibility to safeguard their children from danger and to provide the love, protection, and guidance youngsters need to grow into confident and caring adults. In every community across the Nation, good and courageous citizens are improving the lives of our most vulnerable children with acts of compassion. The strength of America lies in the ability of our citizens to make a positive difference in the lives of our young people.

My Administration is committed to the safety of our Nation's youth. In 2006, I signed into law the Adam Walsh Child Protection and Safety Act, which was designed to protect children from sexual and other violent crimes, help prevent child pornography, and make the Internet safer for our children. This law expands sex offender registration and notification on a nationwide basis, provides a statutory basis for the Project Safe Childhood program, and gives communities and law enforcement the tools necessary to keep children out of harm's way. Additionally, with strengthened Federal penalties, we will ensure that those who prey on our children will be caught, prosecuted, and punished to the fullest extent of the law.

As we observe National Child Abuse Prevention Month, we reaffirm our loving commitment to America's youth and our dedication to building a society in which all children can realize their full potential.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2008 as National Child Abuse Prevention Month. I encourage all citizens to help protect our children from abuse and neglect and to take an active role in creating safe communities.

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

[FR Doc. 08–1099
Filed 4–2–08; 9:03 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8231 of April 1, 2008

National Donate Life Month, 2008

By the President of the United States of America

A Proclamation

Every human life has matchless value, and during National Donate Life Month, we reaffirm our commitment to raising awareness about the importance of organ donation. We also express our appreciation to those who have donated organs, tissue, and marrow.

Thousands of Americans are currently on the waiting list for an organ or tissue transplant. I urge all Americans to register with their State's donor registry; fill out, sign, and carry an organ donor card; say yes to organ donation on their driver's license; and share their decision with family and friends. By taking these steps, Americans can help save lives. My Administration is committed to strengthening organ and tissue donation programs and awareness activities. Just last year, I was pleased to sign the ''Charlie W. Norwood Living Organ Donation Act,'' which helps match more donors with those in need of transplants. The kindness and generosity of donors reflect the compassionate spirit of our Nation.

During National Donate Life Month, we celebrate the life-saving work of medical professionals and researchers and the many others whose actions reflect our commitment to a brighter tomorrow. Individuals can visit organdonor.gov to learn more about organ and tissue donation and how they can give the gift of life.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2008 as National Donate Life Month. I call upon health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to help raise awareness of the urgent need for organ and tissue donors throughout our Nation.

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

[FR Doc. 08–1100
Filed 4–2–08; 9:03 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8232 of April 1, 2008

National Fair Housing Month, 2008

By the President of the United States of America

A Proclamation

During National Fair Housing Month, our Nation commemorates the 40th anniversary of the Fair Housing Act and reaffirms our dedication to maintaining equal access to housing for every American.

On April 11, 1968, President Lyndon B. Johnson signed the Fair Housing Act. This important legislation was one of a series of civil rights laws that sought to secure the rights of individuals and extend the full blessings of liberty to all Americans. The Fair Housing Act prohibits discrimination in the sale, rental, and financing of housing and, in doing so, furthers the ideals championed by Dr. Martin Luther King, Jr., and other heroes of the civil rights movement.

Our Nation has come a long way, yet our journey to justice is not complete. While the housing market works through this difficult period, my Administration remains steadfast in its commitment to help responsible homeowners, to end discrimination, and to work to ensure that all citizens have access to housing. During National Fair Housing Month, we acknowledge our responsibility to ensure that all Americans enjoy the opportunities that this great land of liberty offers.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2008 as National Fair Housing Month. I call upon the people of the United States to learn more about their rights and responsibilities under the Fair Housing Act.

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

[FR Doc. 08–1101
Filed 4–2–08; 9:03 am]
Billing code 3195–01–P

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Federal Register

Vol. 73, No. 65

Thursday, April 3, 2008

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FEDERAL REGISTER PAGES AND DATE, APRIL

17241–17880 1
17881–18148 2
18149–18432 3

CFR PARTS AFFECTED DURING APRIL

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:
7746 (See 8228) 18141
7747 (See 8228) 18141
7987 (See 8228) 18141
8097 (See 8228) 18141
8214 (See 8228) 18141
8228 18141
8229 18425
8230 18427
8231 18429
8232 18431

Executive Orders:
11651 (See Proclamation 8228) 18141

Administrative Orders:
Presidential Determinations:
No. 2008-15 of March 19, 2008 17241
No. 2008-17 of March 28, 2008 17879
No. 2008-16 of March 24, 2008 18147

5 CFR

1201 18149

7 CFR

457 17243

Proposed Rules:
301 17930
319 17930

8 CFR

212 18384
235 18384

9 CFR

94 17881

12 CFR

268 17885

14 CFR

61 17243
71 ..... 17887, 17888, 18151
97 18152

Proposed Rules:
39 ..... 17258, 17260, 17935, 17937, 18220
71 18222

16 CFR

Proposed Rules:
305 17263

17 CFR

200 17810
239 17810
240 17810

18 CFR

35 17246

21 CFR

522 17890

22 CFR

41 18384
53 18384
309 18154

26 CFR

1 ..... 18159, 18160

30 CFR

756 17247

Proposed Rules:
938 17268

32 CFR

Proposed Rules:
199 17271

33 CFR

117 ..... 17249, 17250

Proposed Rules:
165 ..... 18222, 18225

36 CFR

1253 18160

40 CFR

49 18161
52 ..... 17890, 17893, 17896
60 18162
61 18162
63 ..... 17252, 18169
81 17897
180 ..... 17906, 17910, 17914, 17918
271 ..... 17924, 18172

Proposed Rules:
52 ..... 17289, 17939
63 ..... 17292, 17940, 18229, 18334
271 ..... 17944, 18229

42 CFR

422 18176
423 18176

44 CFR

62 18182
64 ..... 17928, 18188
67 ..... 18189, 18197

Proposed Rules:
67 ..... 18230, 18243, 18246

47 CFR

Proposed Rules:
73 18252

48 CFR

Proposed Rules:
2.....17945
9.....17945
13.....17945
17.....17945
36.....17945
42.....17945
53.....17945

49 CFR

Proposed Rules:
171.....17818
173.....17818
174.....17818
179.....17818

50 CFR

17.....17782
648.....18215
679.....18219

Proposed Rules:
622.....18253
697.....18253

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 APRIL 3, 2008

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery; published 3-4-08

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans:

Pennsylvania; published 3-4-08

Pennsylvania etc.; published 3-4-08

Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan:

Quinault Indian Nation; published 4-3-08

MERIT SYSTEMS PROTECTION BOARD

Revised Interim Rule with Request for Comment; published 4-3-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A319, A320, and A321 Series Airplanes; published 2-28-08

ATR Model ATR42 and ATR72 Airplanes; published 2-28-08

BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146 RJ Airplanes; published 2-28-08

Boeing Model 737 300, 400, and 500 Series Airplanes; published 2-28-08

Boeing Model 767 200, 300, 300F, and 400ER Series Airplanes; published 2-28-08

Bombardier Model DHC 8 102, DHC 8 103, DHC 8 106, DHC 8 201, DHC 8 202, DHC 8 301, DHC 8 311, and DHC 8 315 Airplanes, and Model DHC 8 400 Series Airplanes; published 2-28-08

Embraer Model EMB-120, 120ER, 120FC, 120QC, and 120RT Airplanes; published 2-28-08

Fokker Model F.28 Mark 0070 and 0100 Airplanes; published 2-28-08

General Electric Co.; published 2-28-08

Standard Instrument Approach Procedures, etc.; published 4-3-08

TREASURY DEPARTMENT

Internal Revenue Service

Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock; Correction; published 4-3-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Olives Grown in California; Decreased Assessment Rate; comments due by 4-7-08; published 2-7-08 [FR E8-02193]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

South American Cactus Moth; Quarantine and Regulations; comments due by 4-11-08; published 2-11-08 [FR E8-02477]

AGRICULTURE DEPARTMENT

Forest Service

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho; comments due by 4-7-08; published 1-7-08 [FR 07-06305]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Swine Contractors; comments due by 4-8-08; published 2-8-08 [FR E8-02376]

Weighing, Feed, and Swine Contractors; comments due by 4-11-08; published 2-11-08 [FR 08-00577]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants:

Endangered Status for Black Abalone; comments due by 4-10-08; published 1-11-08 [FR E8-00335]

Fisheries of the Exclusive Economic Zone Off Alaska;

Atka Mackerel in the Bering Sea and Aleutian Islands Management Area; comments due by 4-7-08; published 3-21-08 [FR 08-01061]

Fisheries of the Exclusive Economic Zone Off Alaska:

Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska; comments due by 4-7-08; published 3-26-08 [FR 08-01073]

Fisheries of the Northeastern United States:

Atlantic Sea Scallop Fishery; Framework Adjustment 19; comments due by 4-8-08; published 3-19-08 [FR 08-01055]

COMMERCE DEPARTMENT

Patent and Trademark Office

Examination of Patent Applications That Include Claims Containing Alternative Language; comments due by 4-9-08; published 3-10-08 [FR E8-04744]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Implementation Plans:

Reasonably Available Control Technology for Oxides of Nitrogen; New Jersey; comments due by 4-7-08; published 3-6-08 [FR E8-04346]

Community Right-to-Know; Corrections and 2007 Updates:

Toxics Release Inventory; North American Industry Classification System Reporting Codes; comments due by 4-7-08; published 3-6-08 [FR E8-04387]

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]

Final Authorization of State Hazardous Waste Management Program Revisions; Utah; comments due by 4-7-08; published 3-7-08 [FR E8-04251]

Final Authorization of State Hazardous Waste Management Program Revision; Utah; comments due by 4-7-08; published 3-7-08 [FR E8-04253]

Final Authorization of State Hazardous Waste Management Program Revisions:

Colorado; comments due by 4-11-08; published 3-12-08 [FR E8-04978]

Hazardous Waste Management System; Hazardous Waste Manifest System Modification; comments due by 4-11-08; published 2-26-08 [FR E8-03615]

Inert ingredients:

Denial of Pesticide Petitions, etc.; comments due by 4-8-08; published 2-8-08 [FR E8-02175]

Land Disposal Restrictions:

Site Specific Treatment Variance etc.; EnergySolutions Facility in Clive, UT; comments due by 4-7-08; published 3-6-08 [FR E8-04428]

Site Specific Treatment Variance; EnergySolutions Facility in Clive, UT; comments due by 4-7-08; published 3-6-08 [FR E8-04449]

Proposed Tolerance Actions:

2,4-D, Bensulide, et al.; comments due by 4-7-08; published 2-6-08 [FR E8-02094]

FEDERAL COMMUNICATIONS COMMISSION

Creation of a Low Power Radio Service; comments due by 4-7-08; published 3-6-08 [FR E8-04456]

FEDERAL RESERVE SYSTEM

Truth in Lending; comments due by 4-8-08; published 1-9-08 [FR E7-25058]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Participants Choices of TSP Funds; comments due by 4-9-08; published 3-10-08 [FR E8-04776]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Proposal to Permit the Use of Ultrafiltered Milk; Extension of Comment Period:

Cheeses and Related Cheese Products; comments due by 4-11-08; published 2-11-08 [FR E8-02454]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge Operation Regulations:

Mill Neck Creek, Oyster Bay, NY; comments due by 4-7-08; published 3-7-08 [FR E8-04470]

Safety Zone:

Red Bull Air Race; San Diego Bay, San Diego, CA; comments due by 4-11-08; published 4-3-08 [FR E8-06892]

Security Zone:

Anacostia River, Washington, DC; comments due by 4-7-08; published 3-7-08 [FR E8-04463]

MacDill Air Force Base, Tampa Bay, FL; comments due by 4-7-08; published 2-5-08 [FR E8-01765]

Special Local Regulations:

Recurring Marine Events in the Fifth Coast Guard District; comments due by 4-9-08; published 3-10-08 [FR E8-04707]

Temporary Restricted Anchorage:

Seventh Coast Guard District, Captain of the Port Zone Jacksonville; comments due by 4-10-08; published 3-11-08 [FR E8-04757]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

12 Month Finding on Petition to List Bonneville Cutthroat Trout as Threatened or Endangered; comments due by 4-7-08; published 2-7-08 [FR E8-02222]

JUSTICE DEPARTMENT

Standards for the Administrative Collection of Claims; comments due by 4-7-08; published 3-7-08 [FR E8-04586]

LABOR DEPARTMENT

Employment Standards Administration

Family and Medical Leave Act of 1993; comments due by 4-11-08; published 2-11-08 [FR E8-02062]

LABOR DEPARTMENT

Wage and Hour Division

Family and Medical Leave Act of 1993; comments due by 4-11-08; published 2-11-08 [FR E8-02062]

NUCLEAR REGULATORY COMMISSION

Decommissioning Planning; comments due by 4-7-08; published 1-22-08 [FR E8-00574]

PERSONNEL MANAGEMENT OFFICE

Time-in-Grade Rule Eliminated; comments due by 4-7-08; published 2-6-08 [FR E8-02122]

POSTAL SERVICE

New Standards to Prohibit the Mailing of Replica or Inert Munitions; comments due by 4-7-08; published 3-7-08 [FR E8-04459]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Agusta S.p.A. Model AB 139 and AW 139 Helicopters; comments due by 4-7-08; published 3-7-08 [FR E8-04461]

Airbus Model A318, A319, A320, and A321 Airplanes; comments due by 4-7-08; published 3-13-08 [FR E8-05017]

Bell Helicopter Textron Canada Models 206L, L-1, L-3, L-4, and 407 Helicopters; comments due by 4-7-08; published 3-7-08 [FR E8-04495]

Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) Airplane; comments due by 4-10-08; published 3-11-08 [FR E8-04770]

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 4-7-08; published 3-6-08 [FR E8-04322]

Bombardier Model DHC-8-102, DHC-8-103, DHC-8-106, DHC-8-201, DHC-8-202, DHC-8-301, DHC-8-311, and DHC-8-315 Airplanes; comments due by 4-10-08; published 3-11-08 [FR E8-04772]

Bombardier Model DHC-8-400, DHC-8-401, and DHC 8 402 Airplanes; comments due by 4-10-08; published 3-11-08 [FR E8-04771]

Airworthiness directives:

Eurocopter Model AS 332 L2 Helicopters; comments due by 4-7-08; published 2-5-08 [FR E8-01701]

Airworthiness Directives:

Lindstrand Balloons Ltd. Models 42A, 56A, 77A, 105A, 150A, 210A, 260A, 60A, 69A, 90A, 120A, 180A, 240A, and 310A Balloons; comments due by 4-11-08; published 3-12-08 [FR E8-04759]

Rolls-Royce plc RB211 Series Turbofan Engines; comments due by 4-7-08; published 2-6-08 [FR E8-02028]

Saab Model SAAB SF340A and SAAB 340B (Including Variant 340B (WT)) Series Airplanes; comments due by 4-11-08; published 3-12-08 [FR E8-04660]

Amendment of Class E Airspace; Franklin, PA; comments due by 4-7-08; published 2-21-08 [FR 08-00766]

Class E Airspace; comments due by 4-7-08; published 2-21-08 [FR 08-00722]

Establishment of Class E Airspace:

Rumford, ME; comments due by 4-7-08; published 2-20-08 [FR 08-00718]

Swans Island, ME; comments due by 4-7-08; published 2-20-08 [FR 08-00717]

Vinalhaven, ME; comments due by 4-7-08; published 2-20-08 [FR 08-00719]

Modification of Restricted Areas; Camp Shelby, MS; comments due by 4-7-08; published 2-20-08 [FR E8-03138]

TREASURY DEPARTMENT

Internal Revenue Service

Guidance Necessary to Facilitate Electronic Tax Administration—Updating of Section 7216 Regulations; comments due by 4-7-08; published 1-7-08 [FR 08-00002]

TREASURY DEPARTMENT

Standards for the Administrative Collection of Claims; comments due by 4-7-08; published 3-7-08 [FR E8-04586]

LIST OF PUBLIC LAWS

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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. 2733/P.L. 110–198

Higher Education Extension Act of 2008 (Mar. 24, 2008; 122 Stat. 656)

Last List March 18, 2008

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